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THE EUROPEAN UNION**

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

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**I**

At its meeting on 3 and 4 September 2001 the Asylum Working Party continued its examination of the above proposal.

Delegations will find in section II below the text of the proposed Directive, with delegations' comments in the footnotes.

## II <sup>1</sup>

Draft

### 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 <sup>2</sup> for the reception of applicants for asylum in Member States.

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

<sup>2</sup> **D:** the fact that Member States could 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; <sup>1</sup>

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<sup>1</sup> **D/EL/E/NL and UK:** the 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 was 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:** the 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] <sup>1</sup> have been exhausted; <sup>2</sup>
- (d) "family members" means, in so far as the family already existed in the country of origin, <sup>3</sup> the following members of the applicant's family: <sup>4</sup>

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<sup>1</sup> COM(2000) 578 final.

<sup>2</sup> **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".

**F** pointed out that the conclusions adopted by the Council on this subject on 1 December 2000 (13117/1/00 REV 1 ASILE 52) stipulated 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."

<sup>3</sup> **D:** take into account the case where the asylum applicant married after arriving in the host Member State.

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

**EL:** only include the case of minors.

**Cion:** there was a right of family reunification in the framework of the Directive only if the family members were 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;<sup>1</sup>
- (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<sup>2</sup> have undergone particularly traumatic experiences or require special medical treatment;<sup>3</sup>

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<sup>1</sup> **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 was a collective and immediate need of protection was different from that of asylum applicants who, by contrast, sought refugee status individually.

<sup>2</sup> **UK:** substitute "and" for "or".

<sup>3</sup> **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 had special needs, reunification should not apply, since those special needs would probably have to be met in specialised centres that might 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 did 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 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; <sup>1</sup>
- (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; <sup>2</sup>
- (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];

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<sup>1</sup> **D and A:** specify, as stated in the "commentary on Articles" that accompanied the proposal, that this provision made 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 had no place in this Directive and gave 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 those family members to lodge individual asylum applications

<sup>2</sup> **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;<sup>1</sup>
- (j) "reception conditions" means the full set of measures that Member States grant to<sup>2</sup> applicants for asylum in accordance with this Directive;
- (k) "material reception conditions" means the reception conditions that include<sup>3</sup> housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;<sup>4</sup>

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<sup>1</sup> **D:** a definition of unaccompanied minors was unnecessary for this proposal. They were also entitled to lodge asylum applications individually.

**EL:** make provision for the case of minors who reached their majority during the procedure for granting refugee status.

**E and IRL:** legal problems might 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 applied 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").

<sup>2</sup> **D:** say "apply to" rather than "grant to".

<sup>3</sup> **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 seemed inconsistent with the content of Chapter III.

**NL:** if it were an exhaustive list, civil liability insurance should be added.

<sup>4</sup> **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; <sup>1</sup>
- (m) "accommodation centre" means any place used only for collective housing of applicants for asylum and their accompanying family members; <sup>2</sup>
- (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.] <sup>3</sup>

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<sup>1</sup> **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 and P:** refer to "placing" rather than "confinement".

**NL:** reservation. Restrictions on the free movement of persons should not appear here.

**S:** specify that a person could be detained simply because he was an asylum applicant.

Confinement should be possible only if a specific decision on the matter had been taken by the competent authority.

**E:** in the Spanish version, replace "retención" by "detención".

<sup>2</sup> **D/EL/E/IRL/I/NL and FIN:** delete the word "only".

**S:** wanted to be assured that the term "collective" did not preclude the possibility of housing asylum applicants in individual accommodation.

<sup>3</sup> **EL:** delete the words between brackets.

**NL:** such a definition was unnecessary.

**A:** the reference to family members would have to be reviewed once the scope of the Directive had 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 border <sup>1</sup> or on the territory of a Member State and to their accompanying family members.<sup>2 3</sup>

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.<sup>3 4</sup>

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.<sup>5</sup>

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<sup>1</sup> **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 did those submitted by applicants who were 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 were 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).

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

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

<sup>4</sup> **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."

<sup>5</sup> **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. <sup>1</sup>

**CHAPTER II**  
**GENERAL PROVISIONS ON RECEPTION CONDITIONS**

**Article 5**  
**Information**

1. Member States shall inform applicants for asylum [as well as adult accompanying family members] <sup>2</sup>, ~~immediately~~ **within a reasonable time not exceeding fifteen days** <sup>3</sup> after they have lodged their application **with the competent authority**, of benefits to which they are entitled and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information about organisations ~~or persons~~ that provide specific legal assistance and organisations that might be able to help **or inform** them in relation to the available reception conditions, including health care to which they are entitled. <sup>4</sup>

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<sup>1</sup> **A:** scrutiny reservation.

<sup>2</sup> **UK:** say "as well as adult accompanying family members who have also applied for asylum."

<sup>3</sup> **A/P and S:** scrutiny reservations on the 15-day limit.

<sup>4</sup> **D and F:** scrutiny reservations on the new wording of this paragraph.

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.~~
3. Member States shall ensure that the information referred to in paragraph 1 is in writing and, as far as possible, in a language that the applicants **may reasonably be supposed to** understand. **Where appropriate this information shall also be supplied orally.** <sup>1</sup>
4. Applicants shall be informed of language courses and voluntary return schemes when they are available for them. <sup>2</sup>

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<sup>1</sup> **NL and S:** it should be possible to provide the information either in writing or orally, according to circumstances.

<sup>2</sup> **D:** linguistic scrutiny reservation on the German version of the text.  
**EL:** stipulate that this referred to the language of the host Member State.  
**F:** Paragraph 4 was superfluous, since that provision was 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] 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]. <sup>1</sup> If the holder is free to move within all or a part of the national territory, the document shall also certify **this fact**. <sup>2</sup> ~~that the holder is legally 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. <sup>3</sup>

- ~~2. Member States shall ensure that unaccompanied minors are provided with a document equivalent to that referred to in paragraph 1.~~

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<sup>1</sup> **D/EL and E:** exclude asylum applicants in airport transit zones, since they did not need specific documents.  
**F:** scrutiny reservation.  
**NL:** a distinction should be made between conditions relating to the normal procedure and those relating to the accelerated procedure. In the latter case there would be no point in issuing a document. Another option would be to delete this article, since it had no direct bearing on reception conditions for asylum applicants.  
**A:** the document should clearly state that it did not certify the identity of the asylum applicant, thus avoiding the risk of some applicants being able to forge a new identity using these certificates. Include a text on the following lines:  
"In any event, only asylum applicants who declare themselves willing to cooperate with a view to establishing their identity and their need for help, and to immediately provide any facts which may be useful in assessing their need for help, may receive the help provided by the Member State."  
**EL and E:** the document should confine itself to stating that the bearer had declared him or herself to have the identity given on the document and that he or she was an applicant for asylum protected by the principle of non-refoulement.

<sup>2</sup> **EL/L/A/P/FIN/S and UK:** amend this sentence as follows:  
"If the holder's right to free movement is restricted to a part of the national territory, the document must certify this fact."

<sup>3</sup> **D:** scrutiny reservation on the third sentence of this paragraph.

3. Member States shall **adopt the necessary measures to provide asylum applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory or at the frontier of the Member State concerned.** <sup>1</sup>  
~~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 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.~~
4. Member States may exclude the application of this Article **when the asylum applicant is detained** <sup>2</sup> **and** 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.
5. Member States may provide applicants for asylum with a travel document when serious humanitarian reasons arise that require their presence in another State. <sup>3</sup>

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<sup>1</sup> **D/GR/E/F and P:** exclude frontier applications.

**F:** scrutiny reservation.

**P:** paragraphs 3 and 4 appeared to contradict each other.

**FIN:** Article 12 provided for the schooling of minors for as long as a deportation order had not been enforced. Align the two texts.

<sup>2</sup> **F:** say "retenu" instead of "détenu" in F text.

<sup>3</sup> **D:** say that the Member State where the asylum applicant must go for serious humanitarian reasons would issue a travel document and, where appropriate, a visa.

**E and P:** this provision should only apply in the framework of the normal procedure.

**A:** delete this paragraph. Bilateral solutions for humanitarian reasons were applied in such cases.

**S:** keep this paragraph, which addressed real needs on humanitarian grounds.

**L:** this provision belonged in the proposal for a Regulation to replace the Dublin Convention rather than in this Directive.

## Article 7 <sup>1</sup>

### 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]. <sup>2</sup>
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]. <sup>3</sup>

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

<sup>2</sup> **S:** delete the words in square brackets.

<sup>3</sup> **F/L/NL/P and UK:** a mere reference to the Directive on procedures for granting and withdrawing refugee status was 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. <sup>1</sup>
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 <sup>2</sup>, 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. <sup>3</sup>

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<sup>1</sup> **D:** a more flexible wording was needed, since the current wording seemed 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 could be introduced. Furthermore, there should be mention of cases in which an applicant travelled 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 were possible should be clearly described and set in a temporal context (e.g. in cases of extradition petitions).

**F:** it was 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.

<sup>2</sup> **D:** replace "personal reasons" with "serious reasons".

<sup>3</sup> **D:** it would be preferable to make provision for cases in which authorisation of movement was necessary, and exceptionally for cases in which such an authorisation was not necessary.

**IRL:** asylum applicants should provide reasons justifying their need to leave the part of the territory in which they resided.

**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. <sup>1</sup>
6. Member States may require <sup>2</sup> 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. <sup>3</sup>

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<sup>1</sup> **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 accompanied the proposal, that negative decisions could 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.

<sup>2</sup> **D and S:** a more binding form of words was necessary for this provision.

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

## Article 9

### Families

Member States shall take appropriate measures to ~~maintain~~ **support** 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.~~ <sup>1</sup> **The measures mentioned in this Article shall be implemented at the request of the applicants for asylum.**

## Article 10

### Health care

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

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<sup>1</sup> **D:** provide for a reasonable period during which the family members could be separate until shared accommodation was found for them, and also for cases in which the family members arrived after a certain period of time (e.g. several months after the applicant arrived in a Member State). In these cases they could also be separated for a brief initial period.

**F:** scrutiny reservation. The duty to maintain the unity of the family should be limited to the nuclear family members.

**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 any family members with the nationality of the Member State where the asylum applicant submitted his application.

**Article 11**  
**Medical screening**

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

**Article 12**  
**Schooling and education of minors** <sup>2</sup>

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 nationals for so long as ~~an deportation order~~ **expulsion measure** <sup>3</sup> against them or their parents cannot actually be enforced.

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

Minors shall be younger than the age of legal majority in the Member State 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.

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<sup>1</sup> **D/L/NL and A:** clarify the purpose of such medical screening, which would only be necessary in cases where there was a risk of disease being spread.  
**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."  
**Pres:** D and EL should clarify their suggestions for alternative wordings so they could be discussed at a forthcoming meeting.

<sup>2</sup> **D/NL and UK:** scrutiny reservations on the whole Article.

<sup>3</sup> **D:** linguistic scrutiny reservation.

2. Access to the education **system** shall not be postponed for more than ~~65 working days~~ **three months**<sup>1</sup> from the date the application has been lodged by the minor or the minor's parents. **This period may be extended to six months where specific education is provided in order to facilitate access to the education system.**<sup>2</sup>
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.<sup>3</sup>

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<sup>1</sup> **L:** longer delays might prove necessary. The differentiation between paragraphs 2 and 3 was difficult to make, since specific education might consist in a language course, which might be longer than six months.

**S:** reservation: a postponement of access to the education system of three months was too long.

<sup>2</sup> **I:** say "In cases where specific education is provided by the Member State in question in order to facilitate access to the education system, this period may be extended to six months."

<sup>3</sup> **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 was often through integration of these children into the national education system. With that in mind, UK suggested "... minors referred to in paragraph 1 shall receive language assistance..." (rest unchanged).

**E:** include a reference to supplementary lessons. The content of such courses could only be decided by educators.

## Article 13

### Employment <sup>1</sup>

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

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<sup>1</sup> **EL/E/I/L/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 was taking too long through no fault of the applicant).  
**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 blocked national asylum systems.  
**D:** also make provision for working on a self-employed basis.

<sup>2</sup> **S:** text worded too negatively. Preferable to say: "Member States shall authorise ..."

<sup>3</sup> **UK:** the reference to family members should be moved to the second sentence.

<sup>4</sup> **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."

<sup>5</sup> **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].<sup>1</sup>
3. Access to the labour market may be excluded when negative behaviour of the applicant is ascertained, in accordance with Article 22.<sup>2</sup>

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<sup>1</sup> **E:** if the application was 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).

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

**NL:** could accept the suggestion made by D and S.

## Article 14

### Vocational training <sup>1</sup>

1. Member States shall not forbid <sup>2</sup> 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. <sup>3</sup>
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. <sup>4</sup>
3. Access to vocational training may be excluded when negative behaviour of the applicant is ascertained, in accordance with Article 22.<sup>5</sup>

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<sup>1</sup> **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" was 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.

<sup>2</sup> **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.

<sup>3</sup> **NL and A:** state that Member States had no obligation to finance such vocational training.  
**NL:** ad hoc training measures for asylum applicants should be possible.

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

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

**CHAPTER III**<sup>1</sup>  
**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:<sup>2</sup>
  - (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;<sup>3</sup>
  - (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.

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<sup>1</sup> **I:** general scrutiny reservation concerning Chapter III.

<sup>2</sup> **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 would have access to 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.

<sup>3</sup> **IRL:** specify the consequences of an appeal before a court.

**A:** to improve readability, this subparagraph should be drafted along the lines of 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 <sup>1</sup> 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. <sup>2</sup>

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

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

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<sup>1</sup> **D/E/F and A:** this wording was 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.

<sup>2</sup> **A:** this provision did not belong here: Article 23 should be sufficient.

<sup>3</sup> **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 was extended.  
**UK:** access to the labour market after six months should help to raise the standard of living of asylum applicants.

<sup>4</sup> **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.<sup>1</sup>

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<sup>1</sup> **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 was not a sufficient condition to reduce the level of benefits. It was 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 was the fact of having found a job that was important. In addition, the period specified was 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: <sup>1</sup>
  - (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; <sup>2</sup>
  - (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. <sup>3</sup>

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<sup>1</sup> **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 could be provided (such as castles, boats, camp sites – subject to weather conditions - etc.).

<sup>2</sup> **F:** delete this subparagraph.

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

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

<sup>3</sup> **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):<sup>1</sup>
- (a) access to emergency health and psychological care and to health care that cannot be postponed;<sup>2</sup>
  - (b) protection of their family life and privacy;<sup>3</sup>
  - (c) the possibility of communicating with the outside world<sup>4</sup>, including at least relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and the relevant non-governmental organisations (NGOs).<sup>5</sup>

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<sup>1</sup> **UK:** this paragraph was 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)."

<sup>2</sup> **D:** delete this point. It was unnecessary to repeat what had 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).

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

<sup>4</sup> **B:** make it clear that the cost of such communication was to be met by the applicants.

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

<sup>5</sup> **D and EL:** list the relevant NGOs.

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).<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>
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~~].<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> **B/L and UK:** this subparagraph seemed to impose on Member States an obligation to achieve an outcome which was impossible to guarantee. Make it clear that this was a material obligation to cover 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 their countries of origin.

<sup>2</sup> See comments on Article 2(i).

<sup>3</sup> **B/E/F/NL and UK:** make it clear that no obligation to reunify families followed from the provisions of this Directive.

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

<sup>4</sup> The Working Party agreed to delete the words in square brackets.

<sup>5</sup> **E/IRL and NL:** specify more clearly which staff must have special qualifications and were bound by the confidentiality principle.

**EL:** these types of job were not harmonised throughout the Community. Delete this paragraph, which went beyond the scope of the Directive.

**D:** specify which staff were bound by the confidentiality principle. Possibly extend it to staff, 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. <sup>1</sup>
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. <sup>2</sup>
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. <sup>3</sup>

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<sup>1</sup> **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.

<sup>2</sup> **D:** scrutiny reservation.

**EL/E/I/NL/A/FIN and UK:** specify that this referred to NGOs generally recognised in this context.

**E and A:** make clear that this concerned 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:** make it clear that "reasonable access" was intended.

<sup>3</sup> **D:** clarify, as in the commentary on the Articles that accompanied the proposal, that this rule might 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 <sup>1</sup>

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. <sup>2</sup>

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. <sup>3</sup>

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

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<sup>1</sup> **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.

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

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

<sup>4</sup> **D/E and A:** delete this paragraph, which was worded too vaguely. Other exceptions were 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 <sup>1</sup> disputes concerning the material reception conditions provided for by Articles 15, 16 and 17. <sup>2</sup>

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

<sup>2</sup> **EL/E/F/A and S:** reservations. **D/I/NL and P:** scrutiny reservations.  
All these delegations emphasised that administrative or judicial appeals were possible under their national legal systems, without there being any need to create a new appeals 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 <sup>1</sup> 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. <sup>2</sup>
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. <sup>3</sup>

---

<sup>1</sup> **A:** make sure that the German version of the text corresponded to the other language versions.

<sup>2</sup> **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 had a certain income, a contribution might be asked of him to cover some or all of the costs.

**D and UK:** establish a general principle laying down that Member States might decide whether or not the applicant required material benefits.

**L and A:** make provision for the case of an applicant invited to stay in the territory of a Member State by a national who might have served as guarantor for the purpose of obtaining a tourist visa. In that case, it should be possible to call on the national to contribute to the costs.

**A:** reservation on the second sentence in that it created an obligation to notify those decisions in writing.

<sup>3</sup> **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**<sup>1</sup>

**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<sup>2</sup> provided by a general practitioner, **urgent health care**, psychological care, **psychotherapeutic care** and health care that cannot be postponed:
  - (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;
  - (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.

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<sup>1</sup> **UK:** scrutiny reservation on Articles 20 and 21.

<sup>2</sup> **D/FIN/S and UK:** problems with the expression "primary health care", which might have different meanings in the various Member States.

**D and S:** refer, as in Article 13(2) of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons, to "emergency care" and "essential treatment of illness".

2. In the circumstances referred to in paragraph 1, Member States shall ~~meet~~ **take the necessary measures to provide for** the special needs of applicants and their accompanying family members who are pregnant women, minors, mentally ill persons, disabled persons or ~~victims of~~ **persons who have been subjected to torture**, rape or other **serious** forms of ~~gender-related~~ **psychological, physical or sexual** violence.
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 <sup>1</sup> 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.<sup>2</sup>
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. <sup>3</sup>
6. **Member States shall not be required to provide applicants with more favourable health care than that granted to citizens of the EU.** <sup>4</sup>

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<sup>1</sup> **L:** in the French text, say "obliger" rather than "inviter".

<sup>2</sup> **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 was required from beneficiaries towards payment for medicines).

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

<sup>3</sup> See comments on Article 19(2).

<sup>4</sup> **D/I and S:** scrutiny reservations.

**UK:** refer to "citizens of the other Member States".

## Article 21<sup>1</sup>

### 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 **and psychotherapeutic** 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. 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~~ **persons who have been subjected to torture, rape or other serious forms of gender-related psychological, physical or sexual violence.**
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.<sup>2</sup>

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

**D:** delete this Article, which was superfluous, and take account of the real needs of the applicant, which did not depend on what procedure was being followed.

<sup>2</sup> **IRL:** clarify the concept of preventing aggravation of illness.

4. Member States shall ensure that if a decision to dismiss the application as ~~inadmissible or manifestly unfounded~~ **in the framework of the admissibility or accelerated procedure** has not been taken 65 working days <sup>1</sup> after an application is lodged, the applicant and accompanying family members have the same access to health care as during the regular procedure. <sup>2</sup>
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. <sup>3</sup>
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. <sup>4</sup>
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. <sup>5</sup>
8. **Member States shall not be required to provide applicants with more favourable health care than that granted to citizens of the EU.** <sup>6</sup>

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<sup>1</sup> **D:** say three months instead of 65 working days.

<sup>2</sup> **NL:** reservation. A distinction should be made between the admissibility and accelerated procedures, as the consequences and the time-frame were not the same.

<sup>3</sup> **IRL and A:** scrutiny reservations linked to their positions concerning the proposal for a Directive on procedures for granting and withdrawing refugee status.

<sup>4</sup> See comments on Article 20(4).

<sup>5</sup> See comments on Article 20(5).

<sup>6</sup> See comments on Article 20(6).

**CHAPTER V**  
**REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS**

**Article 22**  
**Reduction or withdrawal of reception conditions**  
**following negative behaviour <sup>1</sup>**

1. Member States may reduce or withdraw <sup>2</sup> 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. <sup>3</sup> 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. <sup>4</sup>

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<sup>1</sup> **FIN:** scrutiny reservation on the entire Article.

**S:** reservation on the entire Article.

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

<sup>2</sup> **D and S:** delete the term "withdraw", which seemed excessive.

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

<sup>4</sup> **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 had disappeared.

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

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

- (b) if an applicant withdraws the application; <sup>1</sup>
- (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. <sup>2</sup>

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<sup>1</sup> **D/E/F/IRL/NL and S:** applicants who withdrew 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".

<sup>2</sup> **E:** scrutiny reservation.

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

**L:** add the case of applicants who submitted 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: <sup>1</sup>
- (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; <sup>2</sup>
  - (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. <sup>3</sup>

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<sup>1</sup> **S:** reservation on this paragraph.

<sup>2</sup> **E/IRL/L/NL/P and UK:** extend this paragraph with references to violent behaviour 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. A passage similar to the one in the Austrian legislation could be inserted:

"In any event, the assistance afforded by the Member State shall come to an end if the state of need disappears, if the person concerned voluntarily relinquishes the services covered by the assistance or withdraws his or her application for asylum, but at the latest when a final decision has terminated the asylum procedure. Assistance may also be terminated if the person concerned is suspected of having committed acts punishable by law and in the case of prolonged behaviour which places an unreasonable burden on the person providing the accommodation or on other persons receiving assistance."

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

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

3. Member States may reduce material reception conditions when an applicant prevents minors under that applicant's care from attending school or single classes in ordinary school programmes. <sup>1</sup>
4. Decisions for reduction or withdrawal of reception conditions referred to in paragraphs 1, 2 and 3 shall be based solely on the personal conduct of the person concerned and on the principle of proportionality. Member States shall ensure that such decisions are taken individually, objectively and impartially and reasons shall be given. <sup>2</sup>
5. Member States shall ensure that applicants have the right to bring proceedings before a court against decisions provided for by this Article and that they have access to legal assistance that shall be free of charge when applicants cannot afford it. <sup>3</sup>
6. Emergency health care and health care that cannot be postponed shall not be reduced or withdrawn.

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<sup>1</sup> **NL:** this provision did not appear to belong in this Directive, but was rather a matter of the education policy pursued in the various Member States.

<sup>2</sup> **A:** reservation on the second sentence in so far as it required notification of such decisions to be given in writing.

<sup>3</sup> **D/F and S:** reservations.

**D and S:** the freedom from charge of legal assistance should be linked to the real likelihood of success of the proceedings. Manifestly unfounded proceedings should not receive free legal assistance.

**F:** this paragraph is needlessly specific. More general provisions on modes of appeal should be enough.

**CHAPTER VI**  
**PROVISIONS FOR PERSONS WITH**  
**SPECIAL NEEDS**

**Article 23**

**General principle**

1. Member States shall take into account the specific situation of persons who have special needs as <sup>1</sup> minors, unaccompanied minors, disabled people <sup>2</sup>, elderly people, pregnant women, single women subject, in their country of origin, to substantial legal gender related discrimination, single parents <sup>3</sup> with minor children and, ~~victims of sexual abuse or exploitation~~ **persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence**, in the national legislation enforcing implementing the provisions of this Directive of Chapters III, IV and V relating to material reception conditions, psychological and health care.
  
2. Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.

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<sup>1</sup> **UK:** replace "as" with "such as" to make it clear that this list was not exhaustive.

<sup>2</sup> **EL:** replace "disabled people" with "persons with reduced mobility". Moreover, a reference to national provisions on persons with special needs was required since it was the Member States' administrations which would have to assess the situation and needs of these people.

<sup>3</sup> **E:** in Spanish the reference to "familias monoparentales de menores" should read "familias monoparentales con hijos menores".

## Article 24

### Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.
2. Member States shall ensure access to rehabilitation services to children minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflicts. To facilitate recovery and reintegration, <sup>1</sup> appropriate mental health care shall be developed and qualified psycho-social counselling shall be provided when it is needed.

## Article 25

### Unaccompanied minors

1. Member States shall ensure that, as soon as possible, a guardian <sup>2</sup> for the each unaccompanied minor is appointed who shall ensure that the minor's needs are duly met <sup>3</sup> in the implementation of the provisions of this Directive. Regular assessments shall be made by the appropriate welfare <sup>4</sup> authorities.

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<sup>1</sup> **D and L:** scrutiny reservations. These reintegration measures seemed very far-reaching and their links with the right to asylum were unclear.

**E and NL :** clarify the concept of "reintegration" in this context. Given the wide range of backgrounds of the persons concerned, it was difficult to establish in advance what kind of care would be appropriate. More careful drafting of this provision was needed.

<sup>2</sup> **IRL/FIN and S:** replace " guardian", which had a quite specific meaning in law, with "person authorised by the competent authority" or with " person representing".

<sup>3</sup> **A:** add " wherever possible".

<sup>4</sup> **D/A/FIN and S:** delete "welfare" as different authorities were responsible for such matters in the different Member States.

**D:** reservation on the second sentence of this paragraph.

2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they have to leave the host country Member State in which the application has been lodged or is being examined, be placed <sup>1</sup>, in the following order of priority: <sup>2</sup>
- (a) with adult family members;
  - (b) with a foster family;
  - (c) in centres specialised in accommodation for minors;
  - (d) in other accommodation with a suitable situation for minors.

Siblings <sup>3</sup> shall be kept together. Changes of unaccompanied minors' residence shall be limited to a minimum.

3. If it is in the best interest of the child, Member States shall endeavour to trace the members of the family of unaccompanied minors as soon as possible. In cases where there may be a threat to the life or integrity of a child minor or its close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.
4. Those working with unaccompanied children minors must shall receive appropriate training on their needs. <sup>4</sup>

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<sup>1</sup> **B/L and UK:** where and how a non-accompanied minor was placed was a matter for the competent authorities of the host Member State, which took account of the child's best interests.

<sup>2</sup> **D and P:** this paragraph should be replaced by a similar provision to the one in Article 16(2) of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons.

**E and FIN:** the order of priority should not be rigid. It must be possible to change it in the child's best interests, particularly in the light of his age and degree of maturity.

<sup>3</sup> **I and FIN:** this rule should not be so inflexible. The child's best interests and his wishes, depending on his age and degree of maturity, had to be taken into account.

<sup>4</sup> **D:** in the German text, replace "werden" with "sein".

**EL:** see comments on Article 16(5).

## Article 26

### Victims of torture and organised violence

Member States shall ensure that, if necessary, ~~victims of~~ **persons who have been subjected to** torture, or organised **acts of** violence, rapes, other gender-related violence or other serious acts of violence are accommodated in special centres for traumatised persons or have access to special rehabilitation programmes. Special mental health care shall be provided for persons suffering from post-traumatic stress when it is needed. <sup>1</sup>

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<sup>1</sup> **D/E/IRL/L/P/FIN and UK:** not all Member States had special centres such as described in this Article, even for their own nationals. This provision should be optional and begin with the words: "Member States may lay down ...".

**P and UK:** scrutiny reservations.

**S:** on the other hand supported the mandatory tone of the text proposed by the Commission.

## CHAPTER: VII

### ACTIONS TO IMPROVE THE EFFICENCY OF THE RECEPTION SYSTEM

#### Article 27

#### Cooperation

1. With a view to the administrative co-operation required to implement this Directive, Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it to the other Member States. Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct co-operation, including the exchange of visits, and an exchange of information between the competent authorities. <sup>1</sup>
2. Member States shall, regularly and as quickly as possible, inform the Commission on the data concerning the number of persons, segregated by sex and age, covered by reception conditions and provide full information on the type, name and format of the documents provided for by Article 6. <sup>2</sup>

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<sup>1</sup> **D:** delete the second sentence. This was within the legislative powers of the Member States and had no place in the Directive.  
**E/F and P:** reservation on the Contact Committee provided for in point 5.2 of the legislative financial statement attached to the proposal.  
**Cion:** the Contact Committee provided for was an informal Commission working party of a deliberative and consultative nature, which the Commission could set up without requiring the consent of the other Institutions.

<sup>2</sup> **D and P:** scrutiny reservations.  
**P:** The forwarding of data could cause technical problems and it was too soon to enter into commitments in this respect.

**Article 28**  
**Coordination**

Member States shall ensure co-ordination between the competent authorities and other players, including NGOs, involved at national or local level in the reception of applicants for asylum, in accordance with this Directive. <sup>1</sup>

**Article 29**  
**Local communities**

Member States shall ensure that appropriate measures are in place to promote harmonious relationships between local communities and the accommodation centres that are located in their territory with a view to preventing acts of racism, sex discrimination and xenophobia against applicants for asylum. <sup>2</sup>

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<sup>1</sup> **D:** delete this Article for reasons of subsidiarity.

<sup>2</sup> **D/L and A:** delete this Article. The underlying idea could be included in a statement for the Council minutes (or if need be in a recital) but should not be included in the enacting terms of a Directive.

**A:** the existence of the European Monitoring Centre on Racism and Xenophobia rendered this Article superfluous.

**NL and I:** this provision should remain in the enacting terms.

**I:** begin this Article with the words: "For the purposes of the reception of applicants for asylum ..." (remainder unchanged).

**NL:** The provision should be more assertive and stress the importance of the accommodation centres being well run. The acts referred to should be only examples as other types of undesirable situation could arise.

## Article 30

### Guidance, monitoring and control system

Member States shall provide for rules on the guidance, monitoring and control of the level of reception conditions to ensure:

- (a) comparable standards of reception conditions within the national reception system;
- (b) equivalent comparable standards of facilities in different centres;
- (c) adequate training of the relevant staff.

The rules referred to in paragraph 1 Those rules shall include provisions on the office referred to in Article 18 and on, regular inspections and the adoption of guidelines on standards of reception conditions and measures to remedy possible deficiencies of the reception system. <sup>1</sup>

## Article 31

### Staff and resources <sup>2</sup>

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respects to the needs of both male and female applicants and their accompanying family members.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

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<sup>1</sup> **D and A:** reservations. **E/I/FIN and UK:** scrutiny reservations. These delegations' reservations related to the positions expressed when Article 18 was discussed. They thought that the principle of subsidiarity should apply since this was a matter of the applicability of national law and since an administrative or judicial appeal was already possible under their national legal systems. Otherwise, it should be made clear who was to carry out the control and what the reference standards were.

<sup>2</sup> **D/E/F and A:** delete this provision since staff training was already covered elsewhere in the proposal, since it was a basic obligation and since reference to it could be made in the preamble.

**UK:** scrutiny reservation. This provision was too sweeping. The content should be more specific.

**CHAPTER VIII**  
**FINAL PROVISIONS**

**Article 32**  
**Non-discrimination**

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.<sup>1</sup>

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<sup>1</sup> **D/EL/E/F and UK:** this was not the appropriate place for the general principle contained in this Article. A reference could be included in a recital as in Directive 2000/55/EC on temporary protection in the event of a mass influx of displaced persons.  
**S:** a provision such as the Commission proposed was needed in the enacting terms of this Directive.  
**L:** it was necessary to make clear what was meant by "discrimination on the basis of .... genetic characteristics".

## **Article 33**

### **Reports**

By 31 December 2004 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up this that report, including the statistical data provided for by paragraph 2 of Article 27(2) and the results of the actions provided for by Article 29, by 30 June 2004 at the latest.

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.<sup>1</sup>

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<sup>1</sup> **IRL:** make clear which aspects of the application of the Directive in the Member States were to be reported on.  
**A :** reservation on the dates laid down by the Commission. It seemed premature to set the dates at this stage.

## Article 34

### Penalties

The Member States shall lay down the rules on penalties for applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. ~~The Member States shall notify those provisions to the Commission of these provisions by no later than the date specified in Article 35 at the latest and shall notify it without delay of any subsequent amendments affecting them.~~<sup>1</sup>

## Article 35

### Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [ 31 December 2002 ]<sup>2</sup> at the latest. They shall forthwith inform the Commission thereof.

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

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

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<sup>1</sup> (Text aligned on Article 30 of Directive 2001/55/EC on temporary protection in the event of a mass influx of displaced persons).

**D:** scrutiny reservation.

<sup>2</sup> **EL and S:** the obligation on the Member States to transpose the Directive into their national law should be set at a date 24 months after the adoption of the Directive.

**E:** the date of transposition of the Directive should be coordinated with those of the other proposals on asylum and in particular with that of the proposal on the procedure for granting and withdrawing refugee status.

**Article 36**  
**Entry into force**

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

**Article 37**  
**Addressees**

This Directive is addressed to the Member States.  
Done at Brussels,

For the Council  
The President

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