



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 February 2002**

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**Interinstitutional File:  
2001/0091 (CNS)**

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**6467/02**

**LIMITE**

**ASILE 11**

**PUBLIC**

**OUTCOME OF PROCEEDINGS**

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from : Working Party on Asylum

on : 20 February 2002

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No. prev. doc. : 5444/02 ASILE 3

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 20 February 2002, the Asylum Working Party examined Articles 1 to 12 (formerly 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 5444/02 ASILE 3 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> **A** : scrutiny reseration on the second sentence since it could cause problems in the event of a mass influx of displaced persons.

**NL, FIN and S** : the proposal should also apply to other forms of international protection (e.g. subsidiary protection) and not only to asylum. To this end **S** suggested deleting the words "under the Geneva Convention".

**UK** : say

- (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.
- [(c) "refugee" means a third country national or a stateless person who fulfils the requirements laid down by (Qualification Directive) and is not otherwise excluded from recognitions as such under this Directive.]
- [(d) "International protection" means refugee status + subsidiary protection status.]
- (e) "Application for international protection" means a request by a third country national or stateless person for protection that can be understood to be on the grounds that he has a well founded fear of being persecuted or otherwise suffering serious unjustified harm and is either a refugee or a person eligible for subsidiary protection according to [Qual Directive]. Any application for international protection is presumed to be an application for asylum unless a third country national on a stateless person explicitly requests another kind of protection that can be applied for separately.

- (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;<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:
- (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;
  - (iii) **(deleted)**<sup>2</sup>
- (e) "refugee" means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

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<sup>1</sup> **D** : add :  
"A final decision is a decision in respect of which all possible remedies under national law have been exhausted."

<sup>2</sup> **B** : reservation on the deletion of this subparagraph. Include other members of the family if they are dependent on the applicant or require special treatment.

- (f) "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;
- (g) "Procedures" and "appeals", those established by Member States in their national law;<sup>1</sup>
- (h) "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;
- (i) "reception conditions" means the full set of measures that Member States grant to applicants for asylum in accordance with this Directive;
- (j) "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;
- (k) "**detention**" 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;
- (l) "accommodation centre" means any place used for collective<sup>2</sup> housing of asylum applicants [...];
- (m) "**detention** centre" means any place used for housing, in a **detention** situation, applicants for asylum [...].

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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 (see Article 30 as set out in in 6253/02 ASILE 8).

<sup>2</sup> I : delete the word "collective".

## Article 3

### Scope

1. **This Directive shall apply to all third country nationals and stateless persons who made an application for asylum at the border or in the territory of a Member State as long as they are legally entitled to remain on the territory as applicants for asylum, as well as to the family members referred to by Article 2(d), if they are covered by this application for asylum according the national law.<sup>1</sup>**
2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.<sup>2</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.<sup>3</sup>

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<sup>1</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. Recalled the costs involved in the event of automatic provision of such material benefits.

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

**F** : clearly exclude from the scope asylum applications at the border.

<sup>3</sup> **D and NL** : exclude applicants who are "immediately rejected at the border".

**Cion** : in this event a definition of "immediately rejected at the border" should be provided.

**NL, FIN 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 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 on Article 3.  
**D** : delete the words "insofar as these provisions are compatible with this Directive".

## 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 **at least** 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 : scrutiny reservation.



## **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> **A:** 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

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.<sup>1</sup>

**Member States may decide on the residence<sup>2</sup> of the applicant for asylum, especially for reasons of public interest, public order or where necessary for the swift processing and effective monitoring of their application. Such a measure may be introduced by a general decision.<sup>3</sup>**

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>4</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> The Working Party requested the advice of the Council Legal Service on the drafting of this provision.

<sup>2</sup> **D** : say "stay" instead of "residence".

<sup>3</sup> **S** : reservation.

<sup>4</sup> **UK** : make clear that an obligation to report to police stations must be possible under this text.

## Article 8

### Families

Member States shall [...] take appropriate measures to maintain **as far as possible** family unity [...] 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.

## Article 9

### Medical screening

Member States may require medical screening for applicants [...] on public health grounds.<sup>1</sup>

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<sup>1</sup> **D and S** : scrutiny reservations.

**A** : add the possibility of medical screening to determine the age of minors, either here or in the future Directive on procedures for granting and withdrawing refugee status.

**Article 10**  
**Schooling and education of minors<sup>1</sup>**

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

**The Member State may stipulate that such access must be confined to the State education system.**

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. **When a Member State esteems that a minor within the meaning of paragraph 1 has deficiencies which make normal schooling impossible, particularly due to a lack of knowledge of the language of the host State, it may offer other education arrangements.<sup>3</sup>**

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

<sup>2</sup> S : add "and youths".

<sup>3</sup> NL : include the possibility for the Member State to offer such an education in a language other than the one of the host State.

**Articles 11**  
**Employment<sup>1</sup>**

1. **Member States shall determine a period of time,<sup>2</sup> starting from the date on which an application for asylum has been lodged, during which an applicant shall not have access to the labour market.**
  
2. **If a decision in first instance has not been taken one year after the presentation of an application for asylum and this delay cannot be attributed to the applicant,<sup>3</sup> Member States shall authorize access to the labour market for the applicant subject to the conditions laid down by the Member States.**
  
3. **For reasons of labour market policies, Member States may give priority to EU nationals and nationals of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals.<sup>4</sup>**

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<sup>1</sup> Delegations, while expressing a favourable opinion concerning this new wording, entered scrutiny reservations.

<sup>2</sup> **F and UK** : specify a concrete period of time, in order to ensure harmonisation.

<sup>3</sup> **S and Cion** : this wording leaves Member States too much discretion.

<sup>4</sup> **A** : add :

"More than one year after lodging an application for asylum, access to the labour market may no longer be denied to the asylum seeker solely on grounds of his status as applicant for asylum".

**L** : replace paragraph (3) by the following :

"Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified".

**L**, supported by **B, D and I** : add a new paragraph (4) on the following lines :

"By way of exception to the preceding paragraphs, access to the labour market may be refused if a negative first instance decision on the application for asylum is taken within nine months after the application has been lodged".

**Article 12**  
**Vocational training**

**Member States may allow applicants for asylum access to vocational training irrespective of whether the applicant has access to the labour market.**

**Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 11.<sup>1</sup>**

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<sup>1</sup> Text as agreed by a large majority of delegations at the Strategic Committee on immigration, frontiers and asylum on 28 and 29 January 2002.

**D** : scrutiny reservation.

**NL** : the first paragraph should read as follows:

"Member States shall not prohibit access to vocational training for applicants for asylum irrespective..."(rest unchanged).

It also requested reinsertion of the second paragraph which appeared in 5430/02 ASILE 2:  
"Member States may lay down the conditions of such access to vocational training".