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OUTCOME OF PROCEEDINGS

of : Asylum Working Party
on : 7 and 8 November 2001

No. prev. doc. : 11541/01 ASILE 43

No. Cion prop. : 9074/01 ASILE 29 + COR 1 (fr)

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 7 and 8 November 2001, the Asylum Working Party examined Articles 5 to 14a of the above proposal based on text amendments suggested by the Presidency.

Delegations will find in section II below the text of Articles 5 to 14a. Amendments in relation to 11541/01 ASILE 43 appear in bold.

Delegations' comments are set out in the footnotes.

II

Draft

COUNCIL DIRECTIVE

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

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] ¹, **within a reasonable time not exceeding fifteen days** after they have lodged their application **with the competent authority**, of benefits to which they are entitled ² 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 ³.

¹ **E/F and P:** reservations on the inclusion of family members of asylum applicants within the scope of the Directive.

I: scrutiny reservation on the same grounds.

UK: in order to resolve the problem posed by these reservations, say "as well as adult accompanying family members who have also applied for asylum."

S: maintain the reference to family members as proposed by the Commission.

² **E and A:** align the other language versions on the French version, in order to avoid giving the impression of establishing rights that were enforceable before a court.

A: add the words "if appropriate" or "if the need arises".

³ **D/F and UK:** scrutiny reservation on the new wording of this subparagraph.

I: maintain this subparagraph as proposed by the Commission.

2. 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.**
3. Applicants shall be informed of language courses and voluntary return schemes when they are available for them. ¹

¹ **EL:** stipulate that this referred to the language of the host Member State.
F: paragraph 3 was superfluous, since that provision was implicitly covered by paragraph 1.

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].¹

If the holder is **not** free to move within all or a part of the national territory, the document shall also certify **this fact**.

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 that unaccompanied minors are provided with a document equivalent to that referred to in paragraph 1.~~³

2. **The document referred to in paragraph 1 does not in any way certify the identity of the applicant for asylum.**⁴

¹ **D and E:** exclude asylum applicants in airport transit zones, since they did not need specific documents.

Pres./EI/P and S: the question raised by D and E was solved by paragraph 4.

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.

² **D and E:** scrutiny reservations. These entitlements were attached to certain time limits and conditions. Even nationals of a Member State did not have these rights entered in their identity documents.

³ **S:** reinstate this paragraph.

⁴ **D and P:** scrutiny reservations.

Cion: a new sentence could be added: "However, Member States may decide that the document referred to in paragraph 1 does not certify the identity of the applicant for asylum".

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.
4. Member States may exclude the application of this Article when the asylum applicant is detained ¹ 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. ²

¹ **F:** say "retenu" or "maintenu en rétention" instead of "détenu" in F text.

² **D:** this provision should allow a visa to be issued to an asylum applicant needing to travel from one Member State to another, otherwise travel would be impossible in practice.

Article 7
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].¹

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 **in the cases referred to** ~~for the purpose of taking a decision in the cases described~~ in Article 11 of Directive .../.../EC [on minimum standards for procedures in Member States for granting and withdrawing refugee status].²

¹ S: delete the words in square brackets.

² 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 **only** where it is necessary for implementing this Directive or in order to enable applications for asylum to be processed swiftly. ¹

3a Restrictions on the freedom of movement of applicants for asylum [and their accompanying family members] may be introduced by a general decision. ²

¹ **D:** this paragraph should be worded more positively, since it related to measures intended to ensure the smooth operation of the procedure launched by the asylum applicant.
FIN and S: reservations. There were other ways to assist rapid processing of asylum applicants, without it being necessary to restrict their freedom of movement. Furthermore, it was more a matter to be dealt with in the context of the proposal for a Directive on procedures for granting and withdrawing refugee status and not in the context of reception conditions for asylum applicants.
NL: it should be possible to apply these provisions only in the framework of the accelerated procedure.
A: add the case of restriction of freedom of movement on grounds of limiting the costs of the procedure, otherwise the costs risked becoming disproportionate for some Member States.
EL: it should also be possible to invoke reasons of public policy and national security to restrict freedom of movement, as provided for in the conclusions adopted by the Council on the matter (see 13117/1/00 REV 1 ASILE 52), which followed the wording of the Geneva Convention very closely.
I: detention for reasons of public policy may be carried out in application of the general provisions of national law without any need for a specific reference in this Directive.
D: Article 64(1) TEC states that Title IV "shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security".

² **S:** delete this paragraph.
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.

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, 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.
5. Member States shall ensure that applicants have the right to bring proceedings before a court, **at least in the last instance**, against the limitations on freedom of movement imposed in accordance with paragraphs 3 **and 3a** 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 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 **immediately**. ²

¹ **D:** delete this paragraph and insert a general clause at the beginning of the Directive stipulating that any provision allowing assistance to asylum applicants must be open to appeal.

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

IRL: scrutiny reservation.

² **D, EL and S:** put "Member States shall require" in order to ensure rapid processing of applications.

I: against the binding nature which the above three delegations wanted to give this provision.

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.

Article 9

Families

Member States shall take appropriate measures to **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.¹ **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** psychological **and psychotherapeutic** care, in accordance with the provisions of Chapter IV.

¹ **E and F:** scrutiny reservations. The duty to maintain the unity of the family should be limited to the nuclear family members.
E: delete the words "present within their territory".
EL: say "Member States shall make every effort to maintain family unity."
I and NL: 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.
A: bracket this Article, given its links with the provisions of Article 2(d) and (e), on which agreement had not yet been reached.

Article 11
Medical screening

Member States may require medical screening for applicants.¹

Article 12
Schooling and education of minors

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 nationals² for so long as an expulsion measure against them or their parents cannot actually be enforced.³

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.

¹ **D:** specify that such medical screening would be necessary only in cases where there was a risk of disease being spread and for applicants housed in community centres.
EL/E/F/IRL/I and L: text was preferable as it stood. Disease could be spread outside accommodation centres.
NL: D text acceptable, except for the reference to accommodation centres.
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."
² **NL:** delete the words "under the same conditions as nationals". The education programme should be adapted by the Member State depending on needs.
³ **D:** make provision for minors to be given access to education, without it being worded as a right.
A: better ensure the link between the provisions of Articles 2(i), 11 and 12.

2. Access to the education system shall not be postponed for more than three months ¹ from the date the application has been lodged by the minor or the minor's parents. This period may be extended to **one year** ² where specific education is provided in order to facilitate access to the education system.
3. Member States shall ensure that minors referred to in paragraph 1 are offered language courses if **Member States consider that** a lack of knowledge of the language of that Member State ³ makes normal schooling impossible.

Article 13 ⁴

Employment

1. Member States shall not forbid applicants [and their accompanying family members] to have access to the labour market for more than six months ⁵ after their application has been lodged. Member States shall lay down the conditions for the access to the labour market ~~after such a period~~ **no later than the expiry of this time limit.**

For reasons of labour market policies, Member States may grant priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit.

¹ **S:** reservation: a postponement of access to the education system of three months was too long.

² **S:** scrutiny reservation on the one-year period.

³ **NL:** delete "of that Member State".

S and UK: scrutiny reservations.

⁴ **EL, I, L and UK:** scrutiny reservations on the new wording.

I: reservation.

⁵ **D:** scrutiny reservation on the six-month period.

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].~~

- (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 in 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

3. Access to the labour market may be excluded **or withdrawn** when negative behaviour of the applicant is ascertained, in accordance with Article 22.²

¹ **P:** scrutiny reservation on (c).

² **D and S:** delete this paragraph. Access to employment should not be linked to the applicant's behaviour. General rules of labour law should apply.

Article 14
Vocational training¹

1. Member States shall not forbid applicants [and their accompanying family members] to have access to **available** vocational training for more than six months after their application has been lodged. Member States shall lay down the conditions for the access to **available** vocational training after such a period.²

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.~~
 - (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 in 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 **IRL:** reservation.

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

S and UK: specify that the vocational training available for asylum applicants did not necessarily need to be as broad as for nationals of the Member States.

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

3. Access to vocational training may be excluded **or withdrawn** when negative behaviour of the applicant is ascertained, in accordance with Article 22. ¹

Article 14a

Financial means test ²

1. Member States may make access to all or some material reception conditions subject to a test of the financial means of applicants for asylum [and their accompanying family members] laid down in accordance with this Article. ³
2. Applicants for asylum [and their accompanying family members] may be excluded from all or some material reception conditions on the basis of the financial means test ⁴ referred to in paragraph 1 only when it is assessed that they have the financial means sufficient to avoid becoming destitute.

¹ **D and S:** delete this paragraph. Access to vocational training should not be linked to the applicant's behaviour.

² **D/EL/E/F/I/NL/A/P/FIN and S:** scrutiny reservations.

D and NL: ensure consistency between Articles 14a and 19.

Pres.: the two Articles should be combined. The provisions of Article 14a would be applied when the application was lodged and those of Article 19 would apply throughout the procedure for granting refugee status.

E/F/P and S: the provisions were too detailed:

F: the first paragraph should suffice.

E and P: avoid the risk of creating new grounds for appeal.

I and A: a poverty level should be set for the purposes of applying the provisions of this Article.

E: the poverty level should be at the discretion of each Member State, given the differences in standard and cost of living.

³ **S:** add that Member States may require asylum applicants who can afford it to contribute fully or in part to their subsistence.

⁴ **L and A:** the possibility of indirect material assistance must be covered by this provision. There was an obligation for any relatives of the asylum applicant, resident in the Member State where he lodged his application, to help provide for his needs.

S: assistance offered by relatives of the applicant should not be included as an obligation.

3. Decisions to exclude applicants for asylum [and their accompanying family members] from access to all or some material reception conditions referred to in paragraph 2 shall be taken individually, objectively and impartially and reasons shall be given.
 4. Member States shall ensure that applicants have the right to bring proceedings before a Court, at least in the last instance, against the decisions referred to in paragraph 2 and that they have access to legal assistance. ¹
 5. The decisions referred to in paragraph 2 are effective from the moment they are notified to the applicants for asylum [and to their accompanying family members]. ²
 6. Member States shall ensure that before the decisions referred to in paragraph 2 are notified to the applicants for asylum [and their accompanying family members] the other Articles of Chapter III of this Directive are applied. ³
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¹ E: reservation.

² S: reservation. This provision had no place in a Directive concerning the reception conditions for asylum applicants.

³ S: ditto.