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Subject : Proposal for a Council Directive laying down minimum standards for the reception of applicants for asylum in Member States

I

At its meeting on 23, 24 and 25 July 2001 the Asylum Working Party started examining the above proposal.

Delegations will find in section II below the text of Articles 1 to 22(2), with delegations' comments in the footnotes.

II ¹

Proposal for a

COUNCIL DIRECTIVE

**laying down minimum standards for the reception of applicants for asylum
in Member States**

CHAPTER I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

The purpose of this Directive is to establish minimum standards ² for the reception of applicants for asylum in Member States.

¹ **FIN:** general scrutiny reservation linked to internal consultations in Finland and, in particular, the financial implications of the proposal.

² **D:** the fact that Member States can set more favourable standards than those provided for by the proposal should be expressed more clearly.

Article 2

Definitions

For the purposes of this Directive:

- (a) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as supplemented by the New York Protocol of 31 January 1967;
- (b) "application for asylum" means a request by a third country national or a stateless person for international protection from a Member State which can be understood to be on the grounds that that person is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any application for international protection is presumed to be an application for asylum unless a third country national or a stateless person explicitly requests another kind of protection that can be applied for separately;¹

¹ **D/EL/E/NL and UK:** this definition should be consistent with that ultimately adopted in the framework of the proposal for a Directive on procedures for granting and withdrawing refugee status.
E: no reference should be made to applications "for international protection", since the expression is not defined in international instruments.
EL: preferable to distinguish between asylum and other forms of protection.
F: the text should be given a more precise wording such as: "*application for refugee status under the Geneva Convention*" or "*application made by a person invoking one of the grounds for protection laid down by the Geneva Convention*".
NL: this proposal should apply to all forms of international protection, not only to asylum.
UK: the scope should be as broad as possible. In the second part of the definition, instead of referring to "any application for international protection", reference should be made to "such an application".

- (c) "applicant" or "applicant for asylum" means a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken. A final decision is a decision in respect of which all possible remedies under Council Directive .../.../EC [on minimum standards for procedures in Member States for granting and withdrawing refugee status]¹ have been exhausted;²
- (d) "family members" means, in so far as the family already existed in the country of origin,³ the following members of the applicant's family:⁴

¹ COM(2000) 578 final.

² **Pres.:** this definition too should be aligned with that given in the proposal for a Directive on procedures for granting and withdrawing refugee status.

F, supported by **B:** the wording should be more precise and clearer regarding the "final decision".

On this point, **F** recalled that the conclusions adopted by the Council on this subject on 1 December 2000 (13117/1/00 REV 1 ASILE 52) stipulate that:

"The instrument should apply to the asylum seekers already present in national territory until the application has been the subject of a decision either granting refugee status or refusing that status and which as a consequence no longer entitles that person to remain in the territory as an asylum seeker."

³ **D:** take into account the case where the asylum applicant marries after arriving in the host Member State.

⁴ **F:** reservation regarding the inclusion of members of the asylum applicant's family in the scope of the Directive. Only children who are minors should be covered.

EL: only include the case of minors.

Cion: there is a right of family reunification in the framework of this Directive only if the family members are within the same Member State.

A: reservation.

- (i) the spouse or unmarried partner in a stable relationship, if the legislation of the Member State where the application has been lodged or is being examined treats unmarried couples in the same way as married couples; ¹
- (ii) the children of the couple referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and without distinction according to whether they were born in or out of wedlock or adopted;
- (iii) other members of the family if they are dependent on the applicant or ² have undergone particularly traumatic experiences or require special medical treatment; ³

¹ **D/IRL and I:** the text of subparagraphs (i) and (ii) should be aligned on that of Article 15(1)(a) of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons.

The resulting text might read as follows:

"The spouse of the asylum applicant or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens; the minor unmarried children of the asylum applicant or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted."

E/F and UK: the case of temporary protection of asylum applicants where there is a collective and immediate need of protection is different from that of asylum applicants who, by contrast, seek refugee status individually.

² **UK:** substitute "and" for "or".

³ **D:** scrutiny reservation; reference could be made to the measures applicable to family members in Article 9, but not in the definitions.

E: in the case of non-dependent members of the asylum applicant's family who have special needs, reunification should not apply, since those special needs will probably have to be met in specialised centres that may be distant from the applicant's place of residence.

I: the text of (iii) should be clearer and more precise.

F and A: reservations. This provision does not belong in this Directive.

S: state in the text that the inclusion of the cases under (iii) must be understood as being without prejudice to the right of those other family members to lodge individual asylum applications.

UK: the inclusion or otherwise of family members in the scope must be linked to the degree of their dependence in relation to the asylum applicant and not to their special needs.

- (e) "accompanying family members" means the family members of the applicant who are present in the same Member State in relation to the application for asylum; ¹
- (f) "refugee" means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;
- (g) "refugee status" means the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State; ²
- (h) "regular procedure", "accelerated procedure", "admissibility procedure" and "appeal procedure" mean the procedures provided for by Directive .../.../EC [on minimum standards for procedures in Member States for granting and withdrawing refugee status];

¹ **D and A:** specify, as is said in the "commentary on Articles" that accompanies the proposal, that this provision makes it possible "to exclude from the family unification, under this Directive, family members who are in the host country for different reasons (e.g. work) or who are in another Member State or in a third country."

EL: delete this provision, which has no place in this Directive and gives rise to problems of interpretation.

F: reservation on the inclusion of these family members in the scope of the Directive.

S: specify in the text that the inclusion of the cases covered by (e) must be understood as being without prejudice to the right of these other family members to lodge individual asylum applications

² **Pres.:** the definitions given under (g), (h) and (i) should be aligned with those in the proposal for a Directive on procedures for granting and withdrawing refugee status.

- (i) "unaccompanied minors" means persons below the age of eighteen who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of Member States; ¹
- (j) "reception conditions" means the full set of measures that Member States grant to ² applicants for asylum in accordance with this Directive;
- (k) "material reception conditions" means the reception conditions that include ³ housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance; ⁴

¹ **D:** a definition of unaccompanied minors is unnecessary for this proposal. They are also entitled to lodge asylum applications individually.
EL: make provision for the case of minors who reach their majority during the procedure for granting refugee status.
E and IRL: legal problems may arise regarding the concept of minors accompanied by an adult responsible "by custom". The risk of facilitating trafficking of minors must be avoided.
I: specify that the national rules of the host Member State apply as regards the age of majority and the obligation to attend school.
Cion: the definition could be amended to follow that given in Article 2(f) of Directive 2001/55/CE on temporary protection in the event of a mass influx of displaced persons (for the record: that text reads as follows:
"unaccompanied minors" means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States").

² **D:** say "apply to" rather than "grant to".

³ **D/A/P and S:** this list should not be taken as exhaustive, but as illustrative. To that end, the text should read: "reception conditions that include at least" or "for example" ... (remainder unchanged).
I: this text seems inconsistent with the content of Chapter III.
NL: if it is an exhaustive list, civil liability insurance should be added.

⁴ **IRL/L and UK:** instead of a "daily expenses allowance", the reference should be to an "allowance to cover daily expenses", which should allow Member States to make weekly, monthly or other payments.

- (l) "detention" means confinement of an applicant for asylum by a Member State within a restricted area, such as prisons, detention centres or airport transit zones, where the applicant's freedom of movement is substantially curtailed; ¹
- (m) "accommodation centre" means any place used only for collective housing of applicants for asylum and their accompanying family members; ²
- (n) "detention centre" means any place used for housing, in a detention situation, applicants for asylum and their accompanying family members; [it includes accommodation centres where the applicants' freedom of movement is restricted to the centres.] ³

¹ **Pres.:** this definition should be aligned with that given in the proposal for a Directive on procedures for granting and withdrawing refugee status.
D: delete the reference to airport transit zones.
F/NL and P: delete the words "such as prisons, detention centres or airport transit zones".
F: refer to "placing" rather than "confinement".
NL: reservation. Restrictions on the free movement of persons should not appear here.
S: specify that a person cannot be detained simply because he is an asylum applicant. Confinement should be possible only if a specific decision on the matter has been taken by the competent authority.
E: in the Spanish version, replace "retención" by "detención".

² **D/EL/E/IRL/I/NL and FIN:** delete the word "only".
S: would like to be assured that the term "collective" does not preclude the possibility of housing asylum applicants in individual accommodation.

³ **EL:** delete the words between brackets.
NL: such a definition is unnecessary.
A: the reference to family members will have to be reviewed once the scope of the Directive has been clarified.

Article 3

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border¹ or on the territory of a Member State and to their accompanying family members.^{2 3}

It shall also apply where examination of an application for asylum takes place within the context of a procedure to decide on the right of the applicant to enter legally the territory of a Member State.^{3 4}

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for third country nationals or stateless persons who are found not to be refugees.⁵

¹ **D/E and NL:** asylum applications at the border and applications for admission to the territory should not entail the right to the same benefits as do those submitted by applicants who are on the territory of the Member State, even if only for practical reasons.

F: reservation. Exclude asylum applications at the border from the scope. They are not included in the Council conclusions on conditions for reception of asylum seekers adopted on 1 December 2000 (13117/1/00 REV 1 ASILE 52).

² **EL/E and F:** reservations. Exclude family members. The latter can always submit individual asylum applications.

³ **A:** reservation. Wanted to be sure it was possible to continue excluding from material benefits those asylum applicants who are nationals of Member States of the Council of Europe.

⁴ **D:** amend the second subparagraph to read "where, under the terms of national legislation, entry into the territory of a Member State cannot be refused immediately."

⁵ **D:** align the German version of this text with Article 3(3) of the proposal for a Directive on procedures for granting and withdrawing refugee status (11622/00 ASILE 46).

NL and S: include a reference to subsidiary protection.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants for asylum in so far as they are compatible with this Directive.¹

¹ A: scrutiny reservation.

CHAPTER II
GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5¹

Information²

1. Member States shall inform applicants for asylum as well as adult accompanying family members³, immediately⁴ after they have lodged their application⁵, of benefits to which they are entitled and of the obligations with which they must comply relating to reception conditions.

2. Member States shall ensure that applicants are provided with information about organisations or persons⁶ that provide specific legal assistance and organisations that might be able to help them in relation to the available reception conditions, including health care to which they are entitled.⁷

2. Member States shall ensure that each adult accompanying family member of an applicant is informed in private of the right to make a separate application for asylum.⁸

¹ **I:** scrutiny reservation.

² **E:** specify that it must be possible for all the information to be provided by different bodies of the host Member State's administration and at different points in the procedure.

³ **UK:** specify that there is no obligation to inform adult family members who do not opt to apply for asylum.

⁴ **D and F:** delete the word "immediately" since this will not be possible in all cases.

⁵ **D:** add the words "with the competent authority."

⁶ **D:** delete the reference to "persons" (to avoid e.g. an obligation to provide a list of lawyers).

⁷ **UK:** the information on health care need not always be provided by the national administrations. Voluntary organisations can do this.

⁸ **B/E/F/L/NL/P and UK:** this provision does not belong in this Directive, but rather in the Directive on procedures for granting and withdrawing refugee status.

L: the reference to adult family members is not clear; the scope is not adequately specified.

P: doubts about the requirement to inform in private all adult family members who are not themselves asylum seekers.

3. Member States shall ensure that the information referred to in paragraph 1 is in writing ¹ and, as far as possible, in a language that the applicants understand.
4. Applicants shall be informed of ² language courses ³ and voluntary return schemes when they are available for them. ⁴

¹ **E and NL:** it should also be possible to provide the information orally using interpreters.

² **D:** refer to "all" the language courses.

³ **EL:** specify that the language concerned is that of the host Member State.

⁴ **F:** Paragraph 4 is superfluous, since that provision is implicitly covered by paragraph 1.

NL and P: application of this paragraph should be optional for Member States.

Article 6

Documentation

1. Member States shall ensure that, immediately after an application is lodged, the applicant and each adult accompanying family member ¹ is provided with a document issued in their own name certifying their status as an applicant for asylum or as an adult family member accompanying an applicant for asylum. ² If the holder is free to move within all or a part of the national territory, the document shall also certify that the holder is legally ³ in the territory of the Member State in which the application has been lodged or is being examined. Information on the holder's entitlement to health and psychological care and position in relation to the labour market may be included in the document.
2. Member States shall ensure ⁴ that unaccompanied minors are provided with a document equivalent to that referred to in paragraph 1. ⁵

¹ **E/F and UK:** reservations concerning this text, which seems to create a status of family member accompanying an asylum applicant.

² **UK:** the first sentence of this paragraph should suffice (excluding the reference to family members). All that need be added is that the document should specify that its holder is an asylum applicant.

D/EL and E: exclude asylum applicants in airport transit zones, since they do not need specific documents.

NL: a distinction should be made between conditions relating to the normal procedure and those relating to the accelerated procedure.

A: the document should clearly state that it does not certify the identity of the asylum applicant. To avoid the risk of some applicants being able to forge a new identity using these certificates.

³ **NL:** instead of "legally", this should read "with the approval of the competent authorities" to avoid any disputes.

⁴ **F:** this should read "Member States may decide", since in some Member States minors do not require documents.

⁵ **S:** delete the word "unaccompanied". This provision should apply to all minors.

A: delete this paragraph.

3. Member States shall ensure that the documents referred to in paragraphs 1 and 2 are valid or renewed until a decision on the application for asylum is notified. Member States shall provide for the possibility of renewing the validity of the document ¹ for the duration of the appeal procedure if the applicant lodges an appeal or an automatic review takes place that suspends the negative decision or if the applicant obtains a provisional ruling granting suspensive effect. ²
4. Member States may exclude the application of this Article during the examination of an application within the context of a procedure to decide on the right of the applicant to legally enter the territory of a Member State. ³
5. Member States may provide applicants for asylum with a travel document when serious humanitarian reasons arise that require their presence in another State. ⁴

¹ **UK:** add "or of issuing a new document".

² **D and F:** this paragraph should be drafted more clearly. It would suffice to say that the validity of the document must be extended as long as its holder is entitled to stay in the territory of the Member State.

³ **D:** scrutiny reservation.

⁴ **D:** scrutiny reservation. There is a risk that technical problems of transposition could arise.

EL: it should be specified whether this is a laissez-passer valid for a single journey or a passport allowing several return journeys from the Member State.

A: this paragraph is superfluous. If retained, it should be clarified.

Article 7¹

Freedom of movement

1. Member States shall grant applicants and their accompanying family members individual freedom of movement within their territory [or in a specific area of it under the conditions set out in this Article].²
2. Member States shall not hold applicants for asylum in detention for the sole reason that their applications for asylum need to be examined. However, Member States may hold an applicant for asylum in detention for the purpose of taking a decision in the cases described in Article [...] of Directive .../.../EC [on minimum standards for procedures in Member States for granting and withdrawing refugee status].³

¹ **S:** reservation on this Article. Considered that the restriction on freedom of movement was contrary to human rights.

² **S:** delete the words in square brackets.

³ **F/L/NL/P and UK:** a mere reference to the Directive on procedures for granting and withdrawing refugee status is sufficient. Delete the rest of the paragraph.
S: delete the second sentence.

3. Member States may only limit the freedom of movement of applicants and their accompanying family members to a specific area of their national territory where it is necessary for implementing this Directive or in order to enable applications for asylum to be processed swiftly. ¹
4. In cases referred to in paragraph 3 Member States shall provide for the possibility for applicants for asylum and their adult accompanying family members to receive temporary permission to leave the area of the territory in which they live for relevant personal ², health and family reasons or for reasons relating to the examination of their application. Decisions on requests for temporary permission to leave shall be taken individually, objectively and impartially and reasons shall be given if they are negative. ³

¹ **D:** a more flexible wording is needed, since the current wording seems to impose the burden of proof on Member States and to allow only individual decisions regarding restriction of movement. Provision must be made for generic cases in which such restrictions can be introduced. Furthermore, there should be mention of cases in which an applicant travels without authorisation.
EL: it should also be possible to invoke reasons of national security and public policy to restrict freedom of movement.
E: the cases in which restrictions on freedom of movement are possible should be clearly described and set in a temporal context (e.g. in cases of extradition petitions).
F: it is unlikely that any restriction on freedom of movement would be necessary "for implementing this Directive". Reference should be made rather to the Directive on procedures.
NL: it should be possible to apply these provisions only in the framework of the accelerated procedure.
A: the case of restriction of freedom of movement on grounds of limiting the costs of the procedure should also be cited.
S: delete this paragraph.

² **D:** replace "personal reasons" with "serious reasons".

³ **D:** it would be preferable to make provision for cases in which authorisation of movement is necessary, and exceptionally for cases in which such an authorisation is not necessary.
IRL: asylum applicants should provide reasons justifying their need to leave the part of the territory in which they reside.
NL: scrutiny reservation. These provisions should apply only in the context of the accelerated procedure.
S: delete this paragraph.

5. Member States shall ensure that applicants have the right to bring proceedings before a court against the limitations on freedom of movement imposed in accordance with paragraph 3 and the decisions provided for by paragraph 4 and that they have access to legal assistance which is free of charge when applicants cannot afford it. ¹
6. Member States may require ² applicants who are free to choose their place of residence to inform the competent authorities of their current address and notify any change of address to those authorities as soon as possible.

Article 8

Material reception conditions

Member States shall ensure that applicants and their accompanying family members are provided with material reception conditions, in accordance with the provisions of Chapter III. ³

¹ **D:** scrutiny reservation. Financial assistance with a view to obtaining legal assistance should be used only when there are real possibilities of coming to a favourable decision on the proceedings brought.

NL: the right to legal assistance should apply to cases other than those concerning limitations on freedom of movement.

IRL and P: specify, as in the commentary on the Articles that accompanies the proposal, that negative decisions may be re-examined by a court "at least in the last instance". A first appeal before an administrative authority should be possible.

S: delete this paragraph.

² **D and S:** a more binding form of words is necessary for this provision.

³ **A:** in the German text, replace "Aufnahmebedingungen" with "Aufnahmeunterstützung". This also concerns Articles 15, 17, 18, 19 and 22.

Article 9

Families

Member States shall take appropriate measures to maintain the unity of the family as present within their territory, if applicants and their accompanying family members are provided with housing by that Member State and applicants so request. ¹

Article 10

Health care

Member States shall ensure that applicants for asylum and their accompanying family members have access to health and psychological care, in accordance with the provisions of Chapter IV. ²

¹ **D and IRL:** provide for a reasonable period during which the family members could be separate until shared accommodation is found for them.
D: also make provision for cases in which the family members arrive after a certain period of time (e.g. several months after the applicant arrives in a Member State). In these cases they could also be separated for a brief initial period.
F: recalled its reservation concerning the inclusion of family members in the scope of the Directive.
EL/I and NL: the obligation for Member States should concern the means, not the outcome.
EL: say "Member States shall make every effort to maintain family unity."
I: say: "Member States shall as far as possible take appropriate measures to maintain family unity."
L: exclude from the scope of the Directive family members with the nationality of the Member State where the asylum applicant has submitted his application.

² **D and NL:** refer to "health care, including psychological and psychotherapeutic care."
UK: scrutiny reservation.

Article 11
Medical screening

Member States may require medical screening for applicants. Member States shall ensure that the competent bodies that carry out the screening use methods that are safe and respect human dignity.¹

Article 12
Schooling and education of minors²

1. Member States shall ensure that minor children of applicants for asylum and applicants for asylum who are minors have access to the education system under the same conditions as nationals³ for so long as a deportation order⁴ against them or their parents cannot actually be enforced.

The Member States may limit such access to the state education system only.

¹ **D/EL/F/NL and A:** delete the second sentence, which is superfluous, since international obligations exist in the matter and are respected by the Member States.
D/L and NL: clarify the purpose of such medical screening.
EL: replace this Article by "Member States may make provision for applicants to be subjected to medical screening for public health reasons, while complying with WHO rules."
UK: scrutiny reservation.

² **D/P and S:** scrutiny reservations.

³ **B and IRL:** specify that only primary and secondary education are involved.
B/E and NL: it must be possible to organise ad hoc programmes of education for children who may have specific needs and levels of understanding that differ from those of children of the host Member States.

⁴ **B and L:** the expression "deportation order" is not appropriate, since it is used in cases of deportation for public policy reasons. "Expulsion measure" should be used.

Minors shall be younger than the age of legal majority in the Member State ¹ in which the application has been lodged or is being examined. Member States shall not refuse continued secondary education only by reason of the person concerned having reached the age of majority.

2. Access to the education system shall not be postponed for more than 65 working days ² after the application has been lodged by the minor or the minor's parents.
3. Member States shall ensure that minors referred to in paragraph 1 are offered language courses if a lack of knowledge of the language of that Member State makes normal schooling impossible. ³

¹ **A and S:** the age limit for compulsory schooling differs from one Member State to another, and does not always coincide with the age of legal majority.

² **B and FIN:** such a period does not seem justified.

D/F and A: set a period of "3 calendar months" instead of "65 working days".

E and UK: say "within a reasonable period" instead of "65 working days".

S: set a shorter period.

³ **D:** scrutiny reservation.

EL: this paragraph should be given a non-binding wording: "Member States may make provision for..."

NL: it should be possible to organise courses in a language other than that of the host Member State (e.g. to prepare for the return to the country of origin).

FIN and UK: the reference to language courses should not stand in the way of regular schooling. The best way to learn the language is often through integration of these children into the national education system. With that in mind, the UK felt that this paragraph was superfluous and should be deleted.

Article 13

Employment ¹

1. Member States shall not ² forbid applicants and their accompanying family members ³ to have access to the labour market for more than six months after their application has been lodged ⁴. Member States shall lay down the conditions for the access to the labour market after such a period. ⁵

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- ¹ **EL/E/IL/P and UK:** scrutiny reservations.
EL: include a provision protecting minors and prohibiting children from working.
EL and I: concern that access to employment should not bring about a great increase in asylum requests lodged by immigrants looking for work.
F and IRL: reservations.
F: the principle should be that of preventing access to employment with some exceptions (e.g. if the procedure takes too long without it being the applicant's responsibility).
IRL: the choice should be left to Member States whether or not to allow applicants access to employment. It must be possible to avoid a situation where an increase in asylum applications aimed at finding work blocks national asylum systems.
D: also make provision for working on a self-employed basis.
- ² **S:** text worded too negatively. Preferable to say: "Member States shall authorise ..."
- ³ **UK:** the reference to family members should be moved to the second sentence.
- ⁴ **B/D and EL:** scrutiny reservations on the six-month period.
F: replace "for more than six months" with "after a reasonable period".
S: stipulate a period of less than six months.
E/F and UK: risk that the applicant might delay procedures in order to obtain access to employment.
E: add "insofar as that period of six months during which the decision on the application has not been taken is not attributable to the attitude of the asylum applicant."
- ⁵ **D/EL/NL and A:** the possibility of priority for EU citizens should be provided for, as in Article 12 of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons.
EL: delete the words "after such a period".
A: provide for the possibility of taking into account reasons pertaining to the labour market, which would enable Member States to set quotas, for example.

2. Access to the labour market shall not be withdrawn for the sole reason that an application has been rejected if an appeal with suspensive effect has been lodged or a decision has been obtained allowing the applicant to remain in the Member State in which the application has been lodged [or is being examined for the time an appeal against a negative decision is examined].¹
3. Access to the labour market may be excluded when negative behaviour of the applicant is ascertained, in accordance with Article 22.²

¹ **E:** if the application is rejected, the right to work should cease immediately.

P: delete the words between brackets.

A: to improve readability, this paragraph should be drafted along the lines of Article 20(1).

² **D and S:** delete this paragraph. Access to employment should not be linked to the applicant's behaviour.

NL: can accept the suggestion made by D and S.

Article 14
Vocational training¹

1. Member States shall not forbid² applicants and their accompanying family members to have access to vocational training for more than six months after their application has been lodged. Member States shall lay down the conditions for the access to vocational training after such a period.³

2. Access to vocational training shall not be withdrawn for the sole reason that an application has been rejected if an appeal with suspensive effect has been lodged or a decision has been obtained allowing the applicant to remain in the Member State in which the application has been lodged or is being examined for the time an appeal against a negative decision is examined.⁴

3. Access to vocational training may be excluded when negative behaviour of the applicant is ascertained, in accordance with Article 22.⁵

¹ **EL/E/L/P/S and UK:** scrutiny reservations.

EL/E and UK: same objections as to Article 13.

EL: a precise definition of "vocational training" is needed.

IRL: reservation for the same reasons as Article 13.

A: in German, substitute "Berufliche Fortbildung" for "Berufliche Bildung".

D: this Article should be merged with Article 13, as was done with Article 12 of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons.

² **S:** text worded too negatively. Preferable to say: "Member States shall authorise ...". But Member States should be able to restrict the asylum applicant's access to certain sectors of training, taking into account his or her prior vocational experience.

³ **NL and A:** state that Member States have no obligation to finance such vocational training.

NL: ad hoc training measures for asylum applicants should be possible.

⁴ **A:** to improve readability, this paragraph should be drafted along the lines of Article 20(1).

⁵ **S:** delete this paragraph. Access to vocational training should not be linked to the applicant's behaviour.

CHAPTER III¹
MATERIAL RECEPTION CONDITIONS

Article 15
General rules

1. Member States shall ensure that material reception conditions are available to applicants and their accompanying family members:²
 - (a) during the regular, admissibility and accelerated procedures up to the moment a negative first instance decision is notified;
 - (b) during the appeal procedures, when an appeal against a negative decision has suspensive effect, up to the moment a negative decision on the appeal is notified;³
 - (c) when they have obtained a decision allowing them to remain at the border or on the territory of the Member State in which the application has been lodged or is being examined for the time their appeal against a negative decision is examined.

¹ **I:** general scrutiny reservation concerning Chapter III.

² **D and F:** simplify drafting and create one general rule applicable to all the provisions of Chapters II and III. (Draw on Article 13(2) of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons).

D/E and UK: specify that asylum applicants will have access to the material reception conditions "on the basis of their particular needs".

E: practical difficulties would arise in applying subparagraphs (a) and (b) as they would make it necessary to deal with each case individually.

³ **IRL:** specify the consequences of an appeal before a court.

A: to improve readability, this subparagraph should be drafted along the lines Article 20(1).

2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health and the well-being of applicants ¹ and their accompanying family members as well as the protection of their fundamental rights.

Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 23, as well as in relation to the situation of persons who are in detention. ²

Member States shall ensure that this standard is determined with regard to the length of the procedure. ³

3. Material reception conditions may be provided in kind, or in the form of financial allowances or of vouchers. ⁴

¹ **D/E/F and A:** this wording is too vague and not well suited to the content of a Directive.
D: "Member States shall ensure that applicants have an appropriate standard of living..."
F and A: a reference in the recitals to the need to ensure an adequate standard of living should be sufficient.

² **A:** this provision does not belong here: Article 23 should be sufficient.

³ **B/D/EL/E/F/IRL/I/L/NL/A/P/S and UK:** scrutiny reservations. Most delegations did not consider it appropriate to link the level of benefits to the duration of the procedure.

L: the level of benefits should be reduced, not increased, if the procedure is extended.

UK: access to the labour market after six months should help to raise the standard of living of asylum applicants.

⁴ **EL:** scrutiny reservation. The drafting of this paragraph should be consistent with that of Article 2(k).

4. Member States may reduce or withdraw material reception conditions three months after applicants and their accompanying family members have been allowed access to the labour market. In these cases, as far as they are not financially independent, Member States shall grant them a food allowance and access to basic social care.¹

¹ **E:** scrutiny reservation. The drafting should be more precise to avoid abuse by persons who might be tempted to apply for asylum so as to gain access to the labour market.
D/L/NL/FIN/S and UK: specify that the possibility of access to the labour market is not a sufficient condition to reduce the level of benefits. It is the fact of having found a job and the level of remuneration that would make it possible to reduce or withdraw material benefits.
EL/I and UK: reservation on the three-month period. It is the fact of having found a job that is important. In addition, the period specified is not consistent with that specified in Article 13(1).
I: alternative wording:
"Member States may reduce or withdraw material reception conditions as soon as applicants have begun an occupation within the meaning of Article 13. However, if they are still not financially independent, Member States shall grant them a food allowance and access to basic social care."

Article 16

Housing

1. Housing shall be granted in one or a combination of the following forms: ¹
 - (a) in premises set up for the specific purpose of housing applicants and their accompanying family members during the examination of an application within the context of a procedure to decide on the right of the applicants to legally enter the territory of a Member State; ²
 - (b) in accommodation centres;
 - (c) in private houses, flats or hotels;
 - (d) grant of a financial allowance or vouchers sufficient to enable applicants to find independent housing. ³

¹ **F:** begin this paragraph with the following text:
"Unless a financial allowance is allocated, ..." (remainder of introductory phrase unchanged and delete subparagraphs (a) and (d)).

IRL and L: stipulate that in exceptional cases and for limited periods of time, other forms of housing can be provided (such as castles, boats, camp sites – subject to weather conditions – etc.).

² **F:** delete this subparagraph.

NL: specify that specific premises may also be set up in the context of a procedure to determine whether the asylum applicant has access to the normal procedure.

E: bring out more clearly that these premises need not be situated close to borders.

³ **F:** delete this subparagraph.

2. Member States shall ensure to applicants and their accompanying family members provided with the housing referred to in paragraph 1(a), (b) and (c):¹
- (a) access to emergency health and psychological care and to health care that cannot be postponed;²
 - (b) protection of their family life and privacy;³
 - (c) the possibility of communicating with the outside world⁴, including at least relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and the relevant non-governmental organisations (NGOs).⁵

¹ **UK:** this paragraph is redundant and should be deleted.

E: should read: "Member States shall endeavour to ensure that the housing referred to in paragraph 1(a), (b) and (c) ..."

I: alternative wording:

"Member States shall ensure that the housing intended for applicants allows:

- (a) access to health and psychological care that cannot be postponed;
- (b) protection of privacy;
- (c) communication with the outside world so that asylum applicants can contact relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and the relevant non-governmental organisations (NGOs).

Member States shall ensure that the type of housing does not favour possible acts of aggression within the premises mentioned in paragraph 1(a) and (b)."

² **D:** delete this point. It is unnecessary to repeat what has already been said in Article 10.

FIN: specify that access to such care should also be provided for applicants in the situation described in paragraph 1(d).

³ **D and S:** clarify the concept of "family life" and the obligations arising from it for Member States, or delete this point.

⁴ **B:** clarify that the cost of such communication is to be met by the applicants.

EL: reword to avoid the impression that asylum applicants are kept in confinement centres.

⁵ **D and EL:** clarify what the relevant NGOs are.

Member States shall ensure that applicants and their accompanying family members are protected from sexual assault within the premises referred to in paragraph 1(a) and (b).¹

3. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.² Minor children of applicants or applicants who are minors, who have adult family members responsible for them already living in the Member State in which the application has been lodged or is being examined shall be allowed to stay with their family members, for the duration of their stay in that Member State.³
4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary [~~in relation to the examination of the application or for security reasons~~].⁴ Member States shall provide for the possibility for applicants to inform their legal advisers of the transfer and of their new place of housing.
5. Persons working in accommodation centres shall be specifically trained or have a specific background in relation to the characteristics and the specific needs of applicants for asylum and their accompanying family members. They shall be bound by the confidentiality principle.⁵

¹ **B/L and UK:** this subparagraph seems to impose on Member States an obligation to achieve a result which is impossible to guarantee. Clarify that this is an obligation regarding the means which is addressed to all residents, not merely asylum applicants.

A: add the duty of protection to ensure anonymity of asylum applicants especially in relation to the intelligence services of the countries of origin of such applicants.

² See comments on Article 2(i).

³ **B/E/F/NL and UK:** clarify that no obligation to reunify families follows from the provisions of this Directive.

E/NL and UK: refer to the best interests of the child, which may in certain cases mean separating it from its family.

⁴ The Working Party agreed to delete the words in square brackets.

⁵ **E/IRL and NL:** specify more clearly which personnel must have special qualifications and are bound by the confidentiality principle.

EL: these occupational categories are not harmonised throughout the Community. Delete this paragraph, which goes beyond the scope of the Directive.

D: specify which personnel are bound by the confidentiality principle. Possibly extend it to personnel working in the premises specified in paragraph 1(a).

6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through a representative advisory board or council which should be gender balanced. ¹
7. Member States shall ensure that legal advisers or counsellors of applicants for asylum and the representatives of the UNHCR and the relevant NGOs have access to all housing facilities. Limits on such access may only be imposed on grounds relating to the security of the facilities and of the applicants. ²
8. The housing referred to in paragraph 1(a) shall be available for applicants and their accompanying family members when they must wait for 12 hours or more for a decision on their right to enter the territory. ³

¹ **A:** delete this paragraph.
E: add the need for a balance of nationalities in advisory boards or councils.
S: specify that participation in advisory boards or councils must be voluntary and do not overstress gender balance.

² **D:** scrutiny reservation.
EL/E/I/NL/A/FIN and UK: specify that this refers to NGOs generally recognised in this context.
E and A: make clear that this concerns access to the applicants, not to the reception centres.
E and NL: distinguish more clearly between the competences of the NGOs and of the HCR.
UK: clarify that this is a question of "reasonable access".

³ **D:** clarify, as in the commentary on the Articles that accompanies the proposal, that this rule may be set aside, for a brief period, in exceptional circumstances (e.g. a sudden mass influx of applicants).
I: specify the upper time limit and not merely the lower limit of 12 hours.

Article 17

Total amount of allowances or vouchers ¹

1. Member States shall ensure that the total amount of the allowances or vouchers to cover material reception conditions is sufficient to avoid applicants and their accompanying family members falling into poverty. ²

In cases where applicants, being entitled to those allowances or vouchers, are allowed to stay with relatives or friends, Member States may nonetheless grant them 50% of the allowances or vouchers to which they are entitled pursuant to national law in application of this Directive. ³

2. Member States may decide not to pay an allowance for daily expenses, when applicants for asylum are in detention. ⁴

¹ **EL:** amend the title of this Article as follows: "Allowances and vouchers". Scrutiny reservation on the content.
D: create a general rule that would apply to all the provisions of Chapters II and III (see comments on Article 15).
I and UK: scrutiny reservations.

² **D and UK:** the real needs of applicants must be taken into account (see comments on Article 15(2)).

³ **IRL and NL:** produce a more flexible wording, without the 50% restriction.

⁴ **D/E and A:** delete this paragraph, which is worded too vaguely. Other exceptions are possible. Leave this to national legislation.

Article 18

Complaints and disputes concerning the material reception conditions

Member States shall ensure that applicants and their accompanying family members have access to an independent office that can hear complaints and resolve ¹ disputes concerning the material reception conditions provided for by Articles 15, 16 and 17. ²

¹ **L/ P and UK:** in French, "résoudre" should be used instead of "trancher", which is a term specific to courts.

² **EL/E/F/A and S:** reservations. **D/I/NL and P:** scrutiny reservations.
All these delegations emphasised that administrative or judicial appeals are possible under their national legal systems, without there being any need to create a new appeal body.
IRL: say "Member States shall provide transparent and equitable procedures designed to resolve complaints concerning material reception conditions."

Article 19

Financial contribution

1. Member States may require applicants who can afford to do so to contribute to the cost of their material reception conditions or ¹ to cover it. Decisions to provide material reception conditions not free of charge shall be taken individually, objectively and impartially and reasons shall be given. ²
2. Member States shall ensure that applicants have the right to bring proceedings before a court against the decisions referred to in paragraph 1 and that they have access to legal assistance. ³

¹ **A:** make sure that the German version of the text corresponds to the other language versions.
² **D/E/NL/P/S and UK:** reference should be made to the general principle of the real need of the applicant, which would lead to entitlement to material benefits.
D: some of the applicant's income should be protected in all cases.
NL: stipulate that if the applicant has a certain income, a contribution may be asked of him to cover some or all of the costs.
D and UK: establish a general principle laying down that Member States may decide whether or not the applicant requires material benefits.
L and A: make provision for the case in which an applicant is invited to stay in the territory of a Member State by a national who, if applicable, has served as guarantor for the purpose of obtaining a tourist visa. In this case, it should be possible to call on the national to contribute to the costs.
A: reservation on the second sentence in that it creates an obligation to notify these decisions in writing.
³ **A and S:** reservation on the financial aspects of legal assistance.
D and UK: a general provision on forms of appeal at the beginning of the Directive should be sufficient.

CHAPTER IV
HEALTH AND PSYCHOLOGICAL CARE

Article 20

Health and psychological care during regular procedures

1. Member States shall ensure that applicants and their accompanying family members have access to primary health care provided by a general practitioner, psychological care and health care that cannot be postponed :¹
 - (a) during the regular procedure up to the moment a negative first instance decision is notified;
 - (b) during the appeal procedures, when an appeal against a negative decision in a regular procedure has suspensive effect, up to the moment a negative decision on the appeal is notified; ²
 - (c) when applicants and their accompanying family members have obtained a decision allowing them to remain at the border or on the territory of the Member State in which the application has been lodged or is being examined for the time their appeal against a negative decision in a regular procedure is examined.

¹ **NL and S:** reference should be made to "necessary health care", on which there is a Council of Europe agreement. Such care can include psychological and psychotherapeutic treatment. It is the attending physician who decides on the need for such care without interference from the budget authority.
S: however, specify that only urgent care should come under the scope of the Directive.
D: merge Articles 20 and 21, since the need for health care is independent of the asylum procedure followed.
IRL and S: access to health care should be the same as for nationals of the Member States, and in no case more favourable.

² **A:** use the same terminology as in Articles 13 and 14.

2. In the circumstances referred to in paragraph 1, Member States shall meet ¹ the special needs of applicants and their accompanying family members who are pregnant women, minors, mentally ill persons, disabled persons or victims of rape or other forms of gender related violence. ²
3. In the circumstances referred to in paragraph 1, Member States shall lay down the conditions of access of applicants and their accompanying family members to health care that prevents aggravation of existing illness.
4. In the circumstances referred to in paragraph 1 Member States may require ³ applicants who can afford to do so to contribute to the cost of their health and psychological care or to cover it. Decisions to provide health and psychological care not free of charge shall be taken individually, objectively and impartially and reasons shall be given.⁴
5. Member States shall ensure that applicants have the right to bring proceedings before a court against the decisions referred to in paragraph 4 and that they have access to legal assistance. ⁵

¹ **E and IRL:** do not use the expression "meet", which creates an obligation to achieve a result and runs the risk of leading to more comprehensive cover than is provided for Member State nationals. Better to say that they shall "ensure as far as possible that needs are met."

² **D and NL:** delete this paragraph, which is superfluous.

³ **L:** in the French text, say "obliger" rather than "inviter".

⁴ **D and UK:** it would be preferable to introduce a general provision on financial contributions and another on forms of appeal.

IRL and NL: avoid introducing provisions more favourable than those in force for nationals of Member States (e.g. in certain Member States a small financial contribution is required from beneficiaries towards payment for medicines).

A: reservation on the second sentence of this paragraph, insofar as it creates an obligation to give notice of these decisions in writing.

⁵ See comments on Article 19(2).

Article 21¹

Health and psychological care during other procedures

1. Member States shall ensure that applicants and their accompanying family members have access to emergency health and psychological care and health care that cannot be postponed during admissibility and accelerated procedures, and during the examination of their application within the context of a procedure to decide on their right to legally enter the territory of a Member State.²
2. In the circumstances referred to in paragraph 1 Member States shall meet the special needs of the applicants and their accompanying family members who are pregnant women, minors, mentally ill persons, disabled persons or victims of rape or other forms of gender related violence.³
3. In the circumstances referred to in paragraph 1, Member States shall lay down the conditions of access of applicants and their accompanying family members to health care that prevents aggravation of existing illness.⁴
4. Member States shall ensure that if a decision to dismiss the application as inadmissible or manifestly unfounded has not been taken 65 working days after an application is lodged, the applicant and accompanying family members have the same access to health care as during the regular procedure.⁵

¹ **E:** reservation linked to its position on the proposal for a Directive on procedures for granting and withdrawing refugee status.

² **D and F:** delete this paragraph, which is superfluous, and take into account the real needs of the asylum applicant.

³ **A:** reword this text, since some of the situations it covers can only be confirmed at an advanced stage of the procedure.

⁴ **IRL:** clarify the concept of preventing aggravation of illness.

⁵ **NL:** include the accelerated procedure.

P: scrutiny reservation.

5. Member States shall ensure that if a decision on the appeal has not yet been taken 65 working days after notice of appeal is given in admissibility and accelerated procedures, the applicant and accompanying family members have the same access to health care as during the regular procedure. ¹
6. Member States may require applicants who can afford to do so to contribute to the cost of their health and psychological care or to cover it. Decisions to provide health and psychological care not free of charge shall be taken individually, objectively and impartially and reasons shall be given. ²
7. Member States shall ensure that applicants have the right to bring proceedings before a court against the decisions referred to in paragraph 6 and that they have access to legal assistance. ³

¹ **IRL and A:** scrutiny reservations linked to their positions concerning the proposal for a Directive on procedures for granting and withdrawing refugee status.

P: scrutiny reservation.

² See comments on Article 20(4).

³ See comments on Article 20(5).

CHAPTER V
REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 22
Reduction or withdrawal of reception conditions
following negative behaviour ¹

1. Member States may reduce or withdraw ² the reception conditions in the following cases:
- (a) if an applicant for asylum has disappeared or, without reasonable cause, has not complied with reporting duties or requests to provide information or to appear for personal interviews concerning the asylum procedure for at least 30 working days. ³ When the missing applicant is traced or voluntarily reports to the relevant authority after that period, a reasoned decision based on the reasons for the disappearance shall be taken on the reinstatement of the grant of some or all of the reception conditions. Reception conditions depending on the length of the procedure shall not be granted. ⁴

¹ **FIN:** scrutiny reservation on the entire Article.

S: reservation on the entire Article.

S and UK: the words "negative behaviour" do not seem appropriate. Preferable to refer to cases in which the reception conditions may be reduced.

² **D and S:** delete the term "withdraw", which seems excessive.

³ **EL/E/F/I/NL/A and UK:** the 30-day period seems excessive. Preferable not to specify any period.

⁴ **E:** penalise cases of delaying behaviour for the purpose of extending the procedure and gaining access to the labour market.

I: make provision for the situation of family members of an applicant who has disappeared.

F/I and A: stipulate that asylum applicants who provide false information may also be excluded from reception conditions.

NL: stipulate that in emergencies and where there are not enough places, it should be possible for Member States to lower the standard of housing or even to refuse it to applicants who have previously disappeared.

- (b) if an applicant withdraws the application; ¹
- (c) if an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions;
- (d) if an applicant is regarded as a threat to national security or there are serious grounds for believing that the applicant has committed a war crime or a crime against humanity or if, during the examination of the asylum application, there are serious and manifest reasons for considering that grounds of Article 1(F) of the Geneva Convention may apply with respect to the applicant. ²

¹ **D/E/F/IRL/NL and S:** applicants who withdraw their applications put themselves outside the scope of the Directive.

D: add "if an applicant disappears, he is deemed to have no further needs within the meaning of this Directive".

² **E:** scrutiny reservation.

D and UK: these cases can be confirmed only at the end of the proceedings.

L: add the case of applicants who submit applications in several Member States in order to receive assistance from more than one Member State.

2. Member States may reduce or withdraw material reception conditions in the following cases: ¹

- (a) if an applicant or an accompanying family member has repeatedly behaved in a violent or threatening manner towards persons performing duties in the running of an accommodation centre or to other persons staying at the centres; ²
- (b) if an applicant or an accompanying family member does not comply with a decision requiring them to stay at a place determined by the relevant authority. ³

¹ **S:** reservation on this paragraph.

² **E/IRL/NL/P and UK:** extend this paragraph with references to violent behaviours in other environments: public places, administrative premises of the Member State, etc.

IRL/NL and UK: the list should be illustrative and not exhaustive.

NL: also make provision to cover cases of serious negligence.

A: provide a general reference to unacceptable behaviour towards those working in the reception centres or others living in them.

UK: include acts of vandalism or non-compliance with rules governing the reception centres.

³ **A:** also exclude from the benefits of the Directive children of mixed couples formed by asylum applicants and nationals of the host Member State.