



**UNIVERSITY OF TWENTE.**

University of Twente

Faculty of Behavioural Management and Social Science

Bachelor Thesis European Public Administration

## **The Asylum Qualification Directive**

Towards more restrictive or more favorable provisions for asylum seekers?

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Date of Submission: 23-04-2015

## **Abstract**

The establishment of the Common European Asylum System (CEAS) marked a milestone in the European Union's (EU) creation of an area of protection and solidarity for the most vulnerable. European member states are confronted with several regulations and directives adopted within this system, many of which they are obliged to comply with due to the legislative instruments used by the EU. Nevertheless, member states still have room for making some articles more favourable for asylum seekers. One of the directives that plays a key role in the CEAS is the Asylum Qualification Directive. Little is known about the extent to which members are making use of this possibility and what this means for the rights of asylum seekers.

The bachelor thesis pursues to fill this gap by investigating how countries have implemented the Asylum Qualification Directive and whether these resulted in more restrictive or more liberal provisions towards asylum seekers. Therefore, Directive 2004/83/EC which forms an integral part of the CEAS, is compared to the respective national legislations of Austria, Ireland and Germany. The analysis reveals that while Germany and Ireland follow the more restrictive approach of the EU Directive, Austria shows the opposite. The Austrian legislation pursues a liberal trend compared to the other national and EU legislations. However, the objectives of the CEAS can be called achieved as they managed to achieve a set of minimum EU standards as all of the three implemented the Directive to a certain extent.

## List of Abbreviations

<b>AsylG</b>	Asylgesetz
<b>AslyVfG</b>	Asylverfahrensgesetz
<b>CEAS</b>	Common European Asylum System
<b>EU</b>	European Union
<b>GDP</b>	Gross Domestic Product
<b>UDHR</b>	Universal Declarations on Human Rights
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TEU</b>	Treaty on the European Union
<b>QMV</b>	Qualified Majority Voting

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## 1. Introduction

For more than sixty years, the granting of asylum and the protection of refugees has been a fundamental right, which was first mentioned in the Geneva Convention in 1951. Article I declares asylum to be an international obligation which is granted to people who “fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion [...] outside the country of his nationality” (Geneva Convention, 1951). Regarding the European Union, the asylum policy is part of the Area of Freedom, Security and Justice. Article 78 of the *Treaty on the Functioning of the European Union* (TFEU) states that the EU “shall develop a common policy on asylum, subsidiary and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensure compliance with the principle of *non-refoulement*”(TFEU, 2012).

This common policy on asylum referred to in the TFEU is the Common European Asylum System established in 1999. Since the 1990s, Western European countries are challenged by an influx of refugees and asylum seekers which is one of the most contesting political challenges they face (Overbeek, 1995). With the creation of the borderless European Schengen Area in 1985, the EU countries agreed upon fundamental values and joint approaches regarding the protection for refugees and asylum seekers. This shared responsibility makes it absolutely essential to have uniform standards across all member states in order to treat every applicant in the same way regardless of where the application proceeds (European Commission, 2014a). Since 1980, there is a recognizable shift in competencies of asylum policies from the national to the EU level. This need led to the aforementioned establishment of the CEAS, an area of protection and solidarity for the most vulnerable (European Commission, 2014a).

The core of the CEAS consists of different legislative instruments: The Asylum Procedures<sup>1</sup> Directive and Qualification Directive<sup>2</sup> guarantee the similar process for the application of asylum throughout the European Union and the adequate assessment of the applicant’s refugee or subsidiary protection status. If the qualification was successful, certain rights such as residence permit or access to the labour market and health care are given. The Reception Conditions Directive<sup>3</sup> ensures humane material reception conditions such as housing and that fundamental rights of the persons are fully respected across the EU. The Dublin Regulation<sup>4</sup> established a system determining the state responsible for the asylum application while the EURODAC<sup>5</sup> Regulation ensures that each applicant’s fingerprint is taken and sent to a database called EURODAC.

As member states face distinct conditions and experiences with asylum seekers, the EU allows member states to interpret the regulations and directives less stringent than prescribed. This is where the thematic priority commences. This study assumes that the status quo in the

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<sup>1</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

<sup>2</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>

<sup>2</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>

<sup>3</sup> Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>

<sup>4</sup> Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0343&from=EN>

<sup>5</sup> Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000R2725&from=EN>

field of asylum policies in the European Union is a result of ‘venue-shopping’. Existing literature shows that two contrasting views are prevalent. On the one hand, it is assumed that the policy venue of asylum policies at EU level leads to more restrictive national policies and on the other hand, the EU still offers countries power to be more favourable towards more liberal national asylum policies.

Authors such as Guiraudon (2000), Kaunert & Leonard (2011), Mauer & Parkes (2007) or Lavenex (2006) are also arguing that increasing cooperation at the EU level is due to national policy makers trying to avoid national obstacles and pressures faced at domestic level. This process can be best explained by ‘venue-shopping’. It is “the search by rational policy-makers for new venues of policy-making that are more amenable to their preferences and goals” (Kaunert & Leonard, 2011 p.1). The assumption that European institutions are more ‘migrant-friendly’ compared to national actors (Kaunert & Léonard, 2012) motivates policy actors to venue-shop. Guiraudon (2000) and Kaunert & Leonard (2011) have two opposing views on whether venue-shopping leads to more liberal or to more restrictive national asylum policies.

As the transfer to the supranational level resolves judicial constraints and hampers activities of pro-migrant groups, Guiraudon (2000) argues that venue-shopping leads to the adoption of more restrictive asylum policies on the national level. However, Kaunert & Léonard (2012) have a different view. The authors assume that broader changes within the EU itself, new treaties, such as the Lisbon Treaty in 2009 amending duties, responsibilities, decision-making processes and changes to the EU’s ‘system of venues’ have left to more liberal national asylum policies. These two contrasting views and the member states’ possibility to interpret regulations less stringent than predefined form the main part of the upcoming thesis. It investigates on the outcomes of the CEAS in three EU member states and examines how these countries have interpreted the Asylum Qualification Directive into their national legislations. Thereby, either the argument of Guiraudon (2000) that venue-shopping leads to more restrictive national policies or the argument towards more liberal national policies by Kaunert & Léonard (2012) can be confirmed.

For the analysis, the national legislations of Austria, Ireland and Germany are examined towards their interpretation of the Asylum Qualification Directive. According to this, the main research question is as follows:

*“What are the consequences of the implementation of the Asylum Qualification Directive for national asylum policies in Austria, Ireland and Germany?”*

In order to answer the research question in the most appropriate way, the Qualification Directive is compared to the national legislations of Austria, Ireland and Germany. By doing so, the outcome of venue-shopping is expected to lead to either more liberal or more restrictive outcomes of the implementation and afterwards, similarities and differences of the national legislations can be revealed. This leads to two sub-questions: firstly “how can venue-shopping be characterized?” and secondly, “what are the similarities and differences between the national legislations of Austria, Ireland and Germany?” As the literature review illustrates, ‘venue-shopping’ is a core explanation of national asylum policies to become either more liberal or more restrictive implementing EU Directives. Therefore, two hypotheses come up:

first, the outcome of venue-shopping is more liberal national asylum policies in Austria, Ireland and Germany and second, the outcome of venue-shopping is more restrictive national asylum policies in Austria, Ireland and Germany.

## **1.1 Scientific and societal relevance**

The aim of the thesis is to find out and evaluate the outcomes of national politicians deciding to ‘venue-shop’ to the EU level in the field of asylum. Several authors agree that venue-shopping is the main explanation for the European co-operation in the area of asylum policy. There are several reasons urging national asylum politicians to shift to the EU level which make this topic relevant. Worldwide, but especially in the EU, the numbers of asylum seekers are steadily<sup>6</sup> increasing. In 1992, 670.000 asylum applications have been registered from non-EU countries to the EU-15. Respectively in 2001, numbers decreased to 424.000 and only 200.000 in 2006. The highest number of asylum applicants to the EU-28 after the millennium turn have been noticed in 2013 with 450.000 (Eurostat, 2014). Since 2009, the Charter of Fundamental Rights and the TFEU entail the EU’s duty on the internal protection of people fleeing from their home countries as a human right. The reasons for people fleeing are stated to be persecution, the real risk of suffering serious harm if people have to return to their home country and reasons such as war, terror or natural catastrophes (European Commission, 2014b) are quoted. The alarming numbers and the adopted duties show that the joint approaches of the CEAS are urgently needed to be concrete and efficient, and to provide the member states with means to successfully cope with the many asylum seekers in their countries.

Next to the high numbers of people seeking refuge in the EU and its commitment to guarantee international protection and well-being to the people in need, other venues influence asylum policy, too, making this topic highly relevant. Worldwide, the increase in violent conflicts, border issues and environmental catastrophes due to the climate change contribute to the high number of asylum seekers in the EU. It is not possible for politicians to make decisions on the national level anymore, as these incidents are entangled globally. Thus, the national politicians call for EU regulations dealing with this complex issue on which they can rely in order to amend their national policies.

Even though, the establishment of the CEAS and the directives and regulations are a milestone in EU asylum policy, criticism as from Fekete (2005) has come up arguing that it is not possible for the EU to objectively assesses whether an asylum seeker is in need of protection due to war and conflict if there are quotas determining the amount of refugees admitted and deported. Moreover, they state that the common asylum policy is shifting from the protection of refugees to the protection of states. Especially those EU countries with external borders (e.g. to Africa) seem to be overwhelmed with the situation of refugees arriving at their borders, as reported by the media.

By capturing the thoughts of Guiraudon (2000) and Kaunert & Leonard (2011) and applying their theoretical approaches to three concrete cases: the national legislations of Austria,

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<sup>6</sup> See appendix for more information

Ireland and Germany, one can see how the EU itself and the respective countries are have dealt with this issue and whether different interpretations exist.

## **1.2 Thesis Outline**

The bachelor thesis is introduced by a historical review of the international developments of the refugee issue. Since the UN took over responsibilities, the EU grew in its role as the international framework is binding. As a consistent consequence, the EU established its Common European Asylum System to assist its member states with means to cope with asylum seekers and guarantee rights for the persons concerned. Since the CEAS is the core system in the context of EU asylum policy, its illustration is needed to understand the proceedings and underlying conditions for the applications of asylum seekers in the EU. As mentioned before, the main explanation for the shift is called ‘venue-shopping’, presented in its details in the then following theoretical part. Both contrasting views are highlighted in order to have a basis for the assessment of the more liberal or more restrictive interpretation of the Qualification Directive to the national legislations. Ensuing, the methodology part clarifies the proceeding of the analysis as well as reasons on selection of the Qualification Directive, German, Austrian and Irish legislation. The subsequent analysis part is the actual comparison between the Qualification Directive and its implementation into the respective national legislations concluding with an overview of the results, showing the either more liberal or restrictive trend of the particular national legislation as well as general similarities and differences. Finally, the conclusion completes the thesis.

## **2. Background Information**

### **2.1 A Historical Review of the International Refugee Regime**

In order to be able to understand the full scope of the subject matter on refugees and why it is necessary to consider it on the international level, a review on its history is required. The early incidents presented lay down the foundation for the EU’s necessity to deal with the issue on refugees. With the establishment of the CEAS, the EU reacts to the binding international framework and responds to assist the member states and provide them with efficient and effective means. In the earlier times, when international political actors understood that the refugee issue was not a temporary concern, the United Nations (UN) took responsibilities<sup>7</sup>. The General Assembly ratified the right of asylum as a human right in its Universal Declaration of Human Rights (UDHR), which marked a milestone in asylum policy. Paragraph 1 and 2 of Article 14 define: “Everyone has the right to seek and enjoy in other countries asylum from persecution” and “this right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations” (UN General Assembly, 1948).

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<sup>7</sup> Important predecessors are the United Nations Relief and Rehabilitation Administration (UNRRA) founded in 1946 and the International Refugee Organization (1948) focusing on the resettlement of refugees; For more information see <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005685>



In 1950, the United Nations High Commissioner for Refugees (UNHCR<sup>8</sup>) came into existence. The new agencies' goals were the supply of protection for refugees in an international setting implying the assistance with their assimilation in the new communities, facilitate voluntary repatriation and assist governments with relocations and seek permanent solutions (Feller, 2001; Barnett, 2002). It became an individual permanent body with its main task to make sure countries operating in compliance with the *United Nations Convention Relating to the Status of Refugees*, signed in 1951. The Convention sets out the standards of the proceeding with refugees, grants rights and freedoms and defines the world community's responsibilities in the refugee field (Nanda, 1980). Until today, the 1951 Convention continues to be the only legally binding international instrument in the field of migration and asylum which has only been amended once. It was criticised as its relatedness only compromising the refugee movements of the time before 1951 and as being too individual-oriented. For this reason, the *1967 Protocol Relating to the Status of Refugees*<sup>9</sup> includes a more extensive definition on refugees:

*“every person who owing to external aggression, occupation, foreign domination, or seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” (Protocol Relating to the Status of Refugees, 1967, Art.1).*

The creation of the European Single Market in the 1980s further strengthened problems concerning refugees as the free movement of goods, services, capital and persons attracted even more asylum seekers. Contributing to that, the general reasons behind people fleeing have shifted to protected civil war, communal violence and civil disorder; conflicts are fuelled by superpower rivalry and aggravated by socioeconomic problems in developing countries. On the one hand, refugees felt to be threatening the economic and political stability, which led to increased border controls, harmonization of standards and deportation of refugees has become the norm (Feller, 2001). However, on the other hand, it further increased the attention of political actors to rethink policies as the EU was questioned to act due to an international connectedness and in order to assist their member states.

Especially within the twentieth-century, the European countries were faced with rising numbers of asylum seekers which resulted in increased measures for the reduction of asylum claims. Scholars such as Bloch & Schuster (2005) or Fekete (2005) entitle the EU as a 'deportation machine'. Ever-increasing pressures on states in the early 1990s have rendered deportation<sup>10</sup>, detention<sup>11</sup> and dispersal<sup>12</sup> as 'normalized' actions to manage and control immigrants. The EU member states defend those actions as provisions to spread costs of reception and to prevent a dense population of refugees in a certain area (Schuster, 2005).

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<sup>8</sup> Also referred to as UN Refugee Agency

<sup>9</sup> Available at <http://www.unhcr.org/3b66c2aa10.html>

<sup>10</sup> Deportation implies the physical removal, the ultimate exclusion of individuals or groups from the territory of a state (Schuster, 2005). It takes place when border controls failed to prevent unauthorized entry. For more information see Ellermann (2008)

<sup>11</sup> Detention means the enclosure in a camp or prison and consequently the exclusion from the receiving society (Schuster, 2005).

<sup>12</sup> Dispersal is the distribution of asylum-seekers to areas around a country (Schuster, 2005).

‘Deportation, detention and dispersal’ are exposed to criticism as the 1951 Convention and subsequent international law are harmed as they abuse human rights and penalize individuals (Fekete, 2005; Schuster, 2005).

With the fall of the Berlin Wall in 1989 and the collapse of the Soviet Union (early 1990s), a growing movement of refugees was noticed again. Therefore, European states more and more engaged in policy debates on the harmonization on common standards and solutions. This was where ‘venue-shopping’ became an issue in asylum policies towards more restrictive measures. Until the creation of a Common European Asylum System in 2004, member states already initiated visa restrictions, carrier liabilities and fingerprints, which later were inherited in EU directives implemented under the CEAS between 2003 and 2004 (Schuster, 2005).

Still in operation today, about 60 years after its foundation, the Convention continues to be the only legally binding international instrument in the field of migration and asylum. Differences across countries and regions in expulsion, the increasing expansion of trafficking in human beings and illegal migration contributed to obscure separation between migrants and refugees. It significantly harms the UNHCR’s tasks to ensure international protection as there are more people in need than instruments for protection available (Feller, 2001). The development of a Common European Asylum System and key directives for the determination of procedures determining rights, procedures and minimum standards is a corollary. As mentioned before, the dealing with refugees has a long history and is an ever increasing important and complex issue, as the lines between refugees and migrants are blurry. This required that the status of refugees is determined for further process. This is the task of the Qualification Directive, which is in the focus of this thesis. The directive is of vital importance for the EU member states and the refugee alike.

## **2.2. The Common European Asylum System**

Taking the previous historical review into account, effective asylum policy requires inter-state co-operation under the 1951 Convention. With regards to the European Union, the issue became relevant with the approach of the free movement of goods, services and persons within the Union (Lambert, 2009). As the Treaty of Amsterdam shifted the field of asylum and migration from the third to the first pillar, it facilitated that harmonized asylum policies could be set at the European level. Moreover, the Tampere Meeting of 1999 set the basis for a common area of freedom, security and justice in which the then 15 member states agreed on the establishment of the Common European Asylum System in 1999. According to Lambert (2009), the prosperous harmonization is dependent on common legislation in the form of judicial understandings, principles and norms concerning refugee matters. The European Commission’s exclusive right to propose legislature marked the beginning of four key directives and two regulations on matters of asylum in the first stage of the CEAS.

In the first stage of the CEAS, the harmonization of existing national asylum policies was in the focus. Therefore, three directives and one regulation were passed under the condition that the policies will be based on the application of the 1951 Convention and the principle of ‘non-refoulement’ (Hatton, 2005). The European Union agreed on four main building blocks: the Reception Conditions Directive, the Dublin II Regulation, the Qualification Directive and the Asylum Procedures Directive. The first one determines minimum standards regarding the

access to employment, education, housing, training, subsistence, and health for the reception of asylum seekers; Dublin II refers to the mechanisms defining the member state responsible for the process of application<sup>13</sup>; the Qualification Directive sets a common set of criteria, which can be utilized in the definition of refugees and lately the Asylum Procedures Directive concerning the procedures of asylum claims and the rights to interviews, legal assistance and appeal. The adoption of these four building blocks is of historical importance to the new period in decision-making on the CEAS in the second stage (Ackers, 2005).

Hatton (2005), too elaborated on the extent to which these regulations have been adopted to national legislation. He exemplifies the cases of the UK<sup>14</sup> and Germany<sup>15</sup>, which succeeded in introducing them but only in some areas. It is a common phenomenon that standards are rather ‘levelled down’ as the policies only imply minimum standards and only a few countries are willing to maintain higher ones (Hatton, 2005). By contrast, Kaunert (2009) testifies that as the CEAS managed harmonizing effects in national legislations and the agreed minimum standards to hamper a ‘race to the bottom’, competition on more restrictiveness is not given anymore as there is no need to lower standards compared to neighbours.

With the events of the terror attacks in the United States in 2001, the CEAS was confronted with a security issue which further strengthened the need to stop liberalization of asylum and migration policies (Kaunert, 2009). ‘Venue-shopping’ by national actors promoted the EU member states’ urgency for increased co-operation with EU institutions. It was used as means for successful dealing with immigration and asylum not feasible at national level anymore. Within the second stage of the CEAS, the area of asylum became ‘communitarised’ and decision-making procedures changed as national sovereignty was transferred to the EU level (Kaunert, 2009). The Council, now acting under Qualified Majority Voting (QMV), could avoid any attempts by member states to block policies and together with the European Parliament under co-decision. This was a considerable progressive move towards co-operation with the ‘migrant friendly’ EU institutions resulting in ever more harmonization was given (Kaunert, 2009). Political actors developed a more fully integrated EU-wide asylum system with the Green Paper of 2007 being the foundation for the Commission’s Policy Plan on Asylum (2008) (European Commission, 2014c). The Policy Plan aims to increase harmonization of national asylum legislations and protection standards, effective practical co-operation on grounds of shared responsibilities of the EU states with increased solidarity of EU and non-EU countries (European Commission, 2014c). The initial directives<sup>161718</sup> and regulations<sup>1920</sup> have been amended clarifying common high standards,

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<sup>13</sup> Sustained by EURODAC, a database for fingerprints, and close police co-operation (Hatton, 2005)

<sup>14</sup> “The UK government succeeded in introducing the removal of support from asylum seekers who did not apply for asylum in good time without good reason in line with its Nationality, Immigration and Asylum Act of 2002” (Hatton, 2005, p.9).

<sup>15</sup> “Germany was successful in establishing a provision to restrict the mobility of asylum seekers within the country, even though it is the only country that has this as part of its national policy” (Hatton, 2005, p.9).

<sup>16</sup> Now, ‘revised Asylum Procedures Directive’: aiming at fairer, quicker and better quality asylum decisions. Furthermore, asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture (European Commission, 2014a)

<sup>17</sup> Now, ‘revised Reception Conditions Directive’: “ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are

stronger co-operation in order to guarantee that asylum seekers are treated equally within an open and fair system (European Commission, 2014a).

### 3. Theoretical Framework

#### 3.1 A Definition of ‘Venue-Shopping’

In order to answer the research question, it is necessary to define the concept of ‘venue-shopping’. According to Pralle (2003), it refers to the activities of policymakers and advocacy groups looking for a decision setting where their discrepancies with current policies can be represented by alternative policy proposals. For many years, to ‘venue shop’ is a key component forming an integral part in any political strategy when biases are insoluble to move decision-making to new venues that are more amenable to the policymakers’ preferences (Kaunert & Leonard, 2011; Pralle, 2003). With effective and efficient ‘venue-shopping’, considerable policy changes can be made. Moving to a new policy arena often signifies a whole new understanding of the issue at stake promoted by the involvement of new actors and the adoption of new rules. With these words, the first sub-question on how venue-shopping can be characterized is answered.

With regards to the asylum policy of the European Union, the definition of ‘policy venue’ developed by Baumgartner and Jones (1993), revisited by many scholars such as Pralle (2003), Kaunert and Léonard (2011 and 2012) or Guiraudon (2000), has to be understood as ‘institutional and legal arrangements governing the pursuit of a given policy goal’ (Kaunert & Léonard, 2012, p.1400). Article 78 of the Treaty on the Functioning of the European Union defines the corresponding EU asylum policy venue. Aside from that, Baumgartner and Jones have a more dynamic approach of ‘venue-shopping’ than Lindbolm. Again, with regards to the European Union, the two state that fundamental changes “alter the system, as new definitions of a problem take hold, new actors mobilize, and new rules or institutions are created” (Pralle, 2003, p. 236). This indeed happened to the EU with the introduction of the new treaties, which had major impacts on the EU asylum policy. With the rising importance of the refugee issue as an international concern, there has been urgent need for action. The treaties facilitated the development of the Common European Asylum System (CEAS), an institution which effective practical co-operation on grounds of shared responsibilities of the EU states with increased solidarity of EU and non-EU countries (European Commission,

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fully respected; it also ensures that detention is only applied as a measure of last resort,” (European Commission, 2014a, p.3)

<sup>18</sup> Now, ‘revised Qualification Directive’: “clarifies the grounds for granting international protection and therefore will make asylum decisions more robust; it will also improve the access to rights and integration measures for beneficiaries of international protection; (European Commission, 2014a, p.3)

<sup>19</sup> Now, ‘revised Dublin Regulation’: “enhances the protection of asylum seekers during the process of establishing the state responsible for examining the application and clarifies the rules governing the relations between states; it creates a system to detect early problems in national asylum or reception systems and address their root causes before they develop into fully fledged crises”(European Commission, 2014a, p.3)

<sup>20</sup> Now, ‘revised EURODAC Regulation’: “will allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder and terrorism”(European Commission, 2014a, p.3)

2014c). The EU *acquis* on asylum encompasses several directives and regulations setting common standards and rights for the equal treatment of refugees within an open and fair system (European Commission, 2014a). For the given context, the Asylum Qualification Directive of 2004 is in the focus comprising minimum standards for the qualification and status of third country nationals as well as common grounds to grant international protection. The decision of member states to give their sovereignty to the supranational level is a way of decision making for why ‘venue-shopping’ is currently the main explanation for the development of the EU Asylum policy (Guiraudon, 2000; Kaunert & Leonard, 2011).

### 3.2 ‘Venue-Shopping in the Context of EU Asylum Policy

Revisiting the thoughts of Pralle and Baumgartner & Jones, Guiraudon (2000) transferred ‘venue-shopping’ into the EU context of asylum policy first. She argues that the concept is the most suitable to illustrate the approach of European co-operation. In the beginnings of the 1980s, this ‘upward shift’ of intergovernmental cooperation was a response to the obstacles faced at the domestic level (Kaunert & Leonard, 2011). This was mainly due to constraints of judicial nature, interior ministries or migrant aid-groups impeding policy changes. The ‘judicialisation’ of asylum and migration policy, indicating high national courts as the main restraining actors in increasing migration controls made it nearly impossible for national actors to come up with policy changes (Kaunert & Leonard, 2011; Guiraudon, 2000). According to their views, ‘venue-shopping’ is an adequate way to circumvent those obstacles shifting to new venues with new actors and new rules to avoid liberal constraints and adopt more restrictive provisions for asylum policies (Kaunert & Leonard, 2011). Next to judicial constraints, two further are brought in by Torpey. Firstly, less competition on achieving goals can be expected, as actors such as NGOs which are organised at the national level have little influence in supranational venues. Secondly, it is not that complicated to contract alliances with sending and transit<sup>21</sup> countries at the international venues (Torpey, 1998).

Next to the prominent views of Kaunert & Leonard and Guiraudon, Lavenex and Maurer & Parkes come up with again different views. Both of them being consistent with the definition given by Guiraudon introduce further notions on the EU asylum policy venue. Contrary to Guiraudon, Lavenex (2006) outlines ‘venue-shopping’ as an outward shift from the national to the venue of EU foreign relations. This is a new attempt by national political actors of asylum policies towards more restrictive measures for national asylum legislation and increased migration controls. The rationale behind this autonomy-generating effect of European co-operation of this shift is due to the more power of supranational actors within the so-called ‘Community Integration Method’, the first pillar of the European Union.

Thus, ‘venue-shopping’ is a widely known concept used in the existing literature explaining procedures of national actors within the context of the EU asylum policy to achieve goals by circumventing national obstacles.

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<sup>21</sup> A transit country is a country into which goods are transported from the originating country to a final destination in a third country. In this context, alliances are constructed with sending and transit countries in order to achieve a so-called ‘buffer zone’ around the EU with the effect of reducing numbers coming into the EU (Kaunert and Leonard, 2011).

### **3.3 The two contrasting views: Guiraudon versus Kaunert & Léonard**

As referred to before, there are two main contrasting views on ‘venue-shopping’ within the European context on asylum policy. In pursuance of the following analysis, the two notions are presented to have a valuable foundation for making a reasonable judgement on the question whether ‘venue-shopping’ does lead to more restrictive or more liberal national policies. In the article of Guiraudon published in 2000, several arguments are quoted to show that ‘venue-shopping’ does lead to more restrictive asylum policies. Contrary, Kaunert and Leonard (2011) outline three opposed reasons to show the trend towards more restrictive policies. It must be kept in mind that the article of Guiraudon was written in 2000. This means that no outcomes of the CEAS and its directives are known and that at this time, the establishment has just been agreed upon. In 2011, when Kaunert and Leonard wrote their articles, the results of the CEAS’ attempts were already noticeable. Nevertheless, the two theoretical approaches are interesting to investigate on, it can clearly be seen to what extent the expectations of the early times could have been realised, what has been forgotten in former terms and how political actors have to further develop and design the EU asylum policy venue.

#### **3.3.1 Guiraudon – Vertical Policy making as ‘Venue-Shopping’**

Virginie Guiraudon (2000) outlines that internationalization of migration and asylum gradually emerged with a restrictive regime in a largely intergovernmental framework. It has not been a process which suddenly arose due to specific developments but rather refers to the strategic ‘venue-shopping’ of domestic actors believing in the gain from shifting from the national to the international level. In the new vertical dimension of policy-making, rules, actors and power distribution are unlike those known from domestic processes. National ministerial consultants are excluded from negotiation processes as they are rather bypassed by consultants, liaison officers, experts and non-EU governments now in power in bargaining. This is attributed to the introduction of the Treaty of Amsterdam and the following establishment of the ‘Area of Freedom, Security and Justice’, the Schengen Agreement and the Single Market. Those made a suitable framework for co-operation on immigration and asylum absolutely essential. The reasonable result is a European co-operation on asylum matters as ‘multi-level governance’ including actors from any level in the policy-making. European institutions are function as supranational actors and national ministries and central agents are working at the sub-national level<sup>22</sup>. This is a resulting linkage of the necessity of compensatory measures in the field of asylum and migration.

According to Guiraudon, these changes lead to a more restrictive migration field in which civil servants of the Interior and/or justice domain operate in a transnational, but intergovernmental form of co-operation. The beneficial aspect of this is that the regimes still remain adaptive affording opt-outs and walk-outs, a secretive negotiation style and flexible arrangements having a non-binding character, as EU institutions are playing a minor role. She resumes that a venue if chosen optimal, can constitute policy-makers with a propitious

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<sup>22</sup> Nevertheless, the new transversal character of governance only led to non-legally binding and informal arrangements. The mentioned Schengen Agreement and Dublin Regulation are the single ones adopted and operative (Guiraudon, 2000).

environment for negotiations. She refers to venues as “institutional locations where authoritative decisions are made concerning a given issue” (Guiraudon, 2000, p. 257). It is the actor’s strategy to find a new environment when institutional constraints at the national level are unsolvable. She exemplifies that finding new venues with different kinds of actors, resources and strategies and new instruments and opportunities more in line with the preferences, are those objectives towards more restrict policies in the context of migration and asylum. The most important precondition for a well-functioning transnational co-operation is trustful relations, formal bargains and the adaption of common goals.

For Guiraudon (2000), legal instruments, such as general legal principles and the national jurisprudence with its domestic constitutional principles, are the constraints to the implementation of more restrictive policies. As these judicial constraints can be avoided at the international venue and together with the possibility to reach a new policy field, ‘venue-shopping’ has become the most appropriate process. Since decision-making in the European Union is still intergovernmental, member states play a larger role than the EU institutions and partiality and specific tactics are used by the national actors to still keep their influence in migration and asylum matters.

Guiraudon (2000) follows the argument that ‘venue-shopping’ leads to more restrictive national asylum policies due to changes within the EU’s system and the national politicians request for an international setting with new givens.

### **3.3.2 Kaunert & Léonard – A more liberal Trend in EU Asylum Policy**

Contrary to the argument of Guiraudon (2000), Kaunert & Léonard (2011) pursue to reveal that there is a more liberal trend in the EU asylum policy. The two assume the process of changes within the EU’s system of venues and the legal instruments developed within the CEAS to be the main explanations for ‘venue-shopping’ leading to more liberal national asylum policies. Although the implementation of the CEAS has achieved an improving trend of international protection standards within the European Union, no member state is required to lower any standards. Hence, the provisions of the directives and regulations prohibit national actors contesting for more restrictiveness. To understand this, an analytical breakdown of the EU asylum and migration policy venue and the taking ‘co-dependencies’ into account is needed.

There is a close interrelation of the asylum, borders and migration venue but still, the relevant policy actors are all have different goals for each venue to be pursued. These goals are anchored in the Treaty on the Functioning of the European Union. Exemplary and as mentioned before, Article 78 of the TFEU states the EU’s goal on asylum<sup>2324</sup>. Kaunert and Leonard explain that the asylum policy venue certainly is dependent on the borders venue because although policy actors have different aims in mind, measures decided in the venue do have an impact on the asylum venue. Thus, distinct venues within a single system can all be

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<sup>23</sup> Article 79 TFEU states the goal of ‘common immigration policy’: “the Union shall develop a common immigration policy aimed at ensuring efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of and enhances measures to combat, illegal immigration and trafficking in human beings”

<sup>24</sup> Article 77 (1c) of the TFEU determines “the gradual introduction of an integrated management system for external borders”

cohesively affected by changes in the structure of the system itself. All of this is a result of the introduction of the various treaties starting with the Maastricht Treaty in 1992 through to the current Lisbon Treaty.

These institutional changes which have taken place in the European Union allow affiliating to the development of the European Asylum policy and its trend of more restrictive or more liberal provisions. Kaunert and Leonard come to the conclusion that this increasing ‘communitarisation’ of the asylum field, the growing in roles and presence of the EU institutions, known to be more ‘migrant-friendly’, are obstacles nearly impossible to circumvent by national political actors who intend more restrictive asylum policies. These reinforced roles of the EU institutions, especially of the European Parliament which now has the possibility to mainly influence policy outcomes and the European Council which has become an actor in the decision-making process, has led to a degraded role of national Interior ministers. As a result they testify that more liberal actors are involved in the field of asylum who adopt less restrictive provisions. And the additional fact of ‘judicialisation’ is further emphasising the idea of the adoption of more liberal than restrictive measures. With regards to the EU asylum policy venue, Kaunert and Leonard ascertain that the venue has become unattractive for those actors who want to adopt restrictive measures. Therefore, it is believed that national policy-makers start to anticipate new policy venues more convenient with their policy aims.

Kaunert and Leonard follow the ‘more liberal’ argument as, even if EU regulations are given, no member state is required to lower any standards due to flexible and non-binding arrangements.

### **3.3.3 Résumé**

As the given thesis aims to make sense of the role of ‘venue-shopping’ leading to more liberal or more restrictive national asylum policies, the two contrasting views are interesting to include as they are contradictory. For the analysis, the Qualification Directive of 2004 are compared to the national asylum legislations of Austria, Ireland and Germany. It is examined whether EU members tend to more restrictive or more liberal policies compared to the EU Directive. Guiraudon would assume that more liberal policies are followed as it is easier to circumvent judicial constraints. One can expect less opposition and new allies can be found quicker. Her article was written in 2001, marking the early times of the CEAS and a time in which no implementation of the directives and regulation had been preceded yet as they entered into force in 2003 first. Even if Kaunert and Léonard are consistent in their opinion that ‘venue-shopping’ is the most appropriate framework in asylum policies at EU level, the two authors refute Guiraudon’s assumption in 2011. After ten years of the CEAS being in operation, invalidation is reasonable on grounds of changes within the EU itself and implementation results of the member states. According to them, ‘Communitarisation’, the introduction of the Area of Freedom, Security and Justice, but for this thesis especially the ‘judicialisation’ are the main constraints leading to more restrictive than liberal policies. They are quoting that the ‘judicialisation’ is mainly caused by the increasing role of the European Court of Justice, the relevance of the Geneva Convention in the Directives of the CEAS and



the inclusion of the EU's Charter of Fundamental Rights in the European treaties. Thus, the CEAS itself prohibits liberal policies but promotes more restrictive national asylum policies.

It will be interesting to see what the following analysis can add to this existing literature and which argument can be confirmed. Either that the outcome of venue-shopping is more liberal national asylum policies in Austria, Ireland and Germany and or that venue-shopping results in more restrictive national asylum policies in Austria, Ireland and Germany.

#### 4. Methodology

The intention of the present thesis is to find out what happened to national asylum legislation after the implementation of the Asylum Qualification Directive. More precisely, it is investigated whether the national policies of Austria, Germany and Ireland are a more liberal or more restrictive interpretation of the EU Directive and consequently if the implementation results in more restrictive or liberal national policies. Accordingly, the research question is "What are the consequences of the implementation of the Asylum Qualification for national asylum policies in Austria, Ireland and Germany?" Primary, the thesis presents a comparison of EU and national legislation. Therefore, it is no examination of member states fulfilling their duties. In order to answer the research question, this thesis uses a qualitative approach making use of desk research and a document analysis in which the EU Directive is compared to the national legislations.

##### *Data Collection*

For the document analysis, the national legislations of Austria, the *Asylgesetz*<sup>25</sup> (AsylG) of 2005, the *Immigration, Residence and Protection Bill*<sup>26</sup> under the *Refugee Act 1996* of Ireland and the German *Asylverfahrensgesetz*<sup>27</sup> (AsylVfG) of 2008 have been chosen for comparison with the Directive 2004/83/EC. The Directive is one of the four key directives of the CEAS and sets out minimum standards for the qualification and status of third country nationals as well as common grounds to grant international protection. It was chosen as it forms an integral part of the EU asylum system stipulating essential rules for receiving member states simultaneously beneficial to arriving refugees. For the analysis, articles 4 to 19 have been selected. These cover chapters 2 to 6 relating to the assessment of facts and circumstances, international protection, actors of persecution and protection, the qualification for being a refugee and for subsidiary protection as well as the conditions for cessation, exclusion and revocation of status. According to Dr. H  lene Lambert, the Qualification Directive "is the most ambitious way to combine refugee law and human rights law" (Lambert, 2006, p.162), because it goes to the centrepiece of the 1951 Convention. The Directive and especially articles 4 to 19 are unifying beneficiaries of asylum and two forms of protection in an institutionalizing way towards a common EU definition of persons in need of international protection (Lambert, 2006). These important articles chosen have been implemented into

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<sup>25</sup> Available at

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>

<sup>26</sup> Available at [http://www.inis.gov.ie/en/INIS/IRPB\\_2008.pdf/Files/IRPB\\_2008.pdf](http://www.inis.gov.ie/en/INIS/IRPB_2008.pdf/Files/IRPB_2008.pdf)

<sup>27</sup> Available at [http://www.gesetze-im-internet.de/bundesrecht/asylvfg\\_1992/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/asylvfg_1992/gesamt.pdf)

corresponding national legislations by the AsylG of Austria, the Immigration, Residence and Protection Bill of Ireland and the AsylVfG of Germany.

### *Case Selection*

Authors such as Anckar (2008) and Seawright & Gerring (2008) agree that a valuable comparative study of this type requires choosing for countries which have similar background characteristics. Therefore, three Western European Union member states, Austria, Ireland and Germany, have been chosen. Germany was selected as being one of the most important members of the European Union facing 202.645 non-EU asylum applications in 2014, which constitutes the highest number of all EU countries (Eurostat, 2014). Austria<sup>28</sup> and Ireland<sup>29</sup> are comparable Western European countries. All of the three are similar in their early EU accession and in their GDP per capita. Austria, EU member since 1955 has a GDP per capita of 374.025 US Dollar; the Republic of Ireland has a GDP per capita of 375.807 US Dollar and joined the EU in 1973; and Germany is one of the founding members 1951 and has a GDP per capita of 357.234 US Dollar (OECD, 2015). Moreover, their frameworks of asylum policies seems to be alike as their respective preambles state that the EU's Qualification Directive and the 1951 Convention are respected. Therefore, no random selection has been made but a selection of three cases as similar in a number of specified aspects. This makes it easier to come to a conclusion.

### *Data Analysis*

For the analysis, first the member states are compared individually to the Directive, by making use of a table. Articles 4 to 19 of the EU Directive are listed down in the table and are contrasted to the corresponding articles of the national legislations. In a third column, it is then indicated with a (+) if the article is sufficiently implemented indicating a more restrictive interpretation of the Directive, if the implementation is not complete because of missing details, the article is marked with a (-). An (x) marks the non-implementation of the respective article. In doing so, a conclusion will be drawn on comparing the similarities and differences of the three national legislations. Thereby, the second sub-question "what are the similarities and differences between the national legislations of Austria, Ireland and Germany?" is answered. Furthermore, the thesis is mainly based on the two contrasting views of Guiraudon and Kaunert & Léonard. Following the analysis, either the argument of Guiraudon that 'venue-shopping' leads to more restrictive national asylum policies or the argument of Kaunert & Léonard assuming more liberal policies can then be confirmed. It is important to mention that the national legislations of Austria and Germany are written down in German in order to avoid translation mistakes. Following this tabular analysis, an overview of the implementation results is portrayed, which facilitates the comparison of the three Western countries regarding their asylum policies. It is expected that the three asylum legislations are quite similar. In particular, the prior discussion on 'venue-shopping' is intrinsic in explaining the assumed similarity of national asylum policies. As a result of 'venue-shopping', a deep conjunction by the EU implicates similar political and economic cultures leading to

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<sup>28</sup> Number of non-EU asylum applicants in Austria (2014): 28.035 (Eurostat, 2014)

<sup>29</sup> Number of non-EU asylum applicants in Ireland (2014): 1450 (Eurostat, 2014)

commitment to EU policies such as the concerned Directive, which is according to preambles, implemented in all of the three national legislations.

### *Limitations*

It is very important to consider that the thesis does not aim to examine whether venue-shopping did take place, but that it is investigated on the consequences the implementation of the Directive has on the national legislations of the three chosen different countries. This leads to the fact that the study is only valid for these three EU members chosen and that no generalization is possible. Due to time constraints, it has been decided to focus on only three cases. As an analysis of national legislations takes a lot of work, it is not possible to apply it to all the 27 members of the European Union. This would exceed the framework of the thesis.

## **5. Analysis**

For the purpose of the given thesis and in order to clarify to what extent European Member States are adopting EU legislation to their corresponding national legislation, the following chapter comprises the analysis. The implementation of the Asylum Qualification Directive is compared to the national legislations of Austria, Ireland and Germany. The corresponding national legislations are the *Asylgesetz (AsylG)* of Austria, the *Immigration, Residence and Protection Bill* of Ireland and the *Asylverfahrensgesetz (Asylvfg)* of Germany.

### **5.1 The legal documents**

#### **5.1.1 The Asylum Qualification Directive**

As referred to before, the Asylum Qualification Directive constitutes a part of the EU *acquis* on asylum signed in 2004, which became effective in 2006. The European Union determined that a person who applies for asylum must be recognized as a refugee or as having a legitimate claim for subsidiary protection (European Commission, 2014c; ECRE, 2014). In order to adequately deal with the refugee issue across the European Union, harmonized standards for the member states to provide subsidiary protection for people at risk of serious harm were needed. In order to define the status of asylum applicants, the Qualification Directive was introduced (ECRE, 2014). The Directive 2004/83/EC sets out the minimum standards for this qualification of third country nationals and stateless persons as refugees. Moreover, it stipulates those rights that persons qualify for international protection, which is constituted on common grounds. On the basis of the 1951 Convention and especially with regards to the principle of *non-refoulement*, the Directive grants rights and access to residence permits, employment, integration facilities, travel documents, education, social welfare, healthcare as well as specific provisions for children and vulnerable persons (European Commission, 2014c).

Although the Directive applies to every Member State except for Denmark, critiques have risen up as the minimum standards still have been vague leading to a lowering of standards in the countries. According to the European Commission, these facts led to divergences in national asylum legislations and practices which resulted in tremendously varying chances of persons to be granted international protection across the member states (European

Commission, 2014c). Therefore, the Recast Qualification Directive<sup>30</sup> was implemented in 2011. Nevertheless, within the purpose of the given thesis and with regards to Kaunert & Leonard (2012), the Directive of 2004 is analyzed and compared as it is an essential step beyond the existing rights for refugees in the Geneva Convention towards increased protection of refugees compared to earlier variations in national asylum legislations. For the analysis, it was decided to include articles 4 to 19, as these refer to the assessment of applications for international protection, the qualification for being a refugee, the refugee status, the qualification for subsidiary protection and the subsidiary protection status, which seem to be the most relevant. To include all articles would go beyond the scope of the bachelor thesis.

### **5.1.2 The national legislations of Austria, Ireland and Germany**

#### *Asylgesetz (AsylG) of Austria*

The 1st January 2006 marked an important date for Austrian asylum legislation. The *Fremdenrechtspaket 2005*, a packet of different legislative texts entered into force. It includes the Alien's Police Act, the Settlement and Residence Act and the Asylum Act, which are in the focus for the analysis. The *Fremdenrechtspaket 2005*, a more human-rights oriented approach, is the successor of the *Fremdengesetz 1997*, which was necessary to amend. Especially with regards to the directives and regulations introduced within the CEAS in this time, Austria was demanded. Above all, procedural rules have been amended becoming more efficient by taking peculiarities of asylum law and constitutional principles into account. Furthermore, the application and qualification procedures are quicker making the granting of asylum and subsidiary protection easier (Marth, Doskozil & Bruckner, 2005). The Asylum Act regulates the conditions for the granting of international protection including the recognition as a refugee within the meaning of the 1951 Convention of the EU Qualification Directive and the granting of subsidiary protection under the principle of *non-refoulement*. Moreover, deportation and procedures regarding families are included but these are not part of the analysis.

By virtue of this, one would expect an Austrian asylum act which is within the meaning of the Qualification Directive. However, the direct comparison shows the opposite. Austrian law only fully converges with the Directive in seven out of sixteen articles. Definitions on the actors of protection, the rules on excluding persons from being a refugee or from being eligible for subsidiary protection and on the revocation of refugee or subsidiary protection status are mentioned within a meaning diverging from the EU Directive. It is conspicuously that there is no article determining actors of protection, regulating the exclusion from being a refugee and from being eligible for subsidiary protection, and on the revocation of refugee and subsidiary protection status at all. This is not the case with the legislations of Ireland and Germany.

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<sup>30</sup> Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF> (Directive 2011/95/EU)

One can clearly see that there is a shift towards more restrictive national asylum legislations over time as Austria changed its legislation within the meaning of the EU Directive and the 1951 Convention. But still, when compared to the two other legislations, the implementation was very liberal, which is indicated by the only six convergent articles. In the next part, the three legislations are opposed which makes this first conclusion more evident.

### *Immigration, Residence and Protection Bill of Ireland*

In 1956 and 1968, the Republic of Ireland laid the foundation for its asylum policy when acceding to the 1951 Convention and the Protocol on the Status of Refugees, coincidentally committing to adopt the provisions into national legislation (UNHCR, 2012). In 2000, the Refugee Act 1996 entered into force which is the current Irish asylum law on which bills and statutory instruments are based (HWWI, 2012). It established the Refugee Applications Commissioner (ORAC) responsible for asylum applications and the Refugee Appeals Tribunal taking account of appeals and asylum decisions (Migration Policy Institute, 2009). Ireland is constantly anxious in amending its legislation by improving several sections across time. With the establishment of the CEAS and the linked duty of EU member states to transpose the legislation on free movement and asylum into domestic legislation, the Republic of Ireland was compelled to let international treaties come into operation and apply to them domestically (Stanley, 2011).

This marked the commencing of the Immigration, Residence and Protection Bill of 2008, a milestone for Irish immigration and asylum law. It brings about major changes, rather substituting the present legislation. The new framework is an integrated statutory process ministering clarity and transparency (INIS, 2008). With introducing measures to determine refugee or long-term residence status; enhanced mechanisms for developing regular migration as well as for illegal immigration; explicit rules on visa application procedures; a modernized deportation system; Ireland manages to come up with legislative and organizational amendments (INIS, 2008). This is not only beneficial to the State itself, but forms the basis for complying with international law, too. The bill of 2008 is one of the single Irish legislative texts implementing EU law. As it is known, Ireland is no member of the *European Schengen Area*, as it is more oriented and connected with the United Kingdom and its Travel Area. For this reason, it still has border controls with the rest of the EU countries (MPI, 2009). However, Ireland accepted to implement several EU directives such as the Qualification Directive. The comparison showed that Ireland surprisingly was the country with the highest amount of convergence. The Republic only missed to implement article 19 which was not implemented by any of the other two countries, too. Therefore, it can be concluded that Ireland follows a more restrictive trend of asylum legislations over time, fully complying with EU law.

### *Asylverfahrensgesetz (AsylVfG) of Germany*

Since 1949, asylum is part of the German constitution as a consequence of the occasions within times of nationalism. As mentioned before, asylum applications within the European Union increased in the early 90s which was visible in Germany, too. This led to first amendments of the German legislation. Here, the 1951 Convention is an issue as the

protection of refugees is under international law now and rejection was prohibited under the *principle of non-refoulement*. As a member of the European Union, the EU's regulations and directives are relevant for Germany. Eleven EU Directives have successfully been implemented to German law; especially the Qualification and Procedures Directive implicated major changes. Core elements of the Qualification Directive implemented refer to refugees who are now recognized when persecuted by non-state actors or because of gender. Moreover, there are provisions on exclusion in case of an asylum seeker with subsidiary protection status becoming criminal. Subsidiary protection means that the application is not valid under German law but the refugee cannot return to his or her country of origin, because he fears death penalty or other existential risks. Furthermore, amendments have been made relating to the preconditions of granting refugee status, internal protection and subsidiary protection. Herein, matters of inhuman, humiliating treatment or punishment and arbitrary violence in armed conflicts (BAMF, 2015).

By virtue of the active participation of Germany in creating a framework for the protection of refugees which is known as the Common European Asylum System, it is no wonder that the German asylum legislation is fully convergent with the Qualification Directive. Except for Article 19, the Directive was implemented within the exact wording. The comparison and the temporal assessment of the German law show that it has become more restrictive and convergent with regards to the EU's legislation.

## 5.2 Comparison of the Implementation

### 5.2.1 The Asylum Qualification Directive compared to the AsylG of Austria

The Asylum Qualification Directive	Asylgesetz (AsylG) of Austria	Composition
<p><b>Chapter II: Assessment of Applications for international protection:</b></p> <p><b>Article 4:</b> Assessment of facts and circumstances</p> <p>1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.</p> <p>2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.</p> <p>3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account.</p> <ul style="list-style-type: none"> <li>Country of origin, statements and documentation, information on whether the applicant has been or may be subject to persecution or serious harm; individual position and personal circumstances, background, gender, age; applicant's activities since leaving the country of origin;</li> </ul>	<p><b>3. Hauptstück: Rechte und Pflichten der Asylwerber</b></p> <p><b>2. Abschnitt: Mitwirkungs- und Meldepflichten</b></p> <p><b>§ 15. Mitwirkungspflichten von Asylbewerbern im Verfahren</b> (1) Ein Asylwerber hat am Verfahren nach diesem Bundesgesetz mitzuwirken; insbesondere hat er</p> <p>1. ohne unnötigen Aufschub seinen Antrag zu begründen und alle zur Begründung des Antrags auf internationalen Schutz erforderlichen Anhaltspunkte über Nachfrage wahrheitsgemäß darzulegen;</p> <p>3. Zu den in Abs. 1 Z 1 genannten Anhaltspunkten gehören insbesondere:</p> <ul style="list-style-type: none"> <li>Der Name des Asylbewerbers; alle bisher in Verfahren verwendeten Namen samt Aliasnamen; das Geburtsdatum; die Staatsangehörigkeit, im Falle der Staatenlosigkeit der Herkunftsstaat; Staaten des früheren Aufenthaltes; der Reiseweg nach Österreich; frühere Asylanträge und frühere Anträge auf internationalen Schutz, auch in anderen Staaten; Angaben zu familiären und sozialen Verhältnissen; Angaben über den Verbleib nicht mehr vorhandener Dokumente; Gründe, die zum Antrag auf internationalen Schutz geführt haben, und; Gründe und Tatsachen, nach denen das Bundesamt oder das Bundesverwaltungsgericht ausdrücklich fragt, soweit sie für das Verfahren von Bedeutung sind.</li> </ul>	<p>Article 4 is strictly fulfilled.</p> <p style="text-align: center;">+</p>

	(4) Der Asylbewerber ist zu Beginn des Verfahrens auf seine Mitwirkungspflichten und die Folge einer allfälligen Verletzung dieser nachweislich hinzuweisen.	
<p><b>Article 5:</b> International protection needs arising sur place</p> <p>1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.</p> <p>2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.</p> <p>3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin.</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b></p> <p><b>1. Abschnitt: Status des Asylberechtigten</b></p> <p><b>§3. Status des Asylberechtigten</b> (2) Die Verfolgung kann auch auf Ereignissen beruhen, die eingetreten sind, nachdem der Fremde seinen Herkunftsstaat verlassen hat (objektive Nachfluchtgründe) oder auf Aktivitäten des Fremden beruhen, die dieser seit Verlassen des Herkunftsstaates gesetzt hat, die insbesondere Ausdruck und Fortsetzung einer bereits im Herkunftsstaat bestehenden Überzeugung sind (subjektive Nachfluchtgründe). Einem Fremden, der einen Folgeantrag (§ 2 Abs. 1 Z 23) stellt, wird in der Regel nicht der Status des Asylberechtigten zuerkannt, wenn die Verfolgungsgefahr auf Umständen beruht, die der Fremde nach Verlassen seines Herkunftsstaates selbst geschaffen hat, es sei denn es handelt sich um in Österreich erlaubte Aktivitäten, die nachweislich Ausdruck und Fortsetzung einer bereits im Herkunftsstaat bestehenden Überzeugung sind.</p>	<p>Article 5 is fully implemented; Austria adds that refugee status is granted if the concerned activities are provably an expression and continuation of already existing convictions in the country of origin.</p> <p style="text-align: center;">+</p>
<p><b>Article 6:</b> Actors of persecution or serious harm</p> <p>Actors of persecution or serious harm include:</p> <p>(a) The State,</p> <p>(b) Parties or organizations controlling the State or a substantial part of the territory of the State;</p> <p>(c) Non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7</p>	X	<p>There is no article which concerns the actors of persecution.</p> <p style="text-align: center;">X</p>



<p><b>Article 7: Actors of protection</b></p> <p>1. Action can be provided by:</p> <ul style="list-style-type: none"> <li>(a) the State; or</li> <li>(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.</li> </ul> <p>2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.</p> <p>3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.</p>	<p><b>4. Hauptstück: Asylverfahrensrecht</b>  <b>1. Abschnitt: Allgemeines Asylverfahren</b></p> <p><b>§ 17. Verfahrensablauf</b> (1) Ein Antrag auf internationalen Schutz ist gestellt, wenn ein Fremder in Österreich vor einem Organ des öffentlichen Sicherheitsdienstes, einer Sicherheitsbehörde oder bei einer Erstaufnahmestelle (§ 4 BFA-G) um Schutz vor Verfolgung ersucht.</p> <p>(5) Ersucht ein Fremder vor einer Behörde im Inland, die nicht in Abs. 1 genannt ist, um internationalen Schutz, hat diese Behörde die örtlich zuständige Sicherheitsbehörde oder das nächste Organ des öffentlichen Sicherheitsdienstes zu verständigen.</p>	<p>It is not exactly mentioned from whom protection can be expected and what ‘protection’ should entail. The AsylG does only make reference to an institution of the security service or a ‘first admission place’.</p> <p>Subparagraph 2 and 3 are not mentioned at all.</p> <p style="text-align: center;">—</p>
<p><b>Article 8: International Protection</b></p> <p>1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.</p> <p>2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.</p> <p>3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und subsidiär Schutzberechtigten</b>  <b>5. Abschnitt: Gemeinsame Bestimmungen</b></p> <p><b>§11. Innerstaatliche Fluchtalternative</b> (1) Kann Asylwerbern in einem Teil ihres Herkunftsstaates vom Staat oder sonstigen Akteuren, die den Herkunftsstaat oder einen wesentlichen Teil des Staatsgebietes beherrschen, Schutz gewährleistet werden, und kann ihnen der Aufenthalt in diesem Teil des Staatsgebietes zugemutet werden, so ist der Antrag auf internationalen Schutz abzuweisen (Innerstaatliche Fluchtalternative). Schutz ist gewährleistet, wenn in Bezug auf diesen Teil des Herkunftsstaates keine wohlbegründete Furcht nach Art. 1 Abschnitt A Z 2 Genfer Flüchtlingskonvention vorliegen kann und die Voraussetzungen zur Zuerkennung des Status des subsidiär Schutzberechtigten (§ 8 Abs. 1) in Bezug</p>	<p>Article 8 is fully implemented in Austrian law.</p>

	<p>auf diesen Teil des Herkunftsstaates nicht gegeben sind.</p> <p>(2) Bei der Prüfung, ob eine innerstaatliche Fluchtalternative gegeben ist, ist auf die allgemeinen Gegebenheiten des Herkunftsstaates und auf die persönlichen Umstände der Asylwerber zum Zeitpunkt der Entscheidung über den Antrag abzustellen.</p>	+
<p><b>Chapter III: Qualification for being a Refugee</b></p> <p><b>Article 9: Acts of persecution</b></p> <p>1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:</p> <ul style="list-style-type: none"> <li>(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;</li> <li>(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).</li> </ul> <p>2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:</p> <ul style="list-style-type: none"> <li>(a) acts of physical or mental violence, including acts of sexual violence;</li> <li>(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;</li> <li>(c) prosecution or punishment, which is disproportionate or discriminatory;</li> <li>(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;</li> <li>(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);</li> </ul>	<p><b>1. Hauptstück: Anwendungsbereich und Begriffsbestimmungen</b></p> <p><b>§2. Begriffsbestimmungen</b> (1) Im Sinne des Bundesgesetzes ist <b>11. Verfolgung</b>: jede Verfolgungshandlung im Sinne des Art. 9 Statusrichtlinie;</p>	<p>Article 9 is fully implemented within the meaning of the Qualification Directive in Austrian law.</p> <p>+</p>

<p>(f) acts of a gender-specific or child-specific nature.</p> <p>3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.</p>		
<p><b>Article 10: Reasons for persecution</b></p> <p>1. Member States shall take the following elements into account when assessing the reasons for persecution</p> <ul style="list-style-type: none"> <li>(a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;</li> <li>(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;</li> <li>(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;</li> <li>(d) a group shall be considered to form a particular social group where in particular: <ul style="list-style-type: none"> <li>- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and</li> <li>- that group has a distinct identity in the relevant country, because it is perceived as being different by the</li> </ul> </li> </ul>	<p><b>1. Hauptstück: Anwendungsbereich und Begriffsbestimmungen</b></p> <p><b>§2. Begriffsbestimmungen</b> ( 1) Im Sinne des Bundesgesetzes ist <b>12.</b> ein Verfolgungsgrund: ein in Art. 10 Statusrichtlinie genannter Grund;</p>	<p>Article 10 is fully implemented in Austrian law.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

<p>surrounding society;</p> <p>depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;</p> <p>(e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.</p> <p>2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution</p>		
<p><b>Article 11: Cessation</b></p> <p>1. A third country national or a stateless person shall cease to be a refugee, if he or she:</p> <p>(a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or</p> <p>(b) having lost his or her nationality, has voluntarily reacquired it; or</p> <p>(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or</p> <p>(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or</p>	<p style="text-align: center;"><b>X</b></p>	<p>There is no reference made regarding the cessation of refugee status.</p> <p style="text-align: center;"><b>X</b></p>

<p>(e) can no longer, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;</p> <p>(f) being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, to return to the country of former habitual residence.</p> <p>2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.</p>		
<p><b>Article 12: Exclusion</b></p> <p>1. A third country national or a stateless person is excluded from being a refugee, if:</p> <p>(a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive</p> <p>(b) he or she is recognized by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.</p> <p>2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b></p> <p><b>3. Abschnitt: Ausschluss von der Zuerkennung und Aberkennung des Status des Asylberechtigten</b></p> <p><b>§6. Ausschluss von der Zuerkennung des Status des Asylberechtigten</b> (1) Ein Fremder ist von der Zuerkennung des Status eines Asylberechtigten ausgeschlossen, wenn</p> <ol style="list-style-type: none"> <li>1. und so lange er Schutz gemäß Art. 1 Abschnitt D der Genfer Flüchtlingskonvention genießt;</li> <li>2. einer der in Art. 1 Abschnitt F der Genfer Flüchtlingskonvention genannten Ausschlussgründe vorliegt;</li> <li>3. er aus gewichtigen Gründen eine Gefahr für die Sicherheit der Republik Österreich darstellt oder</li> <li>4. er von einem inländischen Gericht wegen eines besonders schweren Verbrechens rechtskräftig verurteilt worden ist und wegen dieses strafbaren Verhaltens eine Gefahr für die Gemeinschaft bedeutet. Einer Verurteilung durch ein inländisches Gericht ist eine Verurteilung durch ein ausländisches Gericht</li> </ol>	<p>Exclusion from being a refugee is implemented with article 6 in Austrian Law, but only to a limited extent. There is no reference to protection or assistance of the UN/UNHCR/GA; 1(b) and 2(c) are not implemented at all;</p>

<p>(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</p> <p>(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;</p> <p>(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations</p> <p>3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.</p>	<p>gleichzuhalten, die den Voraussetzungen des § 73 StGB, BGBl. Nr. 60/1974, entspricht.</p> <p>(2) Wenn ein Ausschlussgrund nach Abs. 1 vorliegt, kann der Antrag auf internationalen Schutz in Bezug auf die Zuerkennung des Status des Asylberechtigten ohne weitere Prüfung abgewiesen werden. § 8 gilt.</p>	
<p><b>Chapter IV: Refugee Status</b>  <b>Article 13: Granting of Refugee Status</b>  Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b>  <b>1. Abschnitt: Status des Asylberechtigten</b></p> <p><b>§ 3. Status des Asylberechtigten</b> (1) Einem Fremden, der in Österreich einen Antrag auf internationalen Schutz gestellt hat, ist, soweit dieser Antrag nicht bereits gemäß §§ 4, 4a oder 5 zurückzuweisen ist, der Status des Asylberechtigten zuzuerkennen, wenn glaubhaft ist, dass ihm im Herkunftsstaat Verfolgung im Sinne des Art. 1 Abschnitt A Z 2 Genfer Flüchtlingskonvention droht.</p>	<p>The granting of refugee status is implemented with article 3 of the AsylG.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>
<p><b>Article 14: Revocation of, ending of or refusal to renew refugee status</b></p> <p>1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b>  <b>3. Abschnitt: Ausschluss von der Zuerkennung und Aberkennung des Status des Asylberechtigten</b></p> <p><b>§7. Aberkennung des Status des Asylberechtigten</b> (1) Der Status des Asylberechtigten ist einem Fremden von Amts</p>	<p>There is no reference made of revocation within: ‚cessation‘ as the AsylG does not refer to it; with regards to relevant documentation; misrepresentation or</p>

<p>body, if he or she has ceased to be a refugee in accordance with Article 11.</p> <p>2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article</p> <p>3. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:</p> <p>(a) he or she should have been or is excluded from being a refugee in accordance with Article 12</p> <p>(b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.</p> <p>4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:</p> <p>(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;</p> <p>(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.</p> <p>5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.</p> <p>6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.</p>	<p>wegen mit Bescheid abzuerkennen, wenn</p> <ol style="list-style-type: none"> <li>1. ein Asylausschlussgrund nach § 6 vorliegt;</li> <li>2. einer der in Art. 1 Abschnitt C der Genfer Flüchtlingskonvention angeführten Endigungsgründe eingetreten ist oder</li> <li>3. der Asylberechtigte den Mittelpunkt seiner Lebensbeziehungen in einem anderen Staat hat.</li> </ol> <p>(2) Ein Verfahren zur Aberkennung des Status des Asylberechtigten ist jedenfalls einzuleiten, wenn der Fremde straffällig geworden ist (§ 2 Abs. 3) und das Vorliegen der Voraussetzungen gemäß Abs. 1 wahrscheinlich ist.</p> <p>(3) Hat die zuständige Aufenthaltsbehörde nach dem Niederlassungs- und Aufenthaltsgesetz (NAG), BGBl. I Nr. 100/2005 dem Fremden einen Aufenthaltstitel rechtskräftig erteilt hat, kann auch einem solchen Fremden der Status eines Asylberechtigten gemäß Abs. 1 Z 2 aberkannt werden.</p> <p>(4) Die Aberkennung nach Abs. 1 Z 1 und 2 ist mit der Feststellung zu verbinden, dass dem Betroffenen die Flüchtlingseigenschaft kraft Gesetzes nicht mehr zukommt. Dieser hat nach Rechtskraft der Aberkennung der Behörde Ausweise und Karten, die den Status des Asylberechtigten oder die Flüchtlingseigenschaft bestätigen, zurückzustellen.</p>	<p>omission facts; danger to the security</p> <p>There is only mentioned that he or she should have been or is excluded from being a refugee in accordance with Article 6 and when he or she has been convicted by a final judgment of a serious crime.</p> <p style="text-align: center;">—</p>
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<p><b>Chapter V: Qualification for subsidiary protection</b>  <b>Article 15: Serious harm</b></p> <p>Serious harm consists of:  (a) death penalty or execution; or  (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or  (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.</p>	<p style="text-align: center;"><b>X</b></p>	<p>There is no reference made what ‘serious harm’ constitutes.</p> <p style="text-align: center;"><b>X</b></p>
<p><b>Article 16: Cessation</b></p> <p>1. A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.  2. In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b>  <b>4. Abschnitt: Status des subsidiär Schutzberechtigten</b></p> <p><b>§8. Status des subsidiär Schutzberechtigten</b> (7) Der Status des subsidiär Schutzberechtigten erlischt, wenn dem Fremden der Status des Asylberechtigten zuerkannt wird.</p>	<p>It is only said that subsidiary protection does end with the granting of refugee status; there is no reference made to circumstances ceased or that the person eligible for subsidiary protection no longer faces a real risk of serious harm.</p> <p style="text-align: center;">—</p>
<p><b>Article 17: Exclusion</b></p> <p>1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:  (a) he or she has committed a crime against peace, a war</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b>  <b>4. Abschnitt: Status des subsidiär Schutzberechtigten</b></p> <p><b>§8. Status des subsidiär Schutzberechtigten</b> (3) Anträge auf</p>	<p>It is not explicitly said when a third country national or a stateless person is excluded from</p>



<p>crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</p> <p>(b) he or she has committed a serious crime;</p> <p>(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;</p> <p>(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.</p> <p>2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.</p>	<p>internationalen Schutz sind bezüglich der Zuerkennung des Status des subsidiär Schutzberechtigten abzuweisen, wenn eine innerstaatliche Fluchtalternative (§ 11) offen steht.</p> <p>(3a) Ist ein Antrag auf internationalen Schutz bezüglich der Zuerkennung des Status des subsidiär Schutzberechtigten nicht schon mangels einer Voraussetzung gemäß Abs. 1 oder aus den Gründen des Abs. 3 oder 6 abzuweisen, so hat eine Abweisung auch dann zu erfolgen, wenn ein Aberkennungsgrund gemäß § 9 Abs. 2 vorliegt. Diesfalls ist die Abweisung mit der Feststellung zu verbinden, dass eine Zurückweisung, Zurückschiebung oder Abschiebung des Fremden in seinen Herkunftsstaat unzulässig ist, da dies eine reale Gefahr einer Verletzung von Art. 2 EMRK, Art. 3 EMRK oder der Protokolle Nr. 6 oder Nr. 13 zur Konvention bedeuten würde oder für ihn als Zivilperson eine ernsthafte Bedrohung des Lebens oder der Unversehrtheit infolge willkürlicher Gewalt im Rahmen eines internationalen oder innerstaatlichen Konfliktes mit sich bringen würde. Dies gilt sinngemäß auch für die Feststellung, dass der Status des subsidiär Schutzberechtigten nicht zuzuerkennen ist. Kann der Herkunftsstaat des Asylwerbers nicht festgestellt werden, ist der Antrag auf internationalen Schutz bezüglich des Status des subsidiär Schutzberechtigten abzuweisen. Diesfalls ist eine Rückkehrentscheidung zu verfügen, wenn diese gemäß § 9 Abs. 1 und 2 BFA-VG nicht unzulässig ist.</p> <p>(6) Kann der Herkunftsstaat des Asylwerbers nicht festgestellt werden, ist der Antrag auf internationalen Schutz bezüglich des Status des subsidiär Schutzberechtigten abzuweisen. Diesfalls ist eine Rückkehrentscheidung zu verfügen, wenn diese gemäß § 9 Abs. 1 und 2 BFA-VG nicht unzulässig ist.</p>	<p>being eligible for subsidiary protection; it is only mentioned when an application for international protection concerning the granting of subsidiary protection has to be rejected.</p>
<p><b>Chapter VI: Subsidiary Protection Status</b></p> <p><b>Article 18: Granting of subsidiary protection status</b></p> <p>Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b></p> <p><b>4. Abschnitt: Status des subsidiär Schutzberechtigten</b></p> <p><b>§8. Status des subsidiär Schutzberechtigten</b> (1) Der Status</p>	<p>The granting of subsidiary protection is ensured with article 8 of</p>

	<p>des subsidiär Schutzberechtigten ist einem Fremden zuzuerkennen,</p> <ol style="list-style-type: none"> <li>1. der in Österreich einen Antrag auf internationalen Schutz gestellt hat, wenn dieser in Bezug auf die Zuerkennung des Status des Asylberechtigten abgewiesen wird oder</li> <li>2. dem der Status des Asylberechtigten aberkannt worden ist, wenn eine Zurückweisung, Zurückschiebung oder Abschiebung des Fremden in seinen Herkunftsstaat eine reale Gefahr einer Verletzung von Art. 2 EMRK, Art. 3 EMRK oder der Protokolle Nr. 6 oder Nr. 13 zur Konvention bedeuten würde oder für ihn als Zivilperson eine ernsthafte Bedrohung des Lebens oder der Unversehrtheit infolge willkürlicher Gewalt im Rahmen eines internationalen oder innerstaatlichen Konfliktes mit sich bringen würde.</li> </ol> <p>(2) Die Entscheidung über die Zuerkennung des Status des subsidiär Schutzberechtigten nach Abs. 1 ist mit der abweisenden Entscheidung nach § 3 oder der Aberkennung des Status des Asylberechtigten nach § 7 zu verbinden.</p>	<p>the AsylG.</p> <p>+</p>
<p><b>Article 19: Revocation of, ending of or refusal to renew subsidiary protection status</b></p> <p>1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.</p> <p>2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for</p>	<p><b>2. Hauptstück: Status des Asylberechtigten und des subsidiär Schutzberechtigten</b></p> <p><b>4. Abschnitt: Status des subsidiär Schutzberechtigten</b></p> <p><b>§9. Aberkennung des Status des subsidiär Statusberechtigten</b> (1) Einem Fremden ist der Status eines subsidiär Schutzberechtigten von Amts wegen mit Bescheid abzuerkennen, wenn</p> <ol style="list-style-type: none"> <li>1. die Voraussetzungen für die Zuerkennung des Status des subsidiär Schutzberechtigten (§ 8 Abs. 1) nicht oder nicht mehr vorliegen;</li> <li>2. er den Mittelpunkt seiner Lebensbeziehungen in einem anderen Staat hat oder</li> <li>3. er die Staatsangehörigkeit eines anderen Staates</li> </ol>	<p>Article 19 is not fully implemented as the AsylG does state deviant reasons for revocation of the subsidiary protection status. It only complies in its first subparagraph.</p>

<p>subsidiary protection in accordance with Article 17(3).</p> <p>3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:</p> <p>(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);</p> <p>(b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status</p> <p>4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.</p>	<p>erlangt hat und eine Zurückweisung, Zurückschiebung oder Abschiebung des Fremden in seinen neuen Herkunftsstaat keine reale Gefahr einer Verletzung von Art. 2 EMRK, Art. 3 EMRK oder der Protokolle Nr. 6 oder Nr. 13 zur Konvention oder für ihn als Zivilperson keine ernsthafte Bedrohung des Lebens oder der Unversehrtheit infolge willkürlicher Gewalt im Rahmen eines internationalen oder innerstaatlichen Konfliktes mit sich bringen würde.</p> <p>(2) Ist der Status des subsidiär Schutzberechtigten nicht schon aus den Gründen des Abs. 1 abzuerkennen, so hat eine Aberkennung auch dann zu erfolgen, wenn</p> <ol style="list-style-type: none"> <li>1. einer der in Art. 1 Abschnitt F der Genfer Flüchtlingskonvention genannten Gründe vorliegt;</li> <li>2. der Fremde eine Gefahr für die Allgemeinheit oder für die Sicherheit der Republik Österreich darstellt oder</li> <li>3. der Fremde von einem inländischen Gericht wegen eines Verbrechens (§ 17 StGB) rechtskräftig verurteilt worden ist. Einer Verurteilung durch ein inländisches Gericht ist eine Verurteilung durch ein ausländisches Gericht gleichzuhalten, die den Voraussetzungen des § 73 StGB, BGBl. Nr. 60/1974, entspricht.</li> </ol> <p>In diesen Fällen ist die Aberkennung des Status des subsidiär Schutzberechtigten mit der Feststellung zu verbinden, dass eine Zurückweisung, Zurückschiebung oder Abschiebung des Fremden in seinen Herkunftsstaat unzulässig ist, da dies eine reale Gefahr einer Verletzung von Art. 2 EMRK, Art. 3 EMRK oder der Protokolle Nr. 6 oder Nr. 13 zur Konvention bedeuten würde oder für ihn als Zivilperson eine ernsthafte Bedrohung des Lebens oder der Unversehrtheit infolge willkürlicher Gewalt im Rahmen eines internationalen oder innerstaatlichen Konfliktes mit sich bringen würde.</p> <p>(3) Ein Verfahren zur Aberkennung des Status des subsidiär Schutzberechtigten ist jedenfalls einzuleiten, wenn der Fremde straffällig geworden ist (§ 2 Abs. 3) und das Vorliegen der</p>	<p>—</p>
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	Voraussetzungen gemäß Abs. 1 oder 2 wahrscheinlich ist. (4) Die Aberkennung des Status des subsidiär Schutzberechtigten ist mit dem Entzug der Aufenthaltsberechtigung als subsidiär Schutzberechtigter zu verbinden. Der Fremde hat nach Rechtskraft der Aberkennung Karten, die den Status des subsidiär Schutzberechtigten bestätigen, der Behörde zurückzustellen.	
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### 5.2.2 The Asylum Qualification Directive compared to the Immigration, Residence and Protection Bill of Austria

The Asylum Qualification Directive	Immigration, Residence and Protection Bill of Ireland	Composition
<p><b>Chapter II: Assessment of Applications for international protection:</b></p> <p><b>Article 4:</b> Assessment of facts and circumstances</p> <p>1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.</p> <p>2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the</p>	<p>Part 7 Protection Chapter 1 <i>General</i> Assessment of facts and circumstances</p> <p>Article 63. (1) The following matters, in so far as they are known, shall be taken into account by the Minister or, as Tribunal for the purposes of determining a protection application under section 79 or deciding an appeal under section 88.</p> <p>(a) All relevant facts as they relate to the country of origin at the time of making a determination in respect of the application, including laws and regulations of the country of origin and the manner in which they are applied;</p> <p>(b) The relevant statements and documentation presented by the applicant including information on whether he or she has been or may be subject to persecution or serious harm;</p> <p>(c) Individual position and personal circumstances of the</p>	<p>Article 4 is fully implemented in Irish Asylum Law, represented by two articles. Article 63(1) clarifies the duties of the Minister or Tribunal regarding the protection application whereas the duty of the applicant to co-operate and the content of documents are defined in Article 77.</p>



	<ul style="list-style-type: none"> <li>Age; background (including that of relevant relatives); country or countries and place or places of previous residence; identity; identity and travel documents; nationality or nationalities; previous protection applications; reasons for applying for protection or for otherwise wishing to remain in the State, and travel routes and details of persons who assisted the applicant in travelling to the State.</li> </ul>	
<p><b>Article 5:</b> International protection needs arising from place</p> <p>1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.</p> <p>2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.</p> <p>3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin.</p>	<p>Part 7 Protection Chapter 1 <i>General</i> Assessment of facts and circumstances</p> <p><b>Article 63.</b> (2) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall, subject to subsection (3), be regarded as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm.</p> <p>(4) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the protection applicant left his or her country of origin.</p> <p>(5) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the protection applicant since he or she left his or her country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held by the protection applicant in the country of origin.</p>	<p>In Article 63(2), (4) and (5), the arising from place of international protection is incorporated. Moreover, the fact that an applicant has already been subject to persecution; serious harm or direct threat is seen as serious indication of need for international protection.</p> <p style="text-align: center;">+</p>
<p><b>Article 6:</b> Actors of persecution or serious harm</p> <p>Actors of persecution or serious harm include:</p> <p>(a) The State,</p> <p>(b) Parties or organizations controlling the State or a substantial part of the territory of the State;</p> <p>(c) Non-State actors, if it can be demonstrated that the actors</p>	<p><b>Part 7 Protection</b> <b>Chapter 1 <i>General</i></b> <b>Interpretation of Part 7.</b></p> <p><b>Article 61.</b> (1) In this Part – “actors of persecution” and “actors of serious harm” include – (a) A state</p>	<p>“Actors of persecution” are defined in accordance with the wording of the Qualification Directive.</p> <p style="text-align: center;">+</p>

<p>mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7</p>	<p>(b) Parties or organisations controlling a state or a substantial part of the territory of that state, and (c) Non-state actors if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution;</p>	
<p><b>Article 7: Actors of protection</b></p> <p>1. Action can be provided by: (c) the State; or (d) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.</p> <p>2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.</p> <p>3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.</p>	<p><b>Part 7 Protection</b> <b>Chapter 1 General</b> Interpretation of <i>Part 7</i>.</p> <p><b>Article 61.</b> (2) For the purposes of this Part, protection against persecution or serious harm shall be regarded as being generally provided where reasonable steps are taken by a state or parties or organisations, including international organisations, controlling a state or a substantial part of the territory of a state to prevent the persecution or suffering of serious harm, including by the operation of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, where the applicant has access to such protection. (3) For the purposes of assessing, under subsection (2), whether an international organisation controls a state or a substantial part of the territory of a state and provides protection against persecution or serious harm, the Minister or, as the case may be, the Tribunal shall take into account any guidance which may be provided in relevant acts of the Council of the European Union.</p>	<p>Article 61(2) does define the actors of protection within the meaning of Article 7 of the Asylum Qualification Directive.</p> <p style="text-align: center;">+</p>
<p><b>Article 8: International Protection</b></p> <p>1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.</p> <p>2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of</p>	<p><b>Part 7 Protection</b> <b>Chapter 1 General</b> Assessment of facts and circumstances</p> <p><b>Article 63.</b> (6) The Minister or Tribunal may determine that an applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm. (7) In examining whether a part of the country of origin accords</p>	<p>Article 8 is fully implemented by Irish Asylum Law.</p> <p style="text-align: center;">+</p>



<p>taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.</p> <p>3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.</p>	<p>with subsection (6), the Minister or Tribunal shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.</p>	
<p><b>Chapter III: Qualification for being a Refugee</b></p> <p><b>Article 9: Acts of persecution</b></p> <p>1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:</p> <ul style="list-style-type: none"> <li>(c) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;</li> <li>(d) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).</li> </ul> <p>2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:</p> <ul style="list-style-type: none"> <li>(g) acts of physical or mental violence, including acts of sexual violence;</li> <li>(h) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;</li> <li>(i) prosecution or punishment, which is disproportionate or discriminatory;</li> <li>(j) denial of judicial redress resulting in a disproportionate or discriminatory punishment;</li> <li>(k) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);</li> </ul>	<p><b>Part 7 Protection</b></p> <p><b>Chapter 1 General</b></p> <p>Acts of persecution</p> <p><b>Article 64.</b> (1) Acts are not acts of persecution for the purpose of this Part unless –</p> <ul style="list-style-type: none"> <li>(a) They are (i) sufficiently serious by their nature or repetition to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or (ii) an accumulation of various measures, including violations of human rights, which is sufficiently severe to affect and individual in a similar manner as mentioned in subparagraph (i) and</li> <li>(b) There is a connection between the reasons for persecution, as constructed under section 65, and the acts of persecution as constructed under this section.</li> </ul> <p>(2) the following are examples of acts which may amount to acts of persecution for the purposes of subsection (1): acts of physical or mental violence, including acts of sexual violence; legal, administrative, police, or judicial measures or a combination of these measures that are in themselves discriminatory or are implemented in a discriminatory manner; prosecution or punishment that disproportionate or discriminatory; denial of judicial redress resulting in a disproportionate or discriminatory punishment; prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts of a kind referred to in section 66(2) or (5); acts of a gender-specific or child-specific nature</p>	<p>Article 64(1) covers Article 9(1) of the Convention and all of the forms of “acts of persecution” are enshrined in the act in subparagraph (2).</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>





<p>(l) acts of a gender-specific or child-specific nature.</p> <p>3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.</p>		
<p><b>Article 10: Reasons for persecution</b></p> <p>1. Member States shall take the following elements into account when assessing the reasons for persecution</p> <ul style="list-style-type: none"> <li>(f) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;</li> <li>(g) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;</li> <li>(h) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;</li> <li>(i) a group shall be considered to form a particular social group where in particular: <ul style="list-style-type: none"> <li>- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and</li> <li>- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;</li> </ul> </li> </ul>	<p><b>Part 7 Protection</b>  <b>Chapter 1 General</b>  Factors bearing on assessment of reasons for, and fear of, persecution</p> <p><b>Article 65.</b> (1) The Minister or, as the case may be, the Tribunal shall take the following into account when assessing the reasons for persecution:</p> <ul style="list-style-type: none"> <li>(a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;</li> <li>(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;</li> <li>(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State</li> <li>(d) a group shall be considered to form a particular social group where in particular (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, or that group has a distinct identity in the relevant country, because it is</li> </ul>	<p>What to account when assessing “Reasons for persecution” is defined in accord with the wording of the Qualification Directive in Article 51(1) of the Irish Law.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

<p>depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;</p> <p>(j) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.</p> <p>2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.</p>	<p>perceived as being different by the surrounding society;</p> <p>(e) particular social group may include a group based on a common characteristic of sexual orientation, depending on the circumstances in the country of origin;</p> <p>(f) gender-related aspects may be taken into account in assessing whether an applicant is a member of a social group based on sexual orientation without themselves creating a presumption for the applicability of this Part;</p> <p>(g) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the protection applicant</p> <p>(2) In the assessment of whether an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.</p> <p>Moreover, definitions on “sexual orientation” and “membership of a particular social group” are given.</p>	
<p><b>Article 11: Cessation</b></p> <p>3. A third country national or a stateless person shall cease to be a refugee, if he or she:</p> <p>(g) has voluntarily re-availed himself or herself of the protection of the country of nationality; or</p> <p>(h) having lost his or her nationality, has voluntarily reacquired it; or</p> <p>(i) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or</p> <p>(j) has voluntarily re-established himself or herself in the</p>	<p><b>Part 7 Protection</b>  <b>Chapter 1 General</b>  Cessation of Protection Status</p> <p><b>Article 67.</b> (1) A person shall cease to be a refugee if he or she</p> <p>(a) has voluntarily re-availed himself or herself of the protection of the country of nationality</p> <p>(b) having lost his or her nationality, has voluntarily re-acquired it nationality</p> <p>(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality</p> <p>(d) has voluntarily re-established himself or herself in the</p>	<p>Article 11 is fulfilled in Irish Law through Article 67.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

<p>country which he or she left or outside which he or she remained owing to fear of persecution; or</p> <p>(k) can no longer, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;</p> <p>(l) being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, to return to the country of former habitual residence.</p> <p>4. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.</p>	<p>country which he or she left or outside which he or she remained owing to fear of persecution</p> <p>(e) subject to subsection (2), can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality, or</p> <p>(f) subject to subsection (2), being a stateless person, is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.</p> <p>(2) In determining whether subsection (1)(e) or (f) applies, the Minister shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person's fear of persecution can no longer be regarded as well-founded.</p>	
<p><b>Article 12: Exclusion</b></p> <p>4. A third country national or a stateless person is excluded from being a refugee, if:</p> <p>(c) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive</p> <p>(d) he or she is recognized by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.</p>	<p><b>Part 7 Protection</b> <b>Chapter 1 General</b> Exclusion from protection</p> <p><b>Article 66.</b> (1) A person is excluded from being a refugee where he or she is</p> <p>(a) subject to subsection (6) receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance, or</p> <p>(b) recognised by the competent authorities of the country which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those</p> <p>(2) A person is excluded from being a refugee where there are serious reasons for considering that he or she</p> <p>(a) has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of 15 such crimes,</p>	<p>Article 66 does implement the legal reasons for an “exclusion” of a refugee according to Article 12 of the Directive.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

<p>5. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that</p> <p>(d) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</p> <p>(e) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;</p> <p>(f) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations</p> <p>6. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.</p>	<p>(b) has committed a serious non-political crime outside the State prior to the grant of a protection declaration, or (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble 20 and Articles 1 and 2 of the Charter of the United Nations.</p> <p>(6) Subsection (1)(a) shall not apply where the protection or assistance referred to in that subsection has ceased for any reason, without the position of persons who had been receiving that protection or assistance being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.</p>	
<p><b>Chapter IV: Refugee Status</b></p> <p><b>Article 13: Granting of Refugee Status</b></p> <p>Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.</p>	<p><b>Part 7 Protection</b></p> <p><b>Chapter 1 General</b></p> <p>Entitlement to protection in State</p> <p>Article 62. (1) Subject to subsection (3), a foreign national is entitled to protection in the State if he or she</p> <p>(a) is a refugee, or</p> <p>(b) not being a refugee, is a person eligible for subsidiary protection;</p>	<p>The granting of refugee status is given with Article 62.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>
<p><b>Article 14: Revocation of, ending of or refusal to renew refugee status</b></p> <p>7. Concerning applications for international protection filed after the entry into force of this Directive, Member</p>	<p><b>Chapter 5 Protection declarations and permits</b></p> <p>Protection Declaration</p> <p><b>Article 97.</b> (7) The Minister may refuse to grant a protection</p>	<p>Article 99 of the Immigration, Residence and Protection Bill does implement Article 14 on</p>

<p>States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.</p> <p>8. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article</p> <p>9. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:</p> <p>(c) he or she should have been or is excluded from being a refugee in accordance with Article 12</p> <p>(d) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.</p> <p>10. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:</p> <p>(c) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;</p> <p>(d) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.</p> <p>11. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.</p> <p>12. Persons to whom paragraphs 4 or 5 apply are entitled to</p>	<p>declaration where (a) there are reasonable grounds for regarding the applicant as a danger to the security of the State, or (b) the applicant, having been by a final judgment convicted, whether in the State or not, of a particularly serious crime, constitutes a danger to the community of the State.</p> <p><b>Part 7 Protection</b>  <b>Chapter 5 Protection Declarations and Permits</b>  Revocation of protection declaration</p> <p><b>Article 99.</b> (1) the Minister shall revoke a protection declaration granted to a person if satisfied that –</p> <p>(a) the person should have been or is excluded from protection under section 66</p> <p>(b) the person has, in accordance with section 67, ceased to be a refugee or a person eligible for subsidiary protection, or</p> <p>(c) misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive for the granting of protection</p> <p>(2) The Minister may revoke a protection declaration issued to a person determined to be a refugee if satisfied that—</p> <p>(a) there are reasonable grounds for regarding the person as a danger to the security of the State, or</p> <p>(b) the person, having been by a final judgement convicted, whether in the State or not, of a particularly serious crime, constitutes a danger to the community of the State.</p> <p>(3) The Minister shall not, on the grounds specified in section 67(1)(e) or (f), revoke a protection declaration granted to a person determined to be a refugee where the Minister is satisfied that the person concerned is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her nationality or for</p>	<p>the revocation to renew refugee status of the Directive.</p> <p style="text-align: center;">+</p>
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rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.	refusing to return to the country of his or her former habitual residence, as the case may be.	
<b>Chapter V: Qualification for subsidiary protection</b> <b>Article 15: Serious harm</b>  Serious harm consists of: (a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.	<b>Part 7 Protection</b> <b>Chapter 1 General</b> Interpretation of <i>Part 7</i>  <b>Article 61.</b> (1) In this Part - “serious harm” means – (a) death penalty or execution, (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict	“Serious harm” is defined in accord with the wording of the Qualification Directive.  
<b>Article 16: Cessation</b>  1. A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. 2. In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.	<b>Part 7 Protection</b> <b>Chapter 1 General</b> Cessation of Protection Status  <b>Article 67.</b> (3) A person shall cease to be eligible for subsidiary protection when – (a) the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changes to such a degree that protection is no longer required, and (b) the change of circumstances is of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm.	“Cessation of refugee status” is defined in accord with the Qualification Directive.  
<b>Article 17: Exclusion</b> 1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that: (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;	<b>Part 7 Protection</b> <b>Chapter 1 General</b> Exclusion from Protection  <b>Article 66.</b> (3) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she – (a) has committed a crime against peace, a war crime, or a	The “exclusion from protection” is implemented in the exact wording of the Qualification Directive.

<p>(b) he or she has committed a serious crime;  (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;  (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.  2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.</p>	<p>crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;  (b) has committed a serious crime,  (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations, or  (d) constitutes a danger to the community or to the security of the State  (4) A person is excluded from being eligible for subsidiary protection if he or she has, prior to his or her admission to the State, committed one or more crimes, not consisting of a crime or conduct mentioned in subsection (3), which would be punishable by imprisonment had it or they been committed in the State and, in the opinion of the Minister or, as the case may be, the Tribunal, left his or her country of origin only in order to avoid sanctions resulting from that or those crimes.</p>	<p style="text-align: center;">+</p>
<p><b>Chapter VI: Subsidiary Protection Status</b>  <b>Article 18: Granting of subsidiary protection status</b>  Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.</p>	<p><b>Part 7 Protection</b>  <b>Chapter 1 General</b>  Interpretation of <i>Part 7</i>    <b>Article 61.</b> (1) In this Part – “person eligible for subsidiary protection” means a person—  (a) who is not a national of a Member State,  (b) who is not entitled to protection in the State as a refugee  (c) in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm, and who is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country, construed in accordance with subsections (2) and (3); and  (d) to whom section 66 does not apply;</p>	<p>In Article 61 it is clarified who is eligible for “subsidiary protection”.</p> <p style="text-align: center;">+</p>



<p><b>Article 19: Revocation of, ending of or refusal to renew subsidiary protection status</b></p> <p>1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.</p> <p>2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).</p> <p>3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:</p> <p>(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);</p> <p>(b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status</p> <p>4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article</p>		<p>There is no explicit reference made to the revocation to renew subsidiary protection status. But, Article 99(1) can be seen as implementing Article 19 of the directive as reference is made to “Article 99(1) the Minister shall revoke a protection declaration granted to a person if satisfied that the person has, in accordance with section 67, ceased to be a refugee or a person eligible for subsidiary protection”.</p> <p style="text-align: center;">—</p>
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### 5.2.3 The Asylum Qualification Directive compared to the AsylVfG of Germany

The Asylum Qualification Directive	Asylverfahrensgesetz (AsylVfG) of Germany	Composition
<p><b>Chapter II: Assessment of Applications for international protection:</b></p> <p><b>Article 4:</b> Assessment of facts and circumstances</p> <p>1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.</p> <p>2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.</p> <p>3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account.</p> <ul style="list-style-type: none"> <li>Country of origin, statements and documentation, information on whether the applicant has been or may be subject to persecution or serious harm; individual position and personal circumstances, background, gender, age; applicant's activities since leaving the country of origin;</li> </ul>	<p><b>Abschnitt 4: Asylverfahren</b>  <b>Unterabschnitt 1: Allgemeine Verfahrensvorschriften</b></p> <p><b>Article 15. General obligation to cooperate</b> (1) Foreigners shall be personally required to cooperate in establishing the facts of the case. This shall also apply to foreigners represented by a legal adviser</p> <p>(2) The foreigner shall be required in particular to</p> <ul style="list-style-type: none"> <li>Provide necessary information orally and written; inform Federal Office about granting residence title without delay; surrender passport or passport substitutes; surrender necessary certificates and any other documents; cooperate in obtaining an identity document; undergo the required identification measures</li> </ul> <p>(3) Necessary certificates and other documents within the meaning of (2), no. 5 shall include in particular</p> <ol style="list-style-type: none"> <li>any certificates and documents apart from the passport or passport substitute which might aid in establishing the foreigner's identity and nationality;</li> <li>visas, residence permits and other border-crossing documents issued by other countries;</li> <li>air tickets and other transport tickets;</li> <li>documents concerning the travel route from the home country to the Federal territory, the means of transport used and time spent in other countries after leaving the country of origin and before entering the Federal territory; and</li> </ol>	<p>Article 4 of the Directive was fully implemented to German AsylVfG.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

	<p>5. any other certificates and documents which the foreigner uses to substantiate his claim or which are relevant for the decisions and measures to be taken under asylum and foreigners law, including the decision and enforcement of possible deportation to another country.</p>	
<p><b>Article 5:</b> International protection needs arising from place</p> <p>1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.</p> <p>2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.</p> <p>3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin.</p>	<p><b>Abschnitt 4: Asylverfahren</b>  <b>Unterabschnitt 3: Verfahren beim Bundesamt</b></p> <p><b>§28 Nachfluchtstatbestände</b> (1) Ein Ausländer wird in der Regel nicht als Asylberechtigter anerkannt, wenn die Gefahr politischer Verfolgung auf Umständen beruht, die er nach Verlassen seines Herkunftslandes aus eigenem Entschluss geschaffen hat, es sei denn, dieser Entschluss entspricht einer festen, bereits im Herkunftsland erkennbar betätigten Überzeugung. Satz 1 findet insbesondere keine Anwendung, wenn der Ausländer sich auf Grund seines Alters und Entwicklungsstandes im Herkunftsland noch keine feste Überzeugung bilden konnte.</p> <p>(1a) Die begründete Furcht vor Verfolgung im Sinne des §3 Absatz 1 oder die tatsächliche Gefahr, einen ernsthaften Schaden im Sinne des §4 Absatz 1 zu erleiden, kann auf Ereignissen beruhen, die eingetreten sind, nachdem der Ausländer das Herkunftsland verlassen hat, insbesondere auch auf einem Verhalten des Ausländers, das Ausdruck und Fortsetzung einer bereits im Herkunftsland bestehenden Überzeugung oder Ausrichtung ist.</p> <p>(2) Stellt der Ausländer nach Rücknahme oder unanfechtbarer Ablehnung eines Asylantrags erneut einen Asylantrag und stützt diesen auf Umstände, die er nach Rücknahme oder unanfechtbarer Ablehnung seines früheren Antrags selbst geschaffen hat, kann in einem Folgeverfahren in der Regel die Flüchtlingseigenschaft nicht zuerkannt werden.</p>	<p>Article 5 is completely implemented in the German asylum legislation.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

<p><b>Article 6:</b> Actors of persecution or serious harm</p> <p>Actors of persecution or serious harm include:</p> <ul style="list-style-type: none"> <li>(a) The State,</li> <li>(b) Parties or organizations controlling the State or a substantial part of the territory of the State;</li> <li>(c) Non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.</li> </ul>	<p><b>Abschnitt 2: Schutzgewährung</b>  <b>Unterabschnitt 2: Internationaler Schutz</b></p> <p><b>§3c Akteure, von denen Verfolgung ausgehen kann</b></p> <ul style="list-style-type: none"> <li>1. dem Staat</li> <li>2. Parteien oder Organisationen, die den Staat oder einen wesentlichen Teil des Staatsgebiets beherrschen, oder</li> <li>3. nichtstaatlichen Akteuren, sofern die in den Nummern 1 und 2 genannten Akteure einschließlich internationaler Organisationen erwiesenermaßen nicht in der Lage oder nicht willens sind, im Sinne des § 3d Schutz vor Verfolgung zu bieten, und dies unabhängig davon, ob in dem Land eine staatliche Herrschaftsmacht vorhanden ist oder nicht.</li> </ul>	<p>Article 6 is completely implemented in the German asylum legislation.</p> <p style="text-align: center;">+</p>
<p><b>Article 7:</b> Actors of protection</p> <p>1.Action can be provided by:</p> <ul style="list-style-type: none"> <li>(e) the State; or</li> <li>(f) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.</li> </ul> <p>2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.</p> <p>3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.</p>	<p><b>Abschnitt 2: Schutzgewährung</b>  <b>Unterabschnitt 2: Internationaler Schutz</b></p> <p><b>§3d Akteure, die Schutz bieten können</b> (1) Schutz vor Verfolgung kann nur geboten werden</p> <ul style="list-style-type: none"> <li>1. vom Staat oder</li> <li>2. von Parteien oder Organisationen einschließlich internationaler Organisationen, die den Staat oder einen wesentlichen Teil des Staatsgebiets beherrschen, sofern sie willens und in der Lage sind, Schutz gemäß Absatz 2 zu bieten.</li> </ul> <p>(2) Der Schutz vor Verfolgung muss wirksam und darf nicht nur vorübergehender Art sein. Generell ist ein solcher Schutz gewährleistet, wenn die in Absatz 1 genannten Akteure</p>	<p>Article 7 is completely implemented in the German asylum legislation.</p> <p style="text-align: center;">+</p>

	geeignete Schritte einleiten, um die Verfolgung zu verhindern, beispielsweise durch wirksame Rechtsvorschriften zur Ermittlung, Strafverfolgung und Ahndung von Handlungen, die eine Verfolgung darstellen, und wenn der Ausländer Zugang zu diesem Schutz hat. (3) Bei der Beurteilung der Frage, ob eine internationale Organisation einen Staat oder einen wesentlichen Teil seines Staatsgebiets beherrscht und den in Absatz 2 genannten Schutz bietet, sind etwaige in einschlägigen Rechtsakten der Europäischen Union aufgestellte Leitlinien heranzuziehen	
<b>Article 8: International Protection</b>  1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. 2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant. 3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.	<b>Abschnitt 2: Schutzgewährung</b> <b>Unterabschnitt 2: Internationaler Schutz</b>  <b>§3e Interner Schutz</b> (1) Dem Ausländer wird die Flüchtlingseigenschaft nicht zuerkannt, wenn er <ol style="list-style-type: none"> <li>1. in einem Teil seines Herkunftslandes keine begründete Furcht vor Verfolgung oder Zugang zu Schutz vor Verfolgung nach § 3d hat und</li> <li>2. sicher und legal in diesen Landesteil reisen kann, dort aufgenommen wird und vernünftigerweise erwartet werden kann, dass er sich dort niederlässt.</li> </ol> (2) Bei der Prüfung der Frage, ob ein Teil des Herkunftslandes die Voraussetzungen nach Absatz 1 erfüllt, sind die dortigen allgemeinen Gegebenheiten und die persönlichen Umstände des Ausländers gemäß Artikel 4 der Richtlinie 2011/95/EU zum Zeitpunkt der Entscheidung über den Antrag zu berücksichtigen. Zu diesem Zweck sind genaue und aktuelle Informationen aus relevanten Quellen, wie etwa Informationen des Hohen Kommissars der Vereinten Nationen für Flüchtlinge oder des Europäischen Unterstützungsbüros für Asylfragen, einzuholen.	Article 8 is completely implemented in the German asylum legislation.  

<p><b>Chapter III: Qualification for being a Refugee</b>  <b>Article 9: Acts of persecution</b></p> <p>1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:</p> <ul style="list-style-type: none"> <li>(e) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms;</li> <li>(f) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).</li> </ul> <p>2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:</p> <ul style="list-style-type: none"> <li>(m) acts of physical or mental violence, including acts of sexual violence;</li> <li>(n) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;</li> <li>(o) prosecution or punishment, which is disproportionate or discriminatory;</li> <li>(p) denial of judicial redress resulting in a disproportionate or discriminatory punishment;</li> <li>(q) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);</li> <li>(r) acts of a gender-specific or child-specific nature.</li> </ul> <p>3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.</p>	<p><b>Abschnitt 2: Schutzgewährung</b>  <b>Unterabschnitt 2: Internationaler Schutz</b></p> <p><b>§3a Verfolgungshandlungen</b> Als Verfolgungen im Sinne des §3 Absatz 1 gelten Handlungen, die</p> <ol style="list-style-type: none"> <li>1. auf Grund ihrer Art oder Wiederholung so gravierend sind, dass sie eine schwerwiegende Verletzung der grundlegenden Menschenrechte darstellen, insbesondere Rechte, von denen nach Artikel 15 Absatz 2 der Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten (BGBl. 1952 II S. 685, 953) keine Abweichung zulässig ist, oder</li> <li>2. in einer Kumulierung unterschiedlicher Maßnahmen, einschließlich einer Verletzung der Menschenrechte, bestehen, die so gravierend ist, dass eine Person davon in ähnlicher wie der in Nummer 1 beschriebenen Weise betroffen ist.</li> </ol> <p>(2) Als Verfolgung im Sinne des Absatzes 1 können unter anderem die folgenden Handlungen gelten:</p> <ol style="list-style-type: none"> <li>1. die Anwendung physischer oder psychischer Gewalt, einschließlich sexueller Gewalt</li> <li>2. gesetzliche, administrative, polizeiliche oder justizielle Maßnahmen, die als solche diskriminierend sind oder in diskriminierender Weise angewandt werden</li> <li>3. unverhältnismäßige oder diskriminierende Strafverfolgung oder Bestrafung,</li> <li>4. Verweigerung gerichtlichen Rechtsschutzes mit dem Ergebnis einer unverhältnismäßigen oder diskriminierenden Bestrafung,</li> <li>5. Strafverfolgung oder Bestrafung wegen Verweigerung des Militärdienstes in einem Konflikt, wenn der Militärdienst Verbrechen oder Handlungen umfassen würde, die unter die Ausschlussklauseln des § 3 Absatz 2 fallen,</li> </ol>	<p>Article 9 is completely implemented in the German asylum legislation.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>
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	6. Handlungen, die an die Geschlechtszugehörigkeit anknüpfen oder gegen Kinder gerichtet sind	
<p><b>Article 10: Reasons for persecution</b></p> <p>1. Member States shall take the following elements into account when assessing the reasons for persecution</p> <ul style="list-style-type: none"> <li>(k) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;</li> <li>(l) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;</li> <li>(m) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;</li> <li>(n) a group shall be considered to form a particular social group where in particular: <ul style="list-style-type: none"> <li>- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and</li> <li>- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;</li> </ul> </li> </ul> <p>depending on the circumstances in the country of origin, a particular social group might include a group based on a common</p>	<p><b>Abschnitt 2: Schutzgewährung</b>  <b>Unterabschnitt 2: Internationaler Schutz</b></p> <p><b>§3b Verfolgungsgründe</b> (1) Bei der Prüfung der Verfolgungsgründe nach § 3 Absatz 1 Nummer 1 ist Folgendes zu berücksichtigen:</p> <ol style="list-style-type: none"> <li>1. der Begriff der Rasse umfasst insbesondere die Aspekte Hautfarbe, Herkunft und Zugehörigkeit zu einer bestimmten ethnischen Gruppe;</li> <li>2. der Begriff der Religion umfasst insbesondere theistische, nichttheistische und atheistische Glaubensüberzeugungen, die Teilnahme oder Nichtteilnahme an religiösen Riten im privaten oder öffentlichen Bereich, allein oder in Gemeinschaft mit anderen, sonstige religiöse Betätigungen oder Meinungsäußerungen und Verhaltensweisen Einzelner oder einer Gemeinschaft, die sich auf eine religiöse Überzeugung stützen oder nach dieser vorgeschrieben sind;</li> <li>3. der Begriff der Nationalität beschränkt sich nicht auf die Staatsangehörigkeit oder das Fehlen einer solchen, sondern bezeichnet insbesondere auch die Zugehörigkeit zu einer Gruppe, die durch ihre kulturelle, ethnische oder sprachliche Identität, gemeinsame geografische oder politische Herkunft oder ihre Verwandtschaft mit der Bevölkerung eines anderen Staates bestimmt wird;</li> <li>4. eine Gruppe gilt insbesondere als eine bestimmte soziale Gruppe, wenn <ol style="list-style-type: none"> <li>a) die Mitglieder dieser Gruppe angeborene Merkmale oder einen gemeinsamen Hintergrund, der nicht verändert werden kann, gemein haben oder Merkmale oder eine Glaubensüberzeugung teilen, die so bedeutsam für die Identität oder das Gewissen sind, dass der Betreffende nicht gezwungen werden sollte, auf sie zu verzichten, und</li> <li>b) die Gruppe in dem betreffenden Land eine deutlich</li> </ol> </li> </ol>	<p>Article 10 is completely implemented in the German asylum legislation.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

<p>characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;</p> <p>(o) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.</p> <p>2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution</p>	<p>abgegrenzte Identität hat, da sie von der sie umgebenden Gesellschaft als andersartig betrachtet wird;</p> <p>als eine bestimmte soziale Gruppe kann auch eine Gruppe gelten, die sich auf das gemeinsame Merkmal der sexuellen Orientierung gründet; Handlungen, die nach deutschem Recht als strafbar gelten, fallen nicht darunter; eine Verfolgung wegen der Zugehörigkeit zu einer bestimmten sozialen Gruppe kann auch vorliegen, wenn sie allein an das Geschlecht oder die geschlechtliche Identität anknüpft;</p> <p>5. unter dem Begriff der politischen Überzeugung ist insbesondere zu verstehen, dass der Ausländer in einer Angelegenheit, die die in § 3c genannten potenziellen Verfolger sowie deren Politiken oder Verfahren betrifft, eine Meinung, Grundhaltung oder Überzeugung vertritt, wobei es unerheblich ist, ob er auf Grund dieser Meinung, Grundhaltung oder Überzeugung tätig geworden ist.</p> <p>(2) Bei der Bewertung der Frage, ob die Furcht eines Ausländers vor Verfolgung begründet ist, ist es unerheblich, ob er tatsächlich die Merkmale der Rasse oder die religiösen, nationalen, sozialen oder politischen Merkmale aufweist, die zur Verfolgung führen, sofern ihm diese Merkmale von seinem Verfolger zugeschrieben werden.</p>	
<p><b>Article 11: Cessation</b></p> <p>5. A third country national or a stateless person shall cease to be a refugee, if he or she:</p> <p>(m) has voluntarily re-availed himself or herself of the protection of the country of nationality; or</p> <p>(n) having lost his or her nationality, has voluntarily reacquired it; or</p> <p>(o) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or</p> <p>(p) has voluntarily re-established himself or herself in the</p>	<p><b>Abschnitt 8: Erlöschen der Rechtsstellung</b></p> <p><b>§72 Erlöschen</b> (1) Die Anerkennung als Asylberechtigter und die Zuerkennung der Flüchtlingseigenschaft erlöschen, wenn der Ausländer</p> <p>1. sich freiwillig durch Annahme oder Erneuerung eines Nationalpasses oder durch sonstige Handlungen erneut dem Schutz des Staates, dessen Staatsangehörigkeit er besitzt, unterstellt,</p> <p>1a. freiwillig in das Land, das er aus Furcht vor Verfolgung verlassen hat oder außerhalb dessen er sich aus Furcht vor</p>	<p>Article 11 is completely implemented in the German asylum legislation.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>



<p>country which he or she left or outside which he or she remained owing to fear of persecution; or</p> <p>(q) can no longer, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;</p> <p>(r) being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, to return to the country of former habitual residence.</p> <p>6. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.</p>	<p>Verfolgung befindet, zurückgekehrt ist und sich dort niedergelassen hat,</p> <p>2. nach Verlust seiner Staatsangehörigkeit diese freiwillig wiedererlangt hat,</p> <p>3. auf Antrag eine neue Staatsangehörigkeit erworben hat und den Schutz des Staates, dessen Staatsangehörigkeit er erworben hat, genießt oder</p> <p>4. auf sie verzichtet oder vor Eintritt der Unanfechtbarkeit der Entscheidung des Bundesamtes den Antrag zurücknimmt.</p>	
<p><b>Article 12: Exclusion</b></p> <p>7. A third country national or a stateless person is excluded from being a refugee, if:</p> <p>(e) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive</p> <p>(f) he or she is recognized by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.</p> <p>8. A third country national or a stateless person is excluded</p>	<p><b>Abschnitt 2: Schutzgewährung</b>  <b>Unterabschnitt 2: Internationaler Schutz</b></p> <p><b>§3 Zuerkennung der Flüchtlingseigenschaft</b> (2) Ein Ausländer ist nicht Flüchtling nach Absatz 1, wenn aus schwerwiegenden Gründen die Annahme gerechtfertigt ist, dass er</p> <ol style="list-style-type: none"> <li>1. Ein Verbrechen gegen den Frieden, ein Kriegsverbrechen oder ein Verbrechen gegen die Menschlichkeit begangen hat im Sinne der internationalen Vertragswerke, die ausgearbeitet worden sind, um Bestimmungen bezüglich dieser Verbrechen zu treffen,</li> <li>2. Vor seiner Aufnahme als Flüchtling eine schwere nichtpolitische Straftat außerhalb des Bundesgebiets begangen hat, insbesondere eine grausame Handlung, auch wenn mit ihr vorgeblich politische Ziele verfolgt wurden, oder</li> </ol>	<p>Article 12 is completely implemented in the German asylum legislation.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>



<p>from being a refugee where there are serious reasons for considering that</p> <p>(g) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</p> <p>(h) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;</p> <p>(i) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations</p> <p>9. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.</p>	<p>3. Den Zielen und Grundsätzen der Vereinten Nationen zuwidergehandelt hat.</p> <p>Satz 1 gilt auch für Ausländer, die andere zu den darin genannten Straftaten oder Handlungen angestiftet oder sich in sonstiger Weise daran beteiligt haben.</p> <p>(3) Ein Ausländer ist auch nicht Flüchtling nach Absatz 1, wenn er den Schutz oder Beistand einer Organisation oder einer Einrichtung der Vereinten Nationen mit Ausnahme des Hohen Kommissars der Vereinten Nationen für Flüchtlinge nach Artikel 1 Abschnitt D des Abkommens über die Rechtsstellung der Flüchtlinge genießt. Wird ein solcher Schutz oder Beistand nicht länger gewährt, ohne dass die Lage des Betroffenen gemäß den einschlägigen Resolutionen der Generalversammlung der Vereinten Nationen endgültig geklärt worden ist, sind die Absätze 1 und 2 anwendbar.</p>	
<p><b>Chapter IV: Refugee Status</b></p> <p><b>Article 13: Granting of Refugee Status</b></p> <p>Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.</p>	<p><b>Abschnitt 2: Schutzgewährung</b></p> <p><b>Unterabschnitt 1: Asyl</b></p> <p><b>§2 Rechtsstellung Asylberechtigter</b> (1) Asylberechtigte genießen im Bundesgebiet die Rechtsstellung nach dem Abkommen über die Rechtsstellung der Flüchtlinge.</p> <p>(2) Unberührt bleiben die Vorschriften, die den Asylberechtigten eine günstigere Rechtsstellung einräumen.</p> <p>(3) Ausländer, denen bis zum Wirksamwerden des Beitritts in dem in Artikel 3 des Einigungsvertrages genannten Gebiet Asyl gewährt worden ist, gelten als Asylberechtigte.</p> <p><b>Unterabschnitt 2: Internationaler Schutz</b></p> <p><b>§3 Zuerkennung der Flüchtlingseigenschaft</b> (1) Ein Ausländer ist Flüchtling im Sinne des Abkommens vom 28. Juli 1951 über die Rechtsstellung der Flüchtlinge (BGB1. 1953</p>	<p>The granting of refugee status is guaranteed by paragraph 2, defining the general provisions, and paragraph 3 which includes the reasons of persecution such as race, nationality or political opinion.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

	<p>II S. 559, 560), wenn er sich</p> <p>1. Aus begründeter Furcht vor Verfolgung wegen seiner Rasse, Religion, Nationalität, politischen Überzeugung oder Zugehörigkeit zu einer bestimmten sozialen Gruppe</p> <p>2. Außerhalb des Landes (Herkunftsland) befindet</p> <p>a) dessen Staatsangehörigkeit er besitzt und dessen Schutz er nicht in Anspruch nehmen kann oder wegen dieser Furcht nicht in Anspruch nehmen will oder</p> <p>b) in dem er als Staatenloser seinen vorherigen gewöhnlichen Aufenthalt hatte und in das er nicht zurückkehren kann oder wegen dieser Furcht nicht zurückkehren will.</p> <p>(4) Einem Ausländer, der Flüchtling nach Absatz 1 ist, wird die Flüchtlingseigenschaft zuerkannt, es sei denn, er erfüllt die Voraussetzungen des § 60 Abs. 8 Satz 1 des Aufenthaltsgesetzes.</p>	
<p><b>Article 14: Revocation of, ending of or refusal to renew refugee status</b></p> <p>13. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.</p> <p>14. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article</p> <p>15. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:</p>	<p><b>Abschnitt 8: Erlöschen der Rechtsstellung</b></p> <p><b>§73 Widerruf und Rücknahme der Asylberechtigung und der Flüchtlingseigenschaft</b> (1) Die Anerkennung als Asylberechtigter und die Zuerkennung der Flüchtlingseigenschaft sind unverzüglich zu widerrufen, wenn die Voraussetzungen für sie nicht mehr vorliegen. Dies ist insbesondere der Fall, wenn der Ausländer nach Wegfall der Umstände, die zur Anerkennung als Asylberechtigter oder zur Zuerkennung der Flüchtlingseigenschaft geführt haben, es nicht mehr ablehnen kann, den Schutz des Staates in Anspruch zu nehmen, dessen Staatsangehörigkeit er besitzt, oder wenn er als Staatenloser in der Lage ist, in das Land zurückzukehren, in dem er seinen gewöhnlichen Aufenthalt hatte. Satz 2 gilt nicht, wenn sich der Ausländer auf zwingende, auf früheren Verfolgungen beruhende Gründe berufen kann, um die Rückkehr in den Staat abzulehnen, dessen Staatsangehörigkeit er besitzt oder in dem er als Staatenloser seinen gewöhnlichen Aufenthalt hatte.</p> <p>(2) Die Anerkennung als Asylberechtigter ist zurückzunehmen,</p>	<p>Some parts of Article 14 are missing: there is no reference made to the reasons mentioned in article 72 (cessation) and to reasonable grounds for regarding him or her as a danger to the security of the Member State ; and he or she, having been convicted by a final judgment of a particularly serious crime.</p> <p style="text-align: center;">—</p>

<p>(e) he or she should have been or is excluded from being a refugee in accordance with Article 12</p> <p>(f) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.</p> <p>16. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:</p> <p>(e) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;</p> <p>(f) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.</p> <p>17. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.</p> <p>18. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.</p>	<p>wenn sie auf Grund unrichtiger Angaben oder infolge Verschweigens wesentlicher Tatsachen erteilt worden ist und der Ausländer auch aus anderen Gründen nicht anerkannt werden könnte. Satz 1 ist auf die Zuerkennung der Flüchtlingseigenschaft entsprechend anzuwenden.</p>	
<p><b>Chapter V: Qualification for subsidiary protection</b></p> <p><b>Article 15: Serious harm</b></p> <p>Serious harm consists of:</p> <p>(a) death penalty or execution; or</p> <p>(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or</p> <p>(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.</p>	<p><b>Abschnitt 2: Schutzgewährung</b></p> <p><b>Unterabschnitt 2: Internationaler Schutz</b></p> <p><b>§4 Subsidiärer Schutz</b> (1) Ein Ausländer ist subsidiär Schutzberechtigter, wenn er stichhaltige Gründe für die Annahme vorgebracht hat, dass ihm in seinem Herkunftsland ein ernsthafter Schaden droht. Als ernsthafter Schaden gilt:</p> <ol style="list-style-type: none"> <li>1. die Verhängung oder Vollstreckung der Todesstrafe,</li> <li>2. Folter oder unmenschliche oder erniedrigende Behandlung oder Bestrafung oder</li> <li>3. eine ernsthafte individuelle Bedrohung des Lebens oder der Unversehrtheit einer Zivilperson infolge willkürlicher Gewalt im Rahmen eines internationalen oder innerstaatlichen bewaffneten Konflikts.</li> </ol>	<p>Article 15 is completely implemented in the German asylum legislation.</p> <p style="text-align: center; color: green; font-size: 2em;">+</p>

	(3) Die §§ 3c bis 3e gelten entsprechend. An die Stelle der Verfolgung, des Schutzes vor Verfolgung beziehungsweise der begründeten Furcht vor Verfolgung treten die Gefahr eines ernsthaften Schadens, der Schutz vor einem ernsthaften Schaden beziehungsweise die tatsächliche Gefahr eines ernsthaften Schadens; an die Stelle der Flüchtlingseigenschaft tritt der subsidiäre Schutz.	
<b>Article 16: Cessation</b>  1. A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required. 2. In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.	<b>Abschnitt 8: Erlöschen der Rechtsstellung</b>  <b>§ 73b Widerruf und Rücknahme des subsidiären Schutzes</b> (1) Die Gewährung des subsidiären Schutzes ist zu widerrufen, wenn die Umstände, die zur Zuerkennung des subsidiären Schutzes geführt haben, nicht mehr bestehen oder sich in einem Maß verändert haben, dass ein solcher Schutz nicht mehr erforderlich ist. § 73 Absatz 1 Satz 3 gilt entsprechend. (2) Bei Anwendung des Absatzes 1 ist zu berücksichtigen, ob sich die Umstände so wesentlich und nicht nur vorübergehend verändert haben, dass der Ausländer, dem subsidiärer Schutz gewährt wurde, tatsächlich nicht länger Gefahr läuft, einen ernsthaften Schaden im Sinne des § 4 Absatz 1 zu erleiden.	Article 16 is completely implemented in the German asylum legislation.  +
<b>Article 17: Exclusion</b> 1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that: (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he or she has committed a serious crime; (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.	<b>Abschnitt 2: Schutzgewährung</b> <b>Unterabschnitt 2: Internationaler Schutz</b>  <b>§4 Subsidiärer Schutz</b> (2) Ein Ausländer ist von der Zuerkennung subsidiären Schutzes nach Absatz 1 ausgeschlossen, wenn schwerwiegende Gründe die Annahme rechtfertigen, dass er 1. ein Verbrechen gegen den Frieden, ein Kriegsverbrechen oder ein Verbrechen gegen die Menschlichkeit im Sinne der internationalen Vertragswerke begangen hat, die ausgearbeitet worden sind, um Bestimmungen bezüglich dieser Verbrechen festzulegen, 2. eine schwere Straftat begangen hat, 3. sich Handlungen zuschulden kommen lassen hat, die den Zielen und Grundsätzen der Vereinten Nationen, wie sie in der Präambel und den Artikeln 1 und 2 der Charta der Vereinten	Article 17 is completely implemented in the German asylum legislation.  +

<p>2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.</p>	<p>Nationen (BGBI. 1973 II S. 430, 431) verankert sind, zuwiderlaufen oder 4. eine Gefahr für die Allgemeinheit oder für die Sicherheit der Bundesrepublik Deutschland darstellt.</p> <p>Diese Ausschlussgründe gelten auch für Ausländer, die andere zu den genannten Straftaten oder Handlungen anstiften oder sich in sonstiger Weise daran beteiligen.</p>	
<p><b>Chapter VI: Subsidiary Protection Status</b> <b>Article 18: Granting of subsidiary protection status</b> Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.</p>		<p>Article 4 does regulate the granting of subsidiary protection status.</p> <p style="text-align: center;">+</p>
<p><b>Article 19: Revocation of, ending of or refusal to renew subsidiary protection status</b> 1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16. 2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3). 3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:</p>	<p><b>Abschnitt 8 Erlöschen der Rechtsstellung</b></p> <p style="text-align: center;"><b>§ 73b Widerruf und Rücknahme des subsidiären Schutzes</b></p> <p>(3) Die Zuerkennung des subsidiären Schutzes ist zurückzunehmen, wenn der Ausländer nach § 4 Absatz 2 von der Gewährung subsidiären Schutzes hätte ausgeschlossen werden müssen oder ausgeschlossen ist oder eine falsche Darstellung oder das Verschweigen von Tatsachen oder die Verwendung gefälschter Dokumente für die Zuerkennung des subsidiären Schutzes ausschlaggebend war.</p> <p>(4) § 73 Absatz 2b Satz 3 und Absatz 2c bis 6 gilt entsprechend.</p>	<p>Revocation of subsidiary protection status is regulated through article 73b but only to a limited extent.</p> <p style="text-align: center;">-</p>

<p>(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);</p> <p>(b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status</p> <p>4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article</p>		
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### 5.3 Differences and Similarities of the implementation

Qualification Directive	Austria	Ireland	Germany
Article 4	+	+	+
Article 5	+	+	+
Article 6	X	+	+
Article 7	-	+	+
Article 8	+	+	+
Article 9	+	+	+
Article 10	+	+	+
Article 11	X	+	+
Article 12	-	+	+
Article 13	+	+	+
Article 14	-	+	-
Article 15	X	+	+
Article 16	-	+	+
Article 17	-	+	+
Article 18	+	+	+
Article 19	-	-	-

Legend: + = the article is sufficiently implemented; - = the article is incomplete; x = non-implementation of the article

The table commences with the second chapter of the Directive focusing on the assessment of applications for international protection of which article 4 is the first one compared referring to the assessment of facts and circumstances. The Directive addresses the duty of the applicant to co-operate and to submit all documents for the application for international protection. All three countries Austria, Ireland and Germany have implemented article 4 as duty of co-operation in the application process. Article 5 declares that international protection needs arising *sur place* which means that a well founded fear of persecution or a real risk of suffering serious harm must be given. Too, all of the three EU member states have consistent articles in their national legislations. Austria even adds that that refugee status is granted if the concerned activities are probably an expression and continuation of already existing convictions in the country of origin. Ireland reinforces the significance of this article with

adding that persecution, serious harm or direct threat which has already been inflicted to an applicant has to be seen as a serious indication for the need of international protection. These amendments by Austria and Ireland make the articles more restrictive compared to the initial EU Directive, while Germany remains within the minimum standards. Next, the Directive determines the 'actors of persecution and serious harm' and the 'actors of protection'. The first, in accord with the wording of the Directive, article 6 is only adopted in Ireland and Germany; Austria did not implement this article. For article 7, again, Ireland and Germany are compliant with it while Austria is not specifying enough on actors, only mentioning an institution of the security service or a first admission place. Moreover, there is no reference made to what protection does entail and what has to be taken into account concerning the assessment. The analysis of articles 6 and 7 show that Ireland and Germany face a more restrictive interpretation of the EU Directive while Austria's failure of implementation shows a more liberal interpretation. The last article of the second chapter, article 8, stipulates that an application may be ineffective if the applicant can be protected in another part of the country. Here again, all of the three countries are conform.

The table then assesses the qualification for being a refugee, which is laid down in chapter 3 of the Directive. The first, article 9, relating to acts of persecution within the meaning of article 1A of the Geneva Convention and a detailed explanation of the form of the acts, is strictly fulfilled in all of the three national legislations. The same holds true for article 10, defining the reasons for persecution such as race, religion, nationality, political opinion and social groups. It is transferred to national legislations in the wording of the Directive. When it comes to the cessation of persons to be a refugee, this is constituted within article 11. Again Ireland and Germany passed the article while Austria has not implemented this article. Furthermore, the Directive decides in which case a third country national or a stateless person has to be excluded from being a refugee. Article 12 does have the corresponding legal text which again, is consummated in Ireland and Germany but not in Austria. Austria did not effectuate the complete article as reference to protection or assistance of the UN, the UNHCR or the General Assembly is missing. Here, with regards to article 11 and 12 of the Directive, it is apparent that Austria faces a more liberal interpretation compared to Ireland and Germany, too.

Chapter 4 on the refugee status commences with article 13, the granting of refugee status. All of the three member states have enacted this article in their legislations. The revocation of, ending of or refusal to renew refugee status is assessed in article 14. Only Ireland put it into effect. In terms of the AsylG of Austria and the AsylVfG of Germany, there is no bearing on revocation within 'cessation', to reasonable grounds for regarding him or her as a danger to the security of the Member State and to the situation when the applicant has been convicted by a final judgment of a particularly serious crime. Apparently, the Austrian law cannot make a reference to 'cessation' as there is no article to rely on within the legislation. Moreover, Austria misses to concern the applicants' use of false documentation and his or her misrepresentation or omission of facts. It is only mentioned that the applicant should have been or is excluded from being a refugee in accordance with article 6 of the AsylG. In terms of article 14, only Ireland faces a restrictive interpretation. Austria and Germany pursue more liberal interpretations when implementing the article.



Next to the granting of refugee status, the Directive entails the regulations for subsidiary protection. Chapter 5 appoints the qualification for subsidiary protection beginning with article 15, which defines serious harm. Once more, Ireland and Germany are consistent with the Directive while Austria does not give credit to it at all. The same goes for the following article the cessation of a persons' eligibility for subsidiary protection, which is simply adopted by Austrian Law with saying that subsidiary protection does end with the granting of refugee status, but no concerns to circumstances which ceased or that the person affected does no longer face a real risk of serious harm. Germany and Ireland strictly fulfill article 16 in their legislations. The reasons for excluding third country nationals or stateless persons from being eligible for subsidiary protection are laid down in article 17. For Ireland and Germany, the article is implemented in the exact wording of the Qualification Directive while Austria states when an application for international protection concerning the granting of subsidiary protection has to be rejected. However, it does not explicitly address reasons for the exclusion. As well, Austria follows a more liberal trend compared to Germany and Ireland who implement the concerned articles within the full scope.

The last chapter relevant for the analysis is the sixth which concerns the granting of subsidiary protection status. The granting of subsidiary protection, article 18 of the Directive, is ensured in the AsylG, the AsylVfG and the Bill of Ireland. The final article 19, constituting the revocation of, ending of or refusal to renew subsidiary protection status is not implemented in Austria, Ireland and Germany. The AsylG of Austria states deviant reasons for revocation of the subsidiary protection status. It only complies in its first subparagraph. The Immigration Residence and Protection Bill of Ireland fail in realizing the revocation to renew subsidiary protection status. Only Article 99 (1) can be seen as implementing Article 19 of the directive as reference is made to "the Minister shall revoke a protection declaration granted to a person if satisfied that the person has, in accordance with section 67 ceased to be a refugee or a person eligible for subsidiary protection". For the AsylVfG of Germany, article 73 (b) adopts the revocation of subsidiary protection status but only to a limited aspect. The reasons alleged in the Directive are unnoticed. It is only the last article to which all of the three EU members do have a deviant implementation. This shows they more liberal interpretation of the EU Directive for article 19.

This article by article comparison shows that Ireland and Germany pursue a more restrictive interpretation of the Asylum Qualification Directive while Austria is a deviant case. The similarities and differences revealed show that although it is the member states' duty to oblige to the Directive. Countries make use of their possibility to interpret EU legislation in a less stringent way than prescribed. Although the Directive has been implemented by all of the three countries, this has been preceded to different extents.

## 6. Conclusion

This thesis was intended to find out what the consequences of the implementation of the Asylum Qualification for national asylum policies in Austria, Ireland and Germany are. Moreover, it meant to reveal whether it has resulted in more or less restrictive national legislations in three concrete cases which have to be considered individually. For Austria, it can be concluded that a more liberal trend is pursued. Three articles have not been implemented at all and six articles only to a limited extent. Certain articles such as not including the specific circumstances when subsidiary protection status has to be ceased or when refugees have defied to the purposes and principles of the United Nation which means that they have to be excluded from their status have been interpreted vague. This shows that Austria makes use of their possibility to interpret EU legislation less stringent than prescribed. With regards to Ireland and Germany, these face more restrictive national policies as the Directive was fully implemented. Hereby, it is clearly recognizable that both hypotheses stated can be confirmed. For Austria, the explanations of Kaunert & Leonard (2011) that 'venue-shopping' leads to more liberal policies is valid. According to them, the 'judicialisation' and 'communitarisation' mentioned earlier as EU institutions gain in power and their approach of common standards actually prohibits national actors in their pursuit of more restrictiveness. Member states are not required to significantly change their standards as the Directive still leaves room for divergence. This applies to Austria.

As explained by Guiraudon (2000), more restrictive national legislations are the result of the pressure for co-operation on asylum and migration and the resulting linkage of the necessity of compensatory measures. The turning to the international venue entails that national ministerial consultants are excluded from negotiation processes which is now executed by EU officials, consultants and experts. According to Guiraudon (2000), these changes lead to a more restrictive migration field in which civil servants of the Interior and/or justice domain operate in a transnational but intergovernmental form of co-operation. The beneficial aspect of this is that the regimes still remains adaptive affording opt-outs and walk-outs, a secretive negotiation style and flexible arrangements having a non-binding character, because EU institutions are playing a minor role. This can be accepted as true for Ireland and Germany. The Republic of Ireland and Germany have interpreted the EU Directive in a restrictive way. As for Ireland, 16 out of 17 articles have been fully implemented within the wording of the Asylum Qualification Directive and with regard to Germany, 15 out of 17 articles are completely implemented. Germany misses to interpret article 14 of the EU Directive on the revocation of refugee status in its full details. Consequently, while both pursue the more restrictive interpretation, they still make use of opt-outs of those flexible arrangements. In here, the second hypothesis related to the argument of Guiraudon which says that the outcome of venue-shopping is more restrictive national asylum policies in Austria, Ireland and Germany can be confirmed. Moreover, the asylum policies of Germany and Ireland are very similar which makes comparison possible.

By contrasting the Asylum Qualification Directive to the AsylG of Austria, to the Immigration, Residence and Protection Bill of Austria and to the AsylVfG of Germany, it was feasible to see similarities and differences of the national legislations. This does not only answer the second sub-question, but shows what the consequences for the national legislations

are, too. By means of a desk research on ‘venue-shopping’, the two presented contrasting views became relevant. In this way, the analysis had a second focus on an either more restrictive or more liberal trend of national policies after politicians ‘venue-shopped’ to the EU level. However, these findings are not transferable to other member states than Austria, Ireland and Germany. This thesis does not follow a generalizing approach. Nevertheless, it is a first step to fill the gap of existing literature as it is the case of Guiraudon (2000) and Kaunert & Leonard (2011), who did not apply their work to an actual analysis, and a clarion call to consider the implications these differences in national legislations can have. The fact that the EU initially wanted to achieve common standards across all countries to guarantee the equal treatment of refugees regardless of where the application takes place is, with regards to the results, not given. As it seems, refugees are treated differently in Austria than in Ireland and Germany. This complicates proceedings for asylum seekers and somehow challenges the EU with its ‘same procedures everywhere’ approach. Although different conditions and numbers of refugees arriving may be the main explanations for divergent policies, further research needs to focus on the rationale why countries implement EU legislations differently. In order to become an European wide overview on the interpretation of directives, studies with more than three countries would be needed in order to give scientific evidence for all of the EU countries. Consequently, this would require reconsidering the theoretical approaches and adjusting them to the current situation as especially the work of Guiraudon is of 2000.

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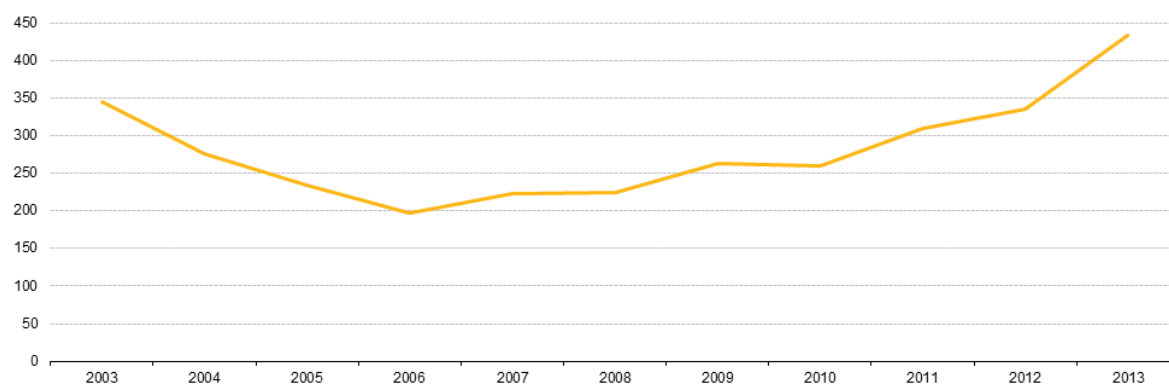
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## Appendix

**Figure 1:** Asylum applications (non-EU) in the EU-28 Member States, 2003–13 (in thousand)



(<sup>1</sup>) 2003–2007: EU-27 and extra-EU-27.

Source: Eurostat (online data codes: migr\_asyctz and migr\_asyappctza)