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of : Permanent Representatives Committee

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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

Delegations will find attached under II the text of the above-mentioned proposal as it results from the discussions of the Permanent Representatives Committee on 10 April 2002.

Comments made by delegations are shown in footnotes. Changes to the text contained in room document ASILE 5/02 are in bold.

Draft

COUNCIL DIRECTIVE

laying down minimum standards for the reception of applicants for asylum

in Member States¹

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.

This Directive shall not apply when the provisions of Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof are applied.

¹ **NL and UK** : parliamentary scrutiny reservations.

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;

- (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;
- (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;
- (e) "refugee" means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

- (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;
- (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 particular place, where the applicant is deprived from his freedom of movement;
- (l) "accommodation centre" means any place used for collective housing of asylum applicants;

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 or in the territory of a Member State as long as they are allowed 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.
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.

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.

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 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.

Article 6 Documentation

1. Member States shall ensure that, within 3 days after an application is lodged with the competent authorities, the applicant is provided with a document issued in their own name certifying their status as an applicant for asylum or testifying that he or she is allowed to stay in the territory of the Member State while his or her application is pending or being examined.

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. **In specific cases, during the examination of an application, Member States may provide applicants with other equivalent evidence to the document referred to in paragraph 1.**¹
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.

¹ D: scrutiny reservation.

Article 7

Residence and freedom of movement

1. Applicants for asylum may move freely within the territory of the host Member State **or within an area assigned to them by a Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.**¹
2. Member States may decide on the residence² of the applicant for asylum for reasons of public interest, public order or when necessary for the swift processing and effective monitoring of their application.

Member States may confine an applicant, if need be, to a particular place in accordance with their national law.³

3. Member States may make provision of the material reception conditions laid down in this Chapter subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision which may be of a general nature, should be taken individually and established by national legislation.
4. Member States shall provide for the possibility of establishing temporary exemptions to the provisions in paragraphs 2 and 3, by granting applicants temporary permission to leave the place of residence. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

¹ **F, NL and S** : scrutiny reservations.

² **D** : in German say “Aufenthalt”.

³ **F** : scrutiny reservation.

5. 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.

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.

Article 10

Schooling and education of minors

1. The Member States shall grant to minor children of applicants for asylum and applicants for asylum who are minors access to the education system under similar conditions as nationals of the host Member State¹ for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

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 withdraw secondary education for the sole reason that the minor has 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.

¹ **B** : delete the words "under similar conditions as nationals of the host Member State".

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the child, the Member State may offer other education arrangements.

Articles 11

Employment¹

1. Member States shall determine a period of time, 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, Member States shall authorize access to the labour market for the applicant subject to the conditions laid down by the Member States.
3. 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.
4. 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.

¹ I : scrutiny reservation.

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.

Article 13

General rules

1. Member States shall ensure that material reception conditions are available to applicants when they make their application.
2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health and to enable the subsistence of applicants.

Member States shall ensure that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.

3. Member States may make the grant of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.
4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, when the applicants have sufficient resources, **for example if they have been working for a reasonable period of time.**

If it transpires that an applicant had sufficient means to cover these basic needs at the time when material reception conditions and health care were being provided, then Member States may ask these to refund.

5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions.

Where Member States provide material reception conditions in the form of allowances or vouchers, their amount shall be set in accordance with the principles set for in this Article.

Article 14

Modalities of material reception conditions

1. In the case housing is provided in kind, it should be granted in one or a combination of the following forms:
 - (a) in premises used for the purpose of housing applicants during the examination of an application lodged at the border;
 - (b) in accommodation centres which guarantee an adequate standard;
 - (c) in private houses, flats, hotels, or other premises adapted for housing applicants;
2. Member States shall ensure to applicants provided with the housing referred to in paragraph 1(a), (b) and (c):
 - (a) protection of their family life;
 - (b) the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) recognised by Member States.

Member States shall pay particular attention to the prevention of assault within the premises referred to in paragraph 1(a) and (b).
3. Member States shall ensure if appropriate 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.

4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. 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 adequately trained, and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work.
6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.
7. Legal advisors or counsellors of applicants for asylum and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by the Member State concerned shall be granted access to reception centres and other housing facilities in order to assist the said applicants. Limits on such access may only be imposed on grounds relating to the security of the facilities and of the applicants.
8. Member States may exceptionally set modalities of material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when :
 - an initial assessment of the specific needs of the applicant is required,
 - material reception conditions, as provided for in this Article, are not available in a certain geographical area,
 - housing capacities normally available are temporarily exhausted,
 - the applicant for asylum is in detention or confined to border posts.

These different conditions shall cover in any case the basic needs.

Article 15
Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness.

2. Member States shall provide necessary medical or other assistance to applicants who have special needs.

CHAPTER III
REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 16¹

Reduction or withdrawal of reception conditions

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

- (a) where an applicant for asylum
- abandons the place of residence determined by the relevant authority without informing it or, if requested, without permission, or
 - does not comply with reporting duties or requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or
 - has already lodged an application in the same Member State.²

When the applicant is traced or voluntarily reports to the relevant authority, 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;

- (b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.

If it transpires that an applicant had sufficient means to cover these basic needs at the time when material reception conditions were being provided, then Member States may ask these to refund.³

¹ S : scrutiny reservation linked to its reservation on Article 7.

² S : scrutiny reservation. Add "and there were reasons for such reduction or withdrawal".

³ NL : add a new subparagraph (c) :

"c) where another Member State can be held responsible for processing the application for asylum."

The Chair, in order to meet NL concerns, suggested saying that where another Member State can be held responsible for processing the application for asylum, minimum conditions in order to enable the subsistence of the asylum applicants must be ensured.

2. Member States may determine sanctions applicable to serious breaching of the rules of the places of accommodation as well as to seriously violent manner.
3. Decisions for reduction or withdrawal of reception conditions or sanctions referred to in paragraphs 1 and 2 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.
4. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.
5. Food, housing, emergency health care and health care that cannot be postponed shall not be reduced.¹

¹ **UK** : delete this paragraph.
Cion, in order to meet **UK** concerns, suggested saying that the subsistence of the applicant must be ensured in all cases.

CHAPTER IV
PROVISIONS FOR PERSONS WITH
SPECIAL NEEDS

Article 17

General principle

1. Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.
2. Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.

Article 18

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 for minor children who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when it is needed.

Article 19
Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship, or where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.

2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application has been lodged or is being examined, be placed:
 - (a) with adult relatives;
 - (b) with a foster-family;
 - (c) in reception centres with special provisions for minors;
 - (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or above in reception centres for adult asylum seekers.

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States, protecting the minor's best interests, 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 minor children shall have or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.

Article 20

Victims of torture and violence

Member States shall ensure that, if necessary, persons who have been subjected to torture, rapes or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts when needed.

CHAPTER V

APPEALS

Article 21

Appeals

1. Member States shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7¹ which individually affect applicants for asylum may be subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal before a judicial body shall be granted.
2. Procedures for access to legal assistance in such cases shall be laid down in national law.

¹ **UK** : delete the words "or decision taken under Article 7."
Cion, in order to meet **UK** concerns, suggested saying "or decisions on temporary exemptions taken under Article 7."

CHAPTER VI¹

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 22

Cooperation

Member States shall regularly 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.

Article 23

Guidance, monitoring and control system

Member States shall ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.²

¹ Former Articles relating to "Coordination" and "local communities" have been deleted. Their content will be placed in the preamble.

² **D** : scrutiny reservation.

Article 24
Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.

2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

CHAPTER VII
FINAL PROVISIONS

Article 25
Reports

By [one year after the date set up in Article 26(1)] 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 Article 22 [18 months after the date set out in Article 26(1)] 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.

Article 26
Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [within 24 months of its adoption] 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 relating to the enforcement of this Directive.

Article 27
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 28
Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President

Draft Statements to the Council Minutes

Re : Articles 2, 3(3) and 7(2)

The Council and the Commission state that after the entry into force of **the future** Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, and of **the future** Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, the Council, acting on a proposal from the Commission, shall **examine the necessary adaptations to the provisions of Articles 2, 3(3) and 7(2) second subparagraph and adapt them as necessary.**¹

Re : Article 3

The Council notes that, as far as **Austria** concerns, it considers that for all legal and practical purposes in connection with asylum matters the candidate countries will be considered as safe countries of origin at the latest after expiry of the time limit referred to under Article 26, paragraph 1 (24 months after adoption of the Directive); therefore concerning the scope of this Directive, Member States of the European Union may regard nationals of the candidate countries as equal to EU citizens.²

Re : Article 9

The Council states that questions concerning medical screening to determine the age of minors will be considered in the process of preparing the Directive on the procedures for granting or withdrawing of refugee status.

¹ **D, EL and F:** scrutiny reservations.

² **Cion:** reservation.