



**COUNCIL OF  
THE EUROPEAN UNION**

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from : Working Party on Asylum

on : 15 and 16 January 2002

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No. prev. doc. : 15190/01 ASILE 60

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

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

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**I**

At its meeting on 15 and 16 January 2002, the Asylum Working Party examined Articles 1 to 14 of the above proposal based on drafting suggestions from the Presidency.

Delegations will find in section II below the text of these Articles. Amendments in relation to 15190/01 ASILE 60 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 I

#### SUBJECT-MATTER, DEFINITIONS AND SCOPE

##### Article 1

##### Subject-matter

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

##### 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" the application filed by a third country national or a stateless person **which can be understood as a request for** international protection from a Member State, under 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> **NL and S** : the proposal should also apply to other forms of international protection (e.g. subsidiary protection) and not only to asylum.

- (c) "applicant" or "applicant for asylum" a third country national or a stateless person who has made an application for asylum in respect of which a **positive decision or a negative decision allowing his expulsion** has not yet been taken [...] <sup>1</sup>;
- (d) "family members" means, [insofar as the family already existed in the country of origin], the following members of the applicant's family who are present in the same Member State in relation to the application for asylum: <sup>2</sup>
- (i) 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;
- (ii) the **minor** 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 as defined under the national law;

[...]

- (e) (deleted)<sup>3</sup>
- (f) "refugee" means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

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<sup>1</sup> **B, D, NL, I, FIN, S and UK** : amend this definition as follows :  
(c) "applicant" or "applicant for asylum" 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 national law have been exhausted.

**F** : do not refer to a decision by the Member States authorities, but say "as long as he may remain legally in the territory of the Member State".

**A** : scrutiny reservation.

<sup>2</sup> **F** : reservation regarding the inclusion of members of the asylum applicant's family in the scope of the Directive. Only children who are minors should be covered.

**A** : scrutiny reservation.

<sup>3</sup> **S** : scrutiny reservation on the deletion of this subparagraph ("accompanying family members").

- (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;
- (h) "Procedures" and "appeals", those established by Member States in their national law;<sup>1</sup>
- (i) "unaccompanied minors" means persons below the age of eighteen who arrive in 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;
- (j) "reception conditions" means the full set of measures that Member States grant to applicants for asylum in accordance with this Directive;
- (k) "material reception conditions" means the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;
- (l) "holding" means confinement of an applicant for asylum by a Member State within a restricted area, [...] where the applicant's freedom of movement is substantially curtailed;<sup>2</sup>
- (m) "accommodation centre" means any place used [...] for collective<sup>3</sup> housing of asylum applicants [and their family members];
- (n) "holding centre" means any place used for housing, in a holding situation, applicants for asylum [and their accompanying family members].

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<sup>1</sup> This provision would be modified when a Directive on procedures in Member States for granting and withdrawing refugee status is adopted by the Council.

<sup>2</sup> **S** : scrutiny reservation. Confinement should be possible only if a specific decision on the matter has been taken by the competent authority and not simply because a person was an asylum applicant.

**D** : say "where the applicant is deprived of his freedom of movement".

<sup>3</sup> **I** : delete the word "collective".

## Article 3

### Scope

1. This Directive shall<sup>1</sup> apply to all third-country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State [...].<sup>2</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.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.<sup>3</sup>
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.

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<sup>1</sup> **NL** : say "without prejudice to paragraphe 2, this Directive shall only apply to" (rest unchanged). Delete paragraph 2. Paragraph 3 becomes paragraph 2.

<sup>2</sup> **UK** : "This Directive shall apply to all asylum seekers who have made an application for asylum at the border or in the territory of a Member State and to their family members as defined in Article 2 d) who have the right to stay legally within that territory as asylum seekers."

**D 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 in the territory of the Member State, even if only for practical reasons.

**NL** : a distinction should be made depending on whether applications follow normal or accelerated procedures.

**F** : reservation. Exclude asylum application at the border from the scope. It was 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).

**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. Recalled the costs involved.

<sup>3</sup> **UK** : say : "This Directive shall not apply to applicants who are outside the territory of a Member State and lodge an application for asylum".

**Pres** : better leave the text as it stands and, if necessary, add "This Directive shall not apply to applicants who are outside the territory of a Member State, where it has no jurisdiction".

**Article 4**  
**More favourable provisions**

Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants for asylum and **other close relatives of the applicant who are present in the same Member State when they are dependant of him or for humanitarian reasons** insofar as **these provisions** are compatible with this Directive.<sup>1</sup>

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<sup>1</sup> A : scrutiny reservation linked to its reservation to Article 3.

## CHAPTER II

### GENERAL PROVISIONS ON RECEPTION CONDITIONS

#### Article 5

#### Information

1. Member States shall inform applicants for asylum [...], within a reasonable time not exceeding fifteen days<sup>1</sup> after they have lodged their application with the competent authority, of<sup>2</sup> any established benefits 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 groups of 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.

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 **may** also be supplied orally.

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<sup>1</sup> UK : delete the words "not exceeding fifteen days".

<sup>2</sup> D : add "at least".

## Article 6 Documentation

1. Member States shall ensure that, **within 3 days** after an application is lodged, the applicant [...] is provided with a document issued in their own name certifying their status as an applicant for asylum [...].<sup>1</sup>

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

2. Member States may exclude the application of this Article when the asylum applicant is being held and during the examination of an application submitted at the border or within the context of a procedure to decide on the right of the applicant to legally enter the territory of a Member State.
3. The document referred to in paragraph 1 must not necessarily certify the identity of the applicant for asylum.
4. 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.
5. Member States may provide applicants for asylum with a travel document when serious humanitarian reasons arise that require their presence in another State.

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<sup>1</sup> S : scrutiny reservation.

A: the document should clearly state that it does 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."



**Article 7**  
**Residence and freedom of movement<sup>1</sup>**

1. Applicants for asylum and their accompanying family members may move freely within the territory of the host Member State and be subject to no more restrictions than those that may be established under the **International** Conventions for the Protection of Human Rights [...].
2. Member States may make provision of the material reception conditions laid down in Chapter III subject to actual residence by the applicants [...] in a specific place, to be determined by the Member States by means of a decision which, where appropriate, may be of a general nature.<sup>2</sup>
3. Member States shall provide for the possibility of establishing temporary exemptions to the provision in paragraph 2, by granting applicants temporary permission to leave the place of residence when necessary for relevant personal or family reasons or for reasons relating to the examination of their application. Decisions on requests for such temporary permission shall be taken individually, objectively and impartially and reasons shall be given if they are negative.
4. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to those authorities as soon as possible.

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<sup>1</sup> **EL and A** : reservation.

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

**UK** : make clear that the obligation to report to police stations must be possible under this text.

Scrutiny reservation related to the possibility of decisions of a general nature.

**EL** : add a new paragraph after paragraph 2:

"Member States may decide on the residence of the applicant for asylum, especially for reasons of public interest, public order or where necessary for the swift processing of their application. Such a measure may be introduced by a general decision."

## Article 8

### Material reception conditions

Member States shall ensure that applicants [...] are provided with material reception conditions, in accordance with the provisions of Chapter III.

## Article 9

### Families

Member States shall as far as possible<sup>1</sup> take appropriate measures to maintain family unity of the family as present within their territory, if applicants are provided with housing by that Member State. The measures mentioned in this Article shall be implemented with the agreement of the applicants for asylum.<sup>2</sup>

## Article 10

### Health care

Member States shall ensure that applicants for asylum [...] have access to health care, including psychological and psychotherapeutic care, in accordance with the provisions of Chapter IV.<sup>3</sup>

## Article 11

### Medical screening

Member States may require medical screening for applicants **for asylum** on public health grounds. [...]<sup>4</sup>

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<sup>1</sup> **B** : delete the words "as far as possible".

**D** : say "as soon as possible".

<sup>2</sup> **UK** : add "and taking into account the best interest of the child".

<sup>3</sup> **UK** : scrutiny reservation.

<sup>4</sup> **D, F, NL and S** : scrutiny reservations.

**A** : add the possibility of medical screening to determine the age of minors.

**Article 12**  
**Schooling and education of minors<sup>1</sup>**

1. Member States shall ensure that minor children<sup>2</sup> of applicants for asylum and applicants for asylum who are minors have access to the education system<sup>3</sup> under the same conditions as nationals for so long as an expulsion measure against them or their parents **is not** actually enforced.

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 **to pursue** secondary education only by reason of the person concerned having reached the age of majority.

2. Access to the education system shall not be postponed for more than three months from the date the application has been lodged by the minor or the minor's parents. This period may be extended to one year 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 opportunities for appropriate special instruction, by means of other education arrangements, particularly where a lack of knowledge of the language of the host State makes normal schooling impossible.<sup>4</sup>

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<sup>1</sup> **UK** scrutiny reservation.

**A** : asked the Council Legal Service whether this subject may be dealt with in this Directive and if Articles 149 and 150 EC should not be added to the legal basis.

<sup>2</sup> **S** : add "and youth".

<sup>3</sup> **D** : delete the words "under the same conditions as nationals".

<sup>4</sup> **I** : scrutiny reservation.

**EL and P** : restore the text of the Commission proposal.

**NL** : add a new paragraph 4 :

"Member States may establish that access to education as mentioned in paragraph 1 may be specially addressed to minors referred to in paragraph 1 and offered in a language other than the one of the host State".

**Articles 13 and 14**  
**Employment and vocational training**

(The Chair announced that this subject would be dealt at the Strategic Committee. See doc. 5430/02 ASILE 2)

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