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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	10009/18 ADD 1
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Subject:	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) - Mandate for negotiations with the European Parliament

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1. In the context of the 2016 proposals for reforming the Common European Asylum System (CEAS), the Commission made a proposal for a Directive laying down standards for the reception of applicants for international protection (recast).
2. On 29 November 2017 COREPER adopted a negotiation mandate. On 20 June 2018, the Presidency submitted a provisional agreement that was reached with the rapporteur on this proposal to COREPER, which was, however, not in a position to confirm the provisional agreement.
3. Following the signing of the Roadmap, between the outgoing, current and the incoming Presidencies and the European Parliament on 7 September 2022, the Presidency cooperated closely with the European Parliament with a view to starting, as soon as possible, inter-institutional negotiations on the Eurodac and Screening Regulations and agree on the way forward on the other proposals, including this one.

4. At the SCIFA meeting on 29 November, most Member States expressed their support for the Presidency to include in the set of proposals on which negotiations with the European Parliament would start or resume soon the Qualification Regulation, the Resettlement Framework, the Reception Conditions Directive, the Eurodac Regulation and the Screening Regulation.
5. In the context of an overall agreement with the EP on moving these files forward, the opening of interinstitutional negotiations on the Eurodac Regulation and the Screening Regulation, which has been a priority for the majority of Member States, would imply accepting the provisional agreements on the Qualification Regulation, the Resettlement Framework and the Reception Conditions Directive that were reached in June 2018, as well as making a quick progress in the Council on the solidarity related files.
6. In that perspective COREPER should be invited to amend the negotiation mandates for these three proposals so that they correspond to the texts of the 2018 provisional agreements. In this way COREPER will indicate to the EP its readiness to move forward on these proposals.
7. It is to be noted that with regard to the Reception Conditions Directive certain provisions (including but not only cross-references to other legal instruments) still need to be finalised (at technical level) in order to complement the 2018 provisional agreement. The request to COREPER to amend the negotiation mandate for this file does not pertain to these provisions, which have been put between square brackets, but only to the text that was covered by the 2018 provisional agreement. Member States will be informed in due course of any changes to be made in the text of the draft directive not covered by the amendments of the mandate set out in the annex to this note.
8. This annex corresponds to the text of the 2018 provisional agreement reached with the European Parliament.

Text deleted from the Commission proposal is marked with [...].

9. Further to the discussions at SCIFA, the Presidency suggests that the future procedural steps by COREPER preparing the adoption of the Reception Conditions Directive will be taken in the context of an overall assessment on a progress in negotiations on all the files under the asylum and migration reform, including the files related to solidarity and responsibility, including the Eurodac and/or Screening Regulation. COREPER will however have the possibility to reassess the above in the future.
  10. On this basis, COREPER is invited to amend the mandate on the Reception Conditions Directive so that is based on the 2018 provisional agreement, as set out in Annex to this note, with the understanding that the procedural steps by COREPER preparing the adoption of the regulation will be decided in the context of the overall assessment, referred to in para 9 of this note.
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**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down standards for the reception of applicants for international protection (recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(f) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ,

Having regard to the opinion of the Committee of the Regions ,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) A number of amendments are to be made to Directive 2013/33/EU of the European Parliament and of the Council<sup>1</sup>. In the interests of clarity, that Directive should be recast.

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<sup>1</sup> Directive 2013/33/EU of the European Parliament and of the Council of 29 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

- (2) A common policy on asylum, which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to third country nationals and stateless persons who seek protection in the Union, thus affirming the principle of non-refoulement. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility.
- (3) The Common European Asylum System (CEAS) establishes a system for determining the Member State responsible for applicants for international protection and common standards for asylum procedures, reception conditions and procedures and rights of beneficiaries of international protection. Notwithstanding the progress that has been made in the development of the CEAS, there are still notable differences between the Member States with regard to the types of procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. Those disparities are important drivers of secondary movement and undermine the objective of ensuring that all applicants are equally treated wherever they apply in the Union.

- (4) In its Communication of 6 April 2016 entitled 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe',<sup>2</sup> the Commission underlined the need for strengthening and harmonising further the CEAS. It also set out priority areas for structurally improving the CEAS, namely the establishment of a sustainable and fair system for determining the Member State responsible for applicants for international protection, ~~to~~ the reinforcement of the Eurodac system, ~~to~~ the achievement of greater convergence in the Union asylum system, ~~to~~ the prevention of secondary movements within the Union and the development of an enhanced ~~a new~~ mandate for the European Union Agency for Asylum. This answers to calls by the European Council on 18-19 February 2016<sup>3</sup> and on 17-18 March 2016<sup>4</sup> to make progress towards reforming the Union's existing framework so as to ensure a humane, fair and efficient asylum policy. The Communication also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report “The situation in the Mediterranean and the need for a holistic EU approach to migration” of 12 April 2016.
- (5) Reception conditions continue to vary considerably between Member States in particular as regards the standards provided to applicants. More harmonised reception standards set at an adequate level across all Member States will contribute to more equal treatment and fairer distribution of applicants across the Union.

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<sup>2</sup> COM(2016) 197 final.

<sup>3</sup> EUCO 19.02.2016, SN 1/16.

<sup>4</sup> EUCO 12/1/16.

- (6) The resources of the Asylum, Migration and Integration Fund and of the European Union Agency for Asylum should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in this Directive, including to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (7) In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants. It is necessary to clarify that material reception conditions should be made available to applicants as from the moment when the person expresses his or her wish to apply for international protection to officials of the competent authorities in accordance with Regulation (EU) No XXX/XXX [Asylum Procedures Regulation].
- (7a) A daily expenses allowance should in all cases be provided to applicants as part of the material reception conditions in order for them to enjoy a minimum degree of autonomy in their daily life. The daily expenses allowance may be provided in the form of a monetary amount, vouchers, or in kind, for example in products, or a combination of any of the three, provided that such an allowance includes a monetary amount.

- (8) Where an applicant is present in another Member State from the one in which he or she is [required/obliged] to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], the applicant should not be entitled to material reception conditions, access to the labour market, language courses and vocational training in accordance with this Directive from the moment the applicant has been notified of a decision to transfer him or her to the Member State responsible. Unless a separate decision has been issued to this effect, the transfer decision should state that the relevant reception conditions have been withdrawn. Member States should however in all circumstances ensure access to health care and a standard of living for applicants which is in accordance with Union law, including the Charter of Fundamental Rights of the European Union and other international obligations.
- (9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.
- (10) Standard conditions for the reception of applicants that will suffice to ensure them an adequate standard of living and comparable living conditions in all Member States should be laid down. The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.
- (11) In order to ensure that applicants are aware of their rights and obligations, Member States should provide them with information relating to the reception conditions set out in this Directive.

The information should include the reception conditions to which applicants, including applicants with special reception needs, are entitled, employment rights and obligations, the circumstances under which the granting of material reception conditions may be restricted or limited to a geographical area and the consequences of absconding and not complying with such restrictions or limitations, as well as the situations in which detention may be ordered, including possibilities for appeal and review. Member States should, in particular, inform applicants of the reception conditions that they are not entitled to in any Member State other than the one in which they are required to be present.

The information should be considered no longer needed notably where it is no longer necessary to effectively enable the applicant to benefit from the rights and comply with the obligations provided for by this Directive, or where he or she is not available to the competent authorities, or is no longer on the territory of the Member State.

- (12) Harmonised Union rules on the documents to be issued to applicants should contribute to making it more difficult for applicants to move in an unauthorised manner within the Union. Member States should only be able to provide applicants with a travel document only when duly justified serious humanitarian reasons or other imperative reasons arise. The validity of travel documents should also be limited to the purpose and duration needed for the reason for which they are issued. Serious humanitarian reasons could for instance be considered when an applicant needs to travel to another State for necessary medical treatment which is not available within the Member State or to visit relatives in particular cases, such as for visits to close relatives who are seriously ill, to attend funerals of close relatives. Other imperative reasons could include situations such as attending marriages of close relatives, travelling as part of a study curriculum, or with foster families. The issuance and use of such a travel document does not affect the Member States' responsibilities under the Regulation (EU) No XXX/XXX [...] (Dublin Regulation [...]). Member States retain the right to assess applicants' rights to stay in their territory.

- (13) Applicants do not have the right to choose the Member State of application. An applicant must apply for international protection in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation]. Appropriate measures should be taken to avoid that the applicant absconds.
- (14) Applicants are required to remain available to the relevant authorities of the Member States. Where an applicant has absconded and has travelled to another Member State without authorisation, it is vital, for the purpose of ensuring a well-functioning Common European Asylum System that the applicant is swiftly transferred to the Member State where he or she is required to be present. Until such a transfer has taken place, there is a risk that the applicant may abscond and his or her whereabouts should therefore be closely monitored.
- (15) The fact that an applicant has previously absconded to another Member State is an important factor when assessing the risk that the applicant may abscond. To ensure that the applicant does not abscond again and remains available to the competent authorities, once the applicant has been transferred to the Member State where he or she is required to be present, his or her whereabouts should therefore be closely monitored. Appropriate measures should be taken to avoid that the applicant absconds again.
- (15a) Member States should be able to freely organise their reception systems. As part of this normal organisation, Member States should be able to allocate applicants to accommodations within their territory for reasons of management of their asylum and reception systems. Member States are not required to adopt an administrative decision for this purpose. Member States could also put in place mechanisms for assessing the needs of their reception systems, including mechanisms for verifying applicants' actual presence in the accommodations. Such mechanisms should not restrict the applicants' freedom of movement within the territory of the Member State.

- (15b) Where applicants could move freely only within a geographical area of the Member States' territory, Member States should guarantee the applicants' access to benefits under this Directive and the procedural guarantees in the asylum procedure within this geographical area. The possibility to temporarily leave the geographical area should be assessed individually, objectively and impartially. If the applicant does not have effective access to his or her rights under this Directive in the geographical area, the allocation in this area no longer applies.
- (16) For reasons of public order or in order to effectively prevent the applicant from absconding, Member States could decide that the applicant should reside in a specific place, such as an accommodation centre, a private house, flat, hotel or other premises adapted for housing applicants. A designation to reside in a specific place should not result in the detention of the applicant. Such a designation could be necessary in cases where the applicant has not complied with the obligations to remain in the Member State where he or she is required to be present, or in cases where the applicant has been transferred to the Member State where he or she is required to be present after having absconded to another Member State. Where the applicant is entitled to material reception conditions, such material reception conditions should be provided subject to the applicant residing in this specific place.
- (17) Where there is a risk that an applicant may abscond or where it is necessary to ensure that restrictions to an applicants' freedom of movement are respected, Member States could require applicants to report to the competent authorities at a specified time or at reasonable intervals without disproportionately affecting their rights under this Directive.

- (18) All decisions restricting an applicant's freedom of movement should take into account relevant aspects of the individual situation of the person concerned, including any special reception needs of applicants and the principles of necessity and proportionality. Applicants should be duly informed of such decisions and of the consequences of non-compliance.
- (18a) All provisions under this Directive relating to detention, residence and reporting obligations as well as reduction and withdrawal of rights or benefits must be applied with due regard to the principle of proportionality, ensuring at all times effective access to the applicable reception conditions in accordance with this Directive, in particular with regard to health care, education, family unity and access to the labour market. Particular attention should be paid to the possible cumulative effect of measures.
- (19) In view of the serious consequences for applicants who have absconded or who are considered to be at risk of absconding, the meaning of absconding should be defined in view of encompassing both a deliberate action and the factual circumstance, which is not beyond the applicant's control, of not remaining available to the relevant authorities, such as by leaving the territory where the applicant is required to be present. Member States may consider that an applicant has absconded even if the applicant has previously not been considered as being at risk of absconding.
- (19-a) When Member States define in national law the objective criteria that are relevant for determining a risk of absconding under this directive, they could consider factors such as the applicant's cooperation with competent authorities or compliance with procedural requirements; the applicant's links in the Member State; and whether the asylum application has been rejected as inadmissible or manifestly unfounded. In the overall assessment of an individual's situation, a combination of several factors frequently provides the basis for concluding that there is a risk of absconding.

- (19a) An applicant should be considered as not being anymore available where he or she fails to respond to requests relating to the procedures under Regulation (EU) No XXX/XXX [Asylum Procedures Regulation] or the procedure under Regulation (EU) No XXX/XXX [Dublin Regulation] unless the applicant provides adequate justification as to why he or she was unable to respond to those requests, for example in case of medical or other unexpected reasons which are beyond his or her control.
- (20) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under the very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both the manner and the purpose of such detention. Detention of applicants pursuant to this Directive should only be ordered in writing by judicial or administrative authorities stating the reasons on which it is based, including in the cases where the person is already detained when making the application for international protection. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy and the right to free legal assistance and representation, where applicable.

- (20a) An acceptable maximum timeframe for for judicial review of detention must be determined in the light of the circumstances of each case, taking into account the complexity of the procedure, as well as the diligence shown by the authorities, any delay caused by the detained person and any other factors causing delay that do not engage the Member State's responsibility.
- (21) Where an applicant has been designated to reside in a specific place but has not complied with this obligation, there still needs to be a risk that the applicant could abscond in order for the applicant to be detained. In all circumstances, special care should be taken to ensure that the length of the detention is proportionate and that it ends as soon as the obligation put on the applicant has been fulfilled or there are no longer reasons for believing that he or she will not fulfil this obligation. The applicant should also have been made aware of the obligation in question and of the consequences of non-compliance.
- (22) With regard to administrative procedures relating to the grounds for detention, the notion of 'due diligence' at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention should not exceed the time reasonably needed to complete the relevant procedures.
- (23) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national's or stateless person's application for international protection.

- (24) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 24 of the Charter of Fundamental Rights of the European Union and Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied.
- (24a) Minors should, as a rule, not be detained but be placed in accommodation with special provisions for minors, including where appropriate in non-custodial, community-based placements. Given the negative impact of detention on minors, such detention could be used, in line with Union law, exclusively in exceptional circumstances, where strictly necessary, only as a last resort, for the shortest time possible, and never in prison accommodation or any other facility destined for law enforcement purposes. Minors should not be separated from their parents or care givers, and the principle of family unit should generally lead to the use of adequate alternatives to detention for families with minors, in accommodation suitable for them. Moreover, everything possible must be done to ensure that a viable range of adequate alternatives to detention of minors is available and accessible. In this context, Member States should take into account the New York Declaration for Refugees and Migrants of 19 September 2016, relevant authoritative guidance by United Nations' Treaty bodies on the United Nations Convention on the Rights of the Child, as well as as relevant case-law.
- (25) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. However, any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned.

- (26) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non- custodial alternative measures to detention have been duly examined. The obligation to examine alternative measures should not prejudice the use of detention where such alternative measures, including residence and reporting obligations, cannot be applied effectively. Any decision imposing detention should state the reasons why other less coercive alternatives could not be applied effectively. Any alternative measure to detention should respect the fundamental human rights of applicants.
- (27) In order to ensure compliance with the procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.
- (28) When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of any applicant who is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State.
- (28a) Member States should be able to resort to temporary housing solutions of a lower standard where the normally available housing capacities are temporarily exhausted. They should also be able to do so if due to a disproportionate number of persons to be accommodated or due to a natural or man-made disaster the normally available housing capacities are temporarily unavailable. Member States should consider providing such temporary housing solutions in fixed building structures to the extent possible.

- (29) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs. Member States should also ensure, as far as possible, the prevention of assault and violence, including with a sexual, gender, racist or religious motive when providing housing. Violence with a religious motive also entails violence directed towards non-believers and apostates.
- (30) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms and, where applicable, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- (30-a) Reception conditions need to be adapted to the specific situation of minors and their special reception needs, whether unaccompanied or within families, with due regard to their security, including against sexual and gender-based violence, physical and emotional care and provided in a manner that encourages their general development. Minors should, as a rule, not be detained. In exceptional circumstances, as a measure of last resort, after it has been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in their best interests, minors could be detained in limited circumstances in accordance with this Directive.

- (30-aa) The communication of the Commission of 12 April 2017 entitled ‘The protection of children in migration’ provides that Member States should put in place appropriate safeguards to protect all children in migration present on their territory, including by adopting of measures to ensure that children are provided with safe and appropriate accommodation as well as necessary support services to secure their best interests and wellbeing, in accordance with the Member States’ obligations arising from national, Union and international law.
- (30-ab) In particular representatives play a crucial role in guaranteeing access to the rights and in safeguarding the best interests of all unaccompanied migrant children. The early appointment of representatives is essential for tackling the phenomenon of migrant children going missing in the Union. Member States should ensure that representatives are appointed as early as possible, in line with the United Nations Convention on the Rights of the Child, to ensure that the unaccompanied children benefit fully from their rights as applicants for international protection granted under this Directive.
- (30a) The main role of a representative should be to guarantee the best interest of the child and represent, assist or where applicable act on behalf of an unaccompanied minor. The representative should, among other possible tasks, be able to further explain information provided to the unaccompanied minor, liaise with the authorities responsible for reception conditions to ensure immediate access for him or her to material reception conditions and health care and represent, assist or where applicable, in accordance with national law, act on behalf of an unaccompanied minor to ensure that he or she benefits from the rights and complies with the obligations under this Directive. Representatives should be designated in accordance with the procedure defined by national law.

- (30ab) A representative should be designated where an application is made by a person who claims to be a minor, who is unaccompanied. A representative should also be designated in cases where the responsible authorities have objective grounds to believe that the person is a minor in view of relevant signs. On the other hand, in cases where a Member State has assessed that a person who claims to be a minor is without any doubt above the age of eighteen years, a representative need not be designated.
- (30b) Until the representative is designated, Member States should designate a person suitable to provisionally act as a representative under this Directive. This person might be for example an employee of a reception centre, of a child care facility, of social services, or of another relevant organisation designated to carry out this task. Persons whose interest conflict or could potentially conflict with those of the unaccompanied minor should not be designated to provisionally act as a representative. It is also important that this person is immediately informed when an application is made by an unaccompanied minor.
- (31) Member States should ensure that applicants receive the necessary health care, whether provided by generalists or, where needed, specialist practitioners. The necessary health care should be of an adequate quality and include, at least, emergency care and essential treatment of illnesses, including of serious mental disorders and necessary sexual and reproductive health care which is essential to address a serious physical condition. To respond to public health concerns with regard to disease prevention and safeguard the health of individual applicants, applicants' access to health care should also include preventive medical treatment, such as vaccinations. Member States may also require medical screening for applicants on public health grounds. The results of medical screening should not influence the assessment of applications for international protection, which should always be carried out objectively, impartially and on an individual basis in line with Regulation (EU) No XXX/XXX [Asylum Procedures Regulation].

- (32) An applicant's entitlement to material reception conditions under this Directive may be curtailed, in certain circumstances such as where an applicant has absconded to another Member State from the Member State where he or she is required to be present. However, Member States should in all circumstances ensure access to health care and a standard of living for applicants which is in accordance with Union Law, including the Charter of Fundamental Rights of the European Union and other international obligations, including the United Nations Convention on the Rights of the Child. Member States should in particular provide for the applicant's subsistence and basic needs, both in terms of physical safety and dignity and in terms of interpersonal relationships, with due regard to the inherent vulnerabilities of the person as applicant for international protection and that of his or her family or caretaker. Due regard should also be given to applicants with special reception needs. The specific needs of children, in particular with regard to respect for the child's right to education and access to healthcare have to be taken into account. The specific needs of applicants who have experienced sexual or gender-based violence, in particular women, should be taken into account, including via ensuring access, at different stages of the asylum procedure, to medical care, legal support, and to appropriate trauma counselling and psycho-social care.
- (32a) The specific needs of children, in particular with regard to respect for the child's right to education and access to healthcare have to be taken into account. Minor children of applicants and applicants who are minors should be granted the same access to education as Member States' own nationals and under similar conditions. This entails that access need not be provided during school holidays. Their education should as a rule be integrated with that of Member States' own nationals and be of the same quality. Member States should also make every effort to ensure the continuity of their education for so long as an expulsion measure against them or their parents is not actually enforced.

- (33) In light of the Charter of Fundamental Rights of the European Union and the European Convention of Human Rights and relevant case-law, and in order not to discriminate family members on the basis of where the family member was formed, the notion of family should also include those formed outside the country of origin, but before their arrival on the territory of the European Union.
- (34) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market and to ensure that such access is effective, by not imposing conditions that effectively hinder an applicant from seeking employment and by not unduly restricting access to specific sectors of the labour market, working time or by setting unreasonable administrative formalities. Applicants who have effective access to the labour market and have been designated to a specific place of residence should be able to seek employment within a reasonable distance from this place. Where required by an applicant's work contract, Member States may allow the applicant to leave the territory to carry out specific work tasks in another Member State in accordance with national law. Labour market tests used to give priority to nationals or to other Union citizens or to third-country nationals legally resident in the Member State concerned should not hinder effective access for applicants to the labour market and should be implemented without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the applicable Acts of Accession.
- (34a) Access to the labour market entitles the applicant to seek employment. Member States may also allow applicants to be self-employed.

- (35) In order to increase integration prospects and self-sufficiency of applicants, earlier access to the labour market is encouraged where the application is likely to be well-founded, including when its examination has been prioritised in accordance with Regulation (EU) No XXX/XXX [Procedures Regulation]. Member States should therefore consider reducing that time period as much as possible in cases where the application is likely to be well-founded. Access to the labour market should not be granted, or, if already granted, should be withdrawn where an applicant's application for international protection is likely to be unfounded and for which therefore an accelerated examination procedure is applied, including in cases where the applicant withholds relevant information or documents with respect to his or her identity.
- (36) Once applicants are granted access to the labour market, they should be entitled to a common set of rights based on equal treatment with nationals. Working conditions should cover at least pay and dismissal, health and safety requirements at the workplace, working hours, leave and holidays, taking into account collective agreements in force. Such applicants should also enjoy equal treatment as regards freedom of association and affiliation, education and vocational training, the recognition of professional qualifications and, with regard to employed applicants, social security. Member States may grant equal treatment also to applicants who are self-employed. Member States should thus use their best endeavours to avoid exploitation of applicants or any form of discrimination against them in the workplace by means of undeclared work practices and other forms of severe labour exploitation.

- (37) Once applicants are granted access to the labour market, a Member State should recognise professional qualifications acquired by an applicant in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and of the Council. Measures should also be considered with a view to effectively addressing the practical difficulties encountered by applicants concerning the authentication of their foreign diploma, certificates or other evidence of formal qualifications, in particular where applicants cannot provide documentary evidence and cannot meet the costs related to the recognition procedures.
- (38) The definition of branches of social security used in Article 3, paragraphs 1 and 2 of Regulation (EC) No 883/2004 of the European Parliament and of the Council should apply.
- (39) Due to the possibly temporary nature of the stay of applicants and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council, Member States should be able to exclude social security benefits which are not dependent on periods of employment or contributions from equal treatment between applicants and their own nationals. Member States should also be able to restrict the application of equal treatment in relation to education and vocational training and the recognition of formal qualifications. In addition, the right to freedom of association and affiliation may be limited by excluding applicants from taking part in the management of certain bodies and from holding a public office.
- (40) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.

- (40a) Language skills are important to ensure that applicants have an adequate standard of living. It also constitutes a deterrent against secondary movements. Member States should therefore ensure or facilitate access to such courses to the extent they consider appropriate to help enhance an applicant's ability to act autonomously and interact with competent authorities.
- (40b) The right to equal treatment should not give rise to rights in relation to situations which lie outside the scope of Union law.
- (41) To ensure that the material reception conditions provided to applicants comply with the principles set out in this Directive, it is necessary to further clarify the nature of those conditions, which should include not only housing, food and clothing but also personal hygiene products. It is also necessary that Member States determine the level of material reception conditions provided in the form of financial allowances or vouchers on the basis of relevant references applied to ensure adequate standard of living for nationals, such as, depending on the national context, minimum income benefits, minimum wages, minimum pensions, unemployment benefits and social assistance benefits. That does not mean that the amount granted to applicants should be the same as for nationals. Member States should be able to grant less favourable treatment to applicants than to nationals as specified in this Directive. Member States should also have the possibility to adapt the level of financial allowances or the vouchers granted to applicants in the region referred to in Article 349 of TFEU, as long as the standard of reception conditions provided for in this Directive is ensured.

(42) In order to restrict the possibility of abuse of the reception system, Member States should be able to provide material reception conditions only to the extent applicants do not have sufficient means to provide for themselves. Member States should be able to require applicants with sufficient means to cover or contribute to the cost of the material reception conditions, including through financial guarantees and refunds. Applicants may be considered as having sufficient means to provide for themselves for example if they have been working for a reasonable period of time. Applicants should not be required to take out loans to pay for reception conditions. When assessing the resources of an applicant and requiring an applicant to cover or contribute to the material reception conditions, Member States should observe the principle of proportionality and take into account the individual circumstances of the applicant and the need to respect his or her dignity or personal integrity, including the applicant's special reception needs. Applicants should not be required to cover or contribute to the costs of their necessary health care where the healthcare is provided free of charge to nationals.

- (42a) The possibility of abuse of the reception system should also be restricted by specifying the circumstances in which material reception conditions may be reduced or withdrawn. Member States should be able to reduce or withdraw the daily expenses allowance or, where duly justified and proportionate, reduce other material reception conditions where certain conditions are met, including where the applicant does not cooperate with the competent authorities or does not comply with the procedural requirements set by them. This should apply in particular where an applicant fails to attend fixed appointments or comply with reporting duties for reasons which are not beyond his or her control; fails to lodge his or her application in accordance with the requirements of the Asylum Procedures Regulation despite having had an effective opportunity to do so; or fails to respect requests to provide information in order to facilitate the identification process, including by refusing to provide biometric data or necessary contact information or by refusing to co-operate during medical screening procedures. Member States should also, where duly justified and proportionate, be able to withdraw material reception conditions in cases where the applicant has seriously or repeatedly breached the rules of the accommodation centre or behaved in a violent or threatening manner in the accommodation centre. Member States should always ensure a minimum standard of living for all applicants in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations, taking into account applicants with special reception needs and the best interests of the child.
- (42b) Member States should be able to apply other sanctions, including disciplinary measures in accordance with the rules of the reception centre, in as far as these sanctions and measures are not contrary to the Directive.

- (43) Member States should put in place appropriate guidance, monitoring and control of their reception conditions. In order to ensure comparable reception conditions, Member States should be required to take into account, in their monitoring and control systems, available non binding operational standards, indicators, guidelines and best practises regarding reception conditions developed by the European Union Agency for Asylum. As long as the material reception conditions provide for an adequate standard of living, conditions in premises for housing applicants could be considered appropriate even if they differ from one facility to the other. The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured, including through the European Union Agency for Asylum network on reception authorities.
- (44) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
- (45) Experience shows that contingency planning is needed to ensure to the extent possible adequate reception of applicants in cases where Member States are confronted with a disproportionate number of applicants for international protection. Whether the measures envisaged in Member States' contingency plans are adequate should be monitored and assessed. Contingency planning is an integral part of the Member States' planning processes and should not be seen as an exceptional activity.

- (45a) The European Union Agency for Asylum shall assist Member States to prepare and review their contingency plans, with the agreement of the Member States concerned. A contingency plan should consist of a comprehensive set of measures that are necessary in order to deal with a possible disproportionate pressure on the Member States' reception systems, and to enhance the efficiency of those systems. For the purpose of this Directive, a situation of disproportionate pressure may be characterised by a sudden and massive influx of third-country nationals to the extent that the influx places extreme burden even on a well-prepared reception system. To achieve greater preparedness for such a situation, the template developed by the European Union Agency for Asylum should include guidance on how to identify possible scenarios, impacts, actions and available resources.
- (46) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.
- (47) Member States are invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that provided for under Regulation (EU) No XXX/XXX [Qualification Regulation].
- (48) The implementation of this Directive should be evaluated at regular intervals. Member States should provide the Commission with the necessary information in order for the Commission to be able to fulfil its reporting obligations.

- (49) Since the objective of this Directive, namely to establish harmonised standards for the reception conditions of applicants in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (50) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011<sup>5</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (51) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this *Directive*]

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<sup>5</sup> OJ C 369, 17.12.2011, p. 14.

(51) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

OR

(51) [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this *Directive* and is not bound by it or subject to its application.

(52) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this *Directive*.]

OR

(51) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this *Directive*.

- (52) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this *Directive* and is not bound by it or subject to its application.]
- (52) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (53) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.
- (54) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (55) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Annex I.

HAVE ADOPTED THIS DIRECTIVE:

# CHAPTER I

## SUBJECT-MATTER , DEFINITIONS AND SCOPE

### Article 1

#### *Purpose*

This Directive lays down standards for the reception of applicants for international protection ('applicants') in Member States.

### Article 2

#### *Definitions*

For the purposes of this Directive , the following definitions apply:

- [(1) 'application for international protection' or 'application' : means [...] a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status;]
- [(2) 'applicant': means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;]
- (3) 'family member' means, in so far as the family already existed before the applicant arrived on the territory of the Member States, the following members of the family of the applicant's family who are present on the territory of the same Member State during the procedure for international protection:

- (a) the spouse of the applicant or his/her unmarried partner in a stable relationship, where the law or the practice of the Member State concerned treats unmarried couples as equivalent to married couples;
- (b) the minor and adult dependent children of the couples referred to in point (a) or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as provided for under national law;
- (c) where the applicant is minor or unmarried, the father, mother or another adult responsible for that applicant, including an adult sibling, whether by law or by practice of the Member State concerned.

For the purpose of points (b) and (c), on the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage would not be in accordance with the relevant national law had it been contracted in the Member State concerned, in particular having regard to the legal age of marriage.

- (4) ‘minor’: means a third-country national or stateless person below the age of 18 years;
- (5) ‘unaccompanied minor’: means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (6) ‘reception conditions’: means the full set of measures that Member States grant to applicants in accordance with this Directive;

- (7) 'material reception conditions': means the reception conditions that include housing, food, clothing and personal hygiene products provided in kind, or as financial allowances or in vouchers, or a combination of the three as well as a daily expenses allowance;
- (7a) 'daily expenses allowance': means an allowance provided to applicants periodically for them to enjoy a minimum degree of autonomy in their daily life in the form of a monetary amount, ~~or~~ vouchers, or in kind, for example in products, or a combination of any of the three, provided that such an allowance includes a monetary amount.
- (8) 'detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;
- (9) 'accommodation centre': means any place used for the collective housing of applicants;
- (10) 'risk of absconding': means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria defined by national law to believe that an applicant may abscond;
- (11) 'absconding': means the action by which an applicant does not remain available to the competent administrative or judicial authorities, such as by leaving the territory of the Member State without authorisation from the competent authorities for reasons which are not beyond the applicant's control;

- (12) 'Representative' means a person or an organisation, including a public authority designated by the competent authorities or bodies, with the necessary skills and expertise, including regarding the treatment and specific needs of minors, to represent, assist and act on behalf of an unaccompanied minor, as applicable, in order to safeguard his or her best interests and general well-being and so that the unaccompanied minor can benefit from the rights and comply with the obligations under this Directive.
- (13) 'applicant with special reception needs': means an applicant who is in need of special conditions or guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive;

### Article 3

#### *Scope*

1. This Directive applies to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the external border, in the territorial sea or in the transit zones of the Member States, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.
2. This Directive does not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. [...]
4. 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 [Qualification Regulation].

Article 4

*More favourable provisions*

Member States may introduce or retain more favourable provisions as regards reception conditions for applicants as well as family members and other close relatives of applicants who are present in the same Member State when such family members and other close relatives are dependent on the applicants, or for humanitarian reasons, insofar as those provisions are compatible with this Directive.

**CHAPTER II**

**GENERAL PROVISIONS ON RECEPTION CONDITIONS**

Article 5

*Information*

1. Member States shall provide applicants with information relating to the reception conditions set out in this Directive, including information specific to the Member State's national system as soon as possible, and in good time to effectively enable applicants to benefit from those rights and comply with those obligations.

Member States shall provide applicants with a standard information template relating to reception conditions set out in this Directive as soon as possible and no later than three days from the making of the application or within the timeframe for its registration in accordance with the Regulation No XXX/XXX [Asylum Procedure Regulation]. Such a standard template shall be developed by the European Union Agency for Asylum in accordance with [Article 12 of Regulation (EU) XXX/XXX (EUAA Regulation)].

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and representation, including free of charge, and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is provided in writing in a concise, transparent, intelligible and easily accessible form, using clear and plain language and in a language that the applicant understands or is reasonably supposed to understand. Where necessary, this information shall also be supplied orally or, if appropriate, in a visual form such as through videos or pictograms, and shall be adapted to the applicant's needs.

In the case of unaccompanied minors, Member States shall provide information in an age-appropriate manner, using, as appropriate, information materials specifically adapted to minors and in such a way as to ensure that the minor understands it. The information shall be provided in the presence of his or her representative or of the person suitable to provisionally carry out the tasks of the representative until the representative is designated.

In exceptional cases, where a Member State is not able to provide the information referred to in paragraph 1 in writing in view of the rare language that an applicant understands or is reasonably supposed to understand, the information may be provided by means of oral translation and, where appropriate, in a visual form by, for instance, using videos or pictograms, subject to the applicant's confirmation that such information has been understood. In such cases, the Member State shall as soon as possible obtain the information referred to in paragraph 1 in writing and provide it to the applicant, except where it is clear that it is no longer needed.

## Article 6

### *Documentation*

1. Member States shall ensure that the applicant is provided with the documents set out in [Article 29 of Regulation (EU) XXX/XXX (Asylum Procedures Regulation)].
  - 1a. Member States shall not require applicants to provide unnecessary or disproportionate documentation or impose other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive, for the sole reason that they are applicants for international protection or on the sole basis of their nationality.
2. Member States may provide applicants with a travel document only when serious humanitarian reasons or other imperative reasons arise that require their presence in another State. The validity of the travel document shall be limited to the purpose and duration needed for the reason for which it is issued.

## Article 6a

### *Organisation of reception systems*

1. Member States may freely organise their reception systems in accordance with this Directive. Applicants may move freely within the territory of the Member State.
2. Member States may allocate applicants to accommodations within their territory for reasons of management of their asylum and reception systems. Such allocation shall ensure that all applicants effectively benefit from their rights under this Directive.
3. When allocating or re-allocating applicants to accommodations, Member States shall take into account objective factors, including family unity in accordance with Article 12 and applicants' special reception needs.
4. The provision of material reception conditions by Member States may be made subject to the actual residence by the applicants in the accommodations to which they have been allocated in accordance with paragraph 2.
5. Member States may also put in place mechanisms to assess and address the needs of their reception systems, including mechanisms for the specific purpose of verifying applicants' actual presence in the accommodations.
6. Member States shall require applicants to inform the competent authorities of their current address, a telephone number where they may be reached and, if available, an electronic mail address. Member States shall also require applicants to notify any change of address, telephone number or electronic mail address to such authorities as soon as possible.
7. Member States shall not be required to adopt administrative decisions for the purpose of this Article.

Article 6b

*Allocation of applicants to a geographical area*

1. Member States may allocate applicants to a geographical area within their territory in which they are able to move freely, [for the duration of the asylum procedure in accordance with the Asylum Procedure Regulation].
2. Allocation in accordance with paragraph 1 may only be applied for the purpose of ensuring swift, efficient and effective processing of applications in accordance with the Asylum Procedure Regulation or geographic distribution of applicants, taking into account the capacities of the geographical areas.

Member States shall inform applicants in accordance with Article 5 about their allocation to a geographical area, including about the geographical boundaries of this area.

3. Member States shall guarantee that applicants have effective access to their rights under this Directive and the procedural guarantees in the asylum procedure in the geographical area to which they are allocated. To that end, the geographical area shall be sufficiently large, allow access to necessary public infrastructure and shall not affect the applicants' unalienable sphere of private life.
4. Member States shall not be required to adopt administrative decisions for the purpose of paragraph 1 of this Article.

5. Member States shall, upon request of the applicant, grant him or her permission to temporarily leave the geographical area for duly justified urgent and serious family reasons, or necessary medical treatment which is not available within the geographical area.

Where an applicant leaves the area without permission, a Member State may not apply other sanctions than those provided for under this Directive.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary. The applicant shall notify the competent authorities in advance of such appointments.

6. Where it has been established, including as a consequence of an applicant's request for review or appeal in accordance with Article 25, that an applicant has not been granted effective access to his or her rights under this Directive or the procedural guarantees in the asylum procedure within the geographical area, his or her allocation to this area no longer applies.
7. Before applying this Article, the Member State concerned shall lay down the conditions for its application in national law and inform the Commission and the European Union Agency for Asylum in accordance with Article 31.

## Article 7

### *Restrictions of freedom of movement*

1. Where necessary, Member States may decide that an applicant is only allowed to reside in a specific place that is adapted for housing applicants, for reasons of public order or to effectively prevent the applicant from absconding, where there is a risk of absconding, in particular when it concerns:
  - applicants who are required to be present in another Member State in accordance with [Article 4(2a) of Regulation (EU) No XXX/XXX [...]] (Dublin Regulation[...]); or
  - applicants who have been transferred to the Member State where they are required to be present in accordance with [Article 4(2a) of Regulation (EU) No XXX/XXX [...]] (Dublin Regulation[...]) after having absconded to another Member State.

Where an applicant's residence has been designated in a specific place in accordance with this paragraph, the provision of material reception conditions shall be subject to the actual residence by the applicant in that specific place.

2. Member States may, where necessary, require applicants to report to the competent authorities at a specified time or at reasonable intervals, without disproportionately affecting their rights under this Directive.

Such reporting requirements may be imposed to ensure that the decisions referred to in paragraph 1 are respected or to effectively prevent applicants from absconding.

3. Upon the request of the applicant, Member States may grant him or her permission to reside temporarily outside the specific place designated in accordance with paragraph 1. Such decisions shall be taken objectively and impartially on the merits of the individual case 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. The applicant shall notify the competent authorities of such appointments.

4. The decisions referred to in paragraphs 1 and 2 shall be proportionate and take into account relevant aspects of the individual situation of the person concerned, including his or her special reception needs.
5. Member States shall state reasons in fact and, where relevant, in law in any decision taken in accordance with paragraphs 1 and 2. Applicants shall be informed in writing of such a decision, as well as of the procedures for challenging the decision in accordance with Article 25 and of the consequences of non-compliance with the obligations imposed by the decision. The applicants shall be informed of the content of such a decision in a language which they understand or are reasonably supposed to understand and in a concise, transparent, intelligible and easily accessible form, using clear and plain language. The decisions referred to in this Article shall be reviewed by a judicial authority *ex officio* when applied for more than 2 months, or Member States shall ensure that such decisions may be appealed at the request of the applicant concerned in accordance with Article 25.

## Article 8

### *Detention*

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant or on the basis of an applicant's nationality. The detention may be based only on one of the grounds for detention set out in paragraph 3. The detention shall not be punitive in nature.
2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
  - 2a. When detaining an applicant Member States shall take into account any visible signs, statements or behaviour indicating that he or she has special reception needs. Where the assessment provided for in Article 21 has not yet been completed, it shall be completed without undue delay and its results shall be taken into account when deciding whether detention shall be continued or whether the detention conditions need to be adjusted.
3. An applicant may be detained only:
  - (a) in order to determine or verify his or her identity or nationality;
  - (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

- (c) in order to ensure compliance with legal obligations imposed on the applicant through an individual decision in accordance with Article 7(1) in cases where the applicant has not complied with such obligations and there is still a risk of absconding of the applicant.
- (d) in order to decide, in the context of a border procedure in accordance with [Article [...]41[...] of Regulation (EU) No XXX/XXX [...] (Asylum Procedures Regulation[...])], on the applicant's right to enter the territory;
- (e) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council in order to prepare the return, or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the procedure for international protection, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- (f) when protection of national security or public order so requires;
- (g) in accordance with Article 29 of Regulation (EU) No XXX/XXX [Dublin Regulation].

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

## Article 9

### *Guarantees for detained applicants*

1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based as well as why other less coercive alternative measures cannot be applied effectively.
3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio or at the request of the applicant, or both. When conducted ex officio, such review shall be concluded as speedily as possible, taking into account the circumstances of each case, and no later than fifteen days or, in exceptional situations, no later than twenty one days from the beginning of detention. When conducted at the request of the applicant, it shall be concluded as speedily as possible, taking into account the circumstances of each case, and no later than fifteen days or, in exceptional situations, within twenty one days from the launch of the relevant proceedings.

Where the judicial review referred to in this paragraph has, where conducted ex officio, not been concluded within twenty one days from the beginning of detention or, where conducted at the request of the applicant, not been concluded within twenty one days after the launch of the relevant proceedings, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.
5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

Without prejudice to the first subparagraph, the detention of unaccompanied minors shall be reviewed ex officio at regular intervals.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

6. In case of judicial review of the detention order provided for in paragraphs 3 and 5, Member States shall ensure that applicants have access to free legal assistance and representation under the conditions set out in Article 25.

## Article 10

### *Conditions of detention*

1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

2. Detained applicants shall have access to open-air spaces.
3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.
5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in [Article 41 of Regulation (EU) No XXX/XXX [...] (Asylum Procedures Regulation[...])].

#### Article 11

##### *Detention of applicants with special reception needs*

1. The health, including mental health, of applicants in detention who have special reception needs shall be of primary concern to national authorities.

Where detention would put the physical and psychological health of applicants with special reception needs at serious risk, they shall not be detained.

Where applicants with special reception needs are detained, Member States shall ensure regular monitoring of, and the provision of timely and adequate support to, applicants taking into account their particular situation, including their physical and mental health.

2. Minor shall, as a rule, not be detained. They shall instead be placed in suitable accommodation in accordance with Articles 22 and 23.

The principle of family unit shall, generally, lead to the use of adequate alternatives to detention for families with minors. Families with minors shall be accommodated in accommodation suitable for them.

However, in exceptional circumstances, as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in their best interests in accordance with Article 22, minors may be detained:

- (a) in case of accompanied minors, where the minor's parent or primary care-giver is detained; or
- (b) in case of unaccompanied minors, where it safeguards the minor.

Such detention shall be for the shortest possible period of time, and never in prison accommodation or another facility for law enforcement purposes. All efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The best interests of the child, as referred to in Article 22(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the right to education in accordance with Article 14, unless the provision of education is of limited value to them due to the very short period of their detention. They shall also have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

3. Where unaccompanied minors are detained, they shall be provided with accommodation in facilities adapted to the housing of unaccompanied minors. Such facilities shall be provided with personnel who are qualified to safeguard the rights of unaccompanied minors and attend to their needs.

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

Detained families with minors shall be accommodated in detention facilities adapted to the needs of minors.

5. Member States shall ensure that detained male and female applicants are accommodated separately, unless they are family members and all individuals concerned consent thereto.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from , the first subparagraph of paragraph 3, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to [in Article 41 of Regulation (EU) No XXX/XXX [...] (Asylum Procedure Regulation[...])]. Member States shall have sufficient facilities and resources in place to ensure that the derogations in this subparagraph are only applied in exceptional situations. When applying this paragraph, Member States shall inform the European Commission and European Union Agency for Asylum.

## Article 12

### *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 the Member State concerned. Such measures shall be implemented with the applicant's agreement.

## Article 13

### *Medical screening*

Member States may require medical screening for applicants on public health grounds.

## Article 14

### *Schooling and education of minors*

1. Member States shall grant to minor children of applicants and to applicants who are minors the same access to education as their own nationals and under similar conditions for so long as an expulsion measure against them or their parents is not actually enforced.

The specific needs of children, in particular with regard to respect for the child's right to education and access to healthcare have to be taken into account. Minor children of applicants and applicants who are minors should be granted the same access to education as Member States' own nationals and under similar conditions. Their education should as a rule be integrated with that of Member States' own nationals and be of the same quality. Member States should also make every effort to ensure the continuity of their education for so long as an expulsion measure against them or their parents is not actually enforced.

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Access to education system shall be granted as soon as possible and shall not be postponed for more than two months from the date on which the application for international protection was lodged taking into account school holidays. Such education shall be provided within the mainstream education system. As a temporary measure, for a maximum period of one month, it may be provided outside the mainstream education system.

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the mainstream education system.

3. Where access to the mainstream education system is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.

## Article 15

### *Employment*

1. Member States shall ensure that applicants have access to the labour market no later than six months from the date when the application for international protection was registered provided that an administrative decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

Where the Member State has accelerated the examination on the merits of an application for international protection in accordance with points [(a) to (f[...])] of Article [...]40(1[...]) of Regulation (EU) No XXX/XXX [...] (Asylum Procedures Regulation[...]), access to the labour market shall not be granted, or, if already granted, shall be withdrawn.

2. Member States shall ensure that applicants, who have access to the labour market in accordance with paragraph 1, have effective access to the labour market in accordance with national law.

For reasons of labour market policies, which may include youth unemployment levels, Member States may verify whether a specific vacancy that an employer is considering filling by an applicant who has access to the labour market in accordance with paragraph 1 could be filled by nationals of the Member State concerned, by other Union citizens, or by third-country nationals lawfully residing in that Member State, in which case the Member State or employer may refuse the employment of the applicant for the specific vacancy.

3. Member States shall ensure that applicants who have access to the labour market in accordance with paragraph 1 enjoy equal treatment with nationals as regards:
- (a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;
  - (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
  - (c) education and vocational training, including training courses for upgrading skills, practical workplace experience and employment guidance services;
  - (d) recognition of diplomas, certificates and other evidence of formal qualifications in the context of existing procedures for recognition of foreign qualifications; and
  - (e) access to appropriate schemes for the assessment, validation and recognition of applicants' prior learning outcomes and experience.

- 3a. Member States may restrict equal treatment of applicants who have access to the labour market in accordance with paragraph 1:
- (a) pursuant to point (b) of paragraph 3, by excluding them from taking part in the management of bodies governed by public law and from holding an office governed by public law;
  - (b) pursuant to point (c) of paragraph 3, by excluding:
    - (i) grants and loans related to education and vocational training and the payment of fees in accordance with national law with respect to access to university and post-secondary education; and
    - (ii) education and vocational training which is not provided within the framework of an existing employment contract, including when provided for employment promotion purposes;
  - (c) pursuant to point (d) or (e) of paragraph 3, by not granting equal treatment until at least 3 months from the date when the application for international protection was registered.
- 3b. Member States shall ensure that applicants who are employed or are entitled to social security benefits based on previous employment enjoy equal treatment with nationals as regards branches of social security, as defined in Article 3(1) and (2) of Regulation (EC) No 883/2004.
- 3c. Without prejudice to Regulation (EU) No 1231/2010, Member States may restrict equal treatment under paragraph 3b by excluding social security benefits which are not dependent on periods of employment or contributions.
- 3d. The right to equal treatment shall not give rise to a right to reside in cases where a decision taken in accordance with Regulation (EU) No XXX/XXX [Asylum Procedures Regulation] has terminated the applicant's right to remain.

- 3e. For the purposes of point (d) of paragraph 3 of this Article, and without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC, Member State shall facilitate, to the extent possible, full access to existing procedures for recognition of foreign qualifications for those applicants who cannot provide documentary evidence of their qualifications.
4. Access to the labour market shall not be withdrawn during appeals procedures, where the applicant has a right to remain on the territory of the Member State during these procedures and until a negative decision on the appeal is notified.

#### Article 15a

##### ***Language courses and vocational training***

Member States shall ensure access to language courses, civic education courses or vocational training courses that they consider appropriate to help enhance applicants' ability to act autonomously, to interact with competent authorities or to find employment, or, depending on the national system, they shall facilitate access to such courses, irrespective of whether applicants have access to the labour market in accordance with Article 15. Member States may require applicants to cover or contribute to the cost of such courses where the applicants have sufficient resources.

#### Article 16

##### ***General rules on material reception conditions and health care***

1. Member States shall ensure that material reception conditions are available to applicants from the moment they make their application for international protection in accordance with [Article 25 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation)].

2. Member States shall ensure that material reception conditions and health care in accordance with Article 18 provide an adequate standard of living for applicants, which guarantees their subsistence, protects their physical and mental health and respects their rights under the Charter of Fundamental Rights of the European Union.

Member States shall ensure that that standard of living is met in the specific situation of applicants with special reception needs as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions subject to the condition that applicants do not have sufficient means to have an adequate standard of living in accordance with paragraph 2.
4. Without prejudice to paragraph 2, Member States may require applicants to cover or contribute to the cost of the material reception conditions, if applicants have sufficient means to do so, for example if they have been working for a reasonable period of time.

Without prejudice to paragraph 2, Member States may also require applicants to cover or contribute to the cost of the healthcare provided, if applicants have sufficient means to do so, except in those cases where the healthcare is provided free of charge to nationals.

- 4a. If it transpires that an applicant had sufficient means to cover material reception conditions or health care in accordance with paragraph 4 at the time when the applicant was provided with an adequate standard of living, Member States may ask the applicant for a refund.

5. When assessing the resources of an applicant, when requiring an applicant to cover or contribute to the cost of the material reception conditions and of the health care or when asking an applicant for a refund in accordance with paragraph 4a, Member States shall respect the principle of proportionality. Member States shall also take into account the individual circumstances of the applicant and the need to respect his or her dignity or personal integrity, including the applicant's special reception needs.
6. Where Member States provide material reception conditions in the form of [financial allowances or vouchers], the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by practice to ensure an adequate standard of living for nationals. These Member States shall inform the Commission and the [European Union Agency for Asylum] of these levels. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is fully or partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.

## Article 17

### *Modalities for material reception conditions*

1. Where housing is provided in kind, Member States shall ensure that such housing provides the applicant with an adequate standard of living in accordance with Article 16(2) as well as necessary support to account for applicants' special reception needs. To that end, the housing provided shall take one or a combination of the following forms:
  - (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;
  - (b) accommodation centres;
  - (c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that:
- (a) applicants are guaranteed protection of their family life;
  - (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;
  - (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.
3. Member States shall take into consideration gender and age-specific concerns and the situation of applicants with special reception needs when providing material reception conditions .
4. When providing housing in accordance with paragraph 1, Member States shall take appropriate measures to ensure, as far as possible, the prevention of assault and violence, including violence committed with a sexual, gender, racist or religious motive.

- 4a. Member States shall provide separate sanitary facilities for female applicants and *a* safe place in accommodation centres for them and their minor children.
5. Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.
6. 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 or counsellors of the transfer and of their new address.
7. Persons providing material reception conditions, including those providing health care and education in accommodation centres, shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.
8. 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. Without prejudice to Article 15, Member States may also allow applicants to perform voluntary work outside the accommodation centre under conditions set by national law.

9. In duly justified cases, Member States may exceptionally provide different material reception conditions from those provided for in this Article, for a reasonable period which shall be as short as possible, when:
- (a) an assessment of the specific needs of the applicant is required, in accordance with Article 21;
  - (b) housing capacities normally available are temporarily exhausted or, due to a disproportionate number of persons to be accommodated or a man-made or natural disaster, housing capacities normally available are temporarily unavailable.

Such different material reception conditions shall in any circumstances ensure access to health care in accordance with Article 18 and a standard of living for all applicants in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations.

When applying these different material reception conditions, the Member State concerned shall inform without delay the Commission and the [European Union Agency for Asylum] in accordance with Article 28(2). about the activation of the contingency plan. It shall also inform the Commission and the [European Union Agency for Asylum] as soon as the reasons for applying these exceptional measures have ceased to exist.

## Article 17a

### ***Reception conditions in a Member State other than the one in which the applicant is required to be present***

From the moment an applicant has been notified of a decision to transfer him or her to the Member State responsible in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], the applicant shall not be entitled to the reception conditions set out in Articles 15 to 17 in any Member State other than the one in which he or she is [required/obliged to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation[...]], without prejudice to the need to ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations. Unless a separate decision is issued, the transfer decision shall state that the relevant reception conditions have been withdrawn in accordance with this paragraph. The applicant shall be informed about his or her rights and obligations in this regard.

## Article 18

### ***Health care***

1. Member States shall ensure that applicants, irrespective of where they are required to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], receive the necessary health care, whether provided by generalist or, where needed, specialist practitioners. Such necessary health care shall be of an adequate quality and include, at least, emergency care, essential treatment of illnesses, including of serious mental disorders, and necessary sexual and reproductive health care which is essential to address a serious physical condition.

- 1a. Member States shall ensure that minor children of applicants and applicants who are minors receive *the same type of* health care as *provided to* their own nationals who are minors.  
Member States shall ensure that specific treatment provided in accordance with this paragraph, which started before the minor reached the age of majority, is received without interruption or delay after the minor's coming to age, where it is considered to be necessary health care.
2. Where needed for medical reasons, Member States shall provide necessary medical or other assistance, such as necessary rehabilitation and assistive medical devices, to applicants who have special reception needs, including appropriate mental health care.

## **CHAPTER III**

# **REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS**

### Article 19

#### *Reduction or withdrawal of material reception conditions*

1. With regard to applicants who are required to be present on their territory in accordance with [Article 4(2a) of Regulation (EU) No XXX/XXX [...](Dublin Regulation[...])], Member States may reduce or withdraw the daily expenses allowance. When duly justified and proportionate, Member States may also:
  - a) reduce other material reception conditions, or
  - b) where paragraph 2 point (e) applies, withdraw other material reception conditions.

2. Paragraph 1 applies where an applicant:

- (a) abandons a geographical area within which the applicant may move freely in accordance with article 6b or the residence in a specific place designated by the competent authority in accordance with article 7 without permission, or absconds; or
- (b) does not cooperate with the competent authorities, or does not comply with the procedural requirements set by them; or
- (c) has lodged a subsequent application as defined in [Article [...]4(2)(i[...]) of Regulation (EU) No XXX/XXX [...](Asylum Procedures Regulation[...])]; or
- (d) has concealed financial resources, and has therefore unduly benefited from material reception conditions; or
- (e) has seriously or repeatedly breached the rules of the accommodation centre or has behaved in a violent or threatening manner in the accommodation centre; or
- (f) fails to [...]participate in compulsory integration measures[...], where provided or facilitated by [...] the [...]Member State, unless there are circumstances outside the applicant's control.

1a. In case a decision has been taken in accordance with paragraphs 1 points (a), (b) or (f) thereof, and the circumstances on which that decision was based cease to exist, Member States shall consider whether some or all of the material reception conditions withdrawn or reduced may be reinstated. Where not all material reception conditions are reinstated, a duly motivated decision shall be taken and notified to the applicant.

2. Decisions in accordance with paragraphs 1, shall be taken objectively and impartially on the merits of the individual case and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to applicants with special reception needs, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 18 and shall ensure a standard of living in accordance with Union law, including the Charter of Fundamental Rights of the European Union, and international obligations for all applicants.
3. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 2.

## **CHAPTER IV**

### **PROVISIONS FOR APPLICANTS WITH SPECIAL RECEPTION NEEDS**

#### Article 20

##### **Applicants with special reception needs**

Member States shall take into account the specific situation of applicants with special reception needs, in the national law implementing this Directive.

Member States shall take into consideration the fact that applicants such as those falling within any of the following categories are more likely to have special reception needs: minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, lesbian, gay, bisexual, trans and intersex persons, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders including post traumatic stress disorder and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.

## Article 21

### *Assessment of special reception needs*

1. In order to effectively implement Article 20, Member States shall, as early as possible after an application for international protection is made, individually assess whether each applicant has special reception needs, through oral translation where needed.

That assessment may be integrated into existing national procedures or into the assessment referred to in [Article 20 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation)].

The assessment shall be initiated by identifying special reception needs based on visible signs or on the applicants' statements or behaviour or, where applicable, statements of the parents or the representative of the applicant.

The assessment shall be completed within 30 days from the making of the application for international protection [or, where it is integrated into the assessment referred to in Article 20 of Regulation (EU) No XXX/XXX (Asylum Procedure Regulation) within the timeframe set out in that Regulation], and the special reception needs identified shall be addressed.

Where special reception needs become apparent at a later stage in the procedure for international protection, Member States shall assess and address those needs.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the procedure for international protection and shall provide for appropriate monitoring of their situation.

2. For the purposes of paragraph 1, Member States shall ensure that the personnel assessing special reception needs in accordance with this Article:
  - (a) are trained and continue to be trained to detect signs that an applicant requires special reception conditions and to address those needs when identified;
  - (b) include information concerning the nature of the applicant's special reception needs in the applicant's file held by the competent authorities, together with a description of the signs or the applicants' statements or behaviour relevant for the assessment of the applicants' special reception needs as well as the measures that have been identified to respond to them and the authorities responsible for such a response; and

- (c) subject to prior consent in accordance with national law, refer applicants to the appropriate medical practitioner or psychologist for further assessment of their psychological and physical state where there are indications that their psychological or physical state could affect their reception needs. Where necessary, oral translation shall be provided by professionals trained in translation to ensure that the applicant is able to communicate with medical personnel. Where the lack of such trained professionals would risk delaying the treatment, oral translation may be provided by other adult individuals, provided the applicant consents.

The competent authorities shall take into account the result of the examination referred to in point (c) when deciding on the type of special reception support which may be provided to the applicant.

3. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.
4. Only applicants with special reception needs may benefit from the specific support provided in accordance with relevant provisions in this Directive.
5. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Regulation (EU) No XXX/XXX [Qualification Regulation].

## Article 22

### *Minors*

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that may affect minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.
2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:
  - (a) family reunification possibilities;
  - (b) the minor's well-being and social development, taking into particular consideration the minor's background-and the need for stability and continuity in care;
  - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence or exploitation, including trafficking in human beings;
  - (d) the views of the minor in accordance with his or her age and maturity.
3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age, and to open-air activities within the premises and accommodation centres referred to in Article 17(1)(a) and (b), as well as to school materials where needed.

4. Member States shall ensure access to rehabilitation services for minors 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 needed.
5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents or with the adult responsible for them and their unmarried minor siblings whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.
6. Those working with minors, including representatives and persons suitable to provisionally act as representatives as provided for in Article 23 shall not have a record of child-related crimes and offences, or crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regard to children and shall receive initial and continuous appropriate training concerning the rights and needs of unaccompanied minors, including those relating to any applicable child safeguarding standards, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

#### Article 23

##### *Unaccompanied minors*

1. Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, Member States shall designate:

- (a) a person who is suitable to provisionally act as representative under this Directive until a representative has been designated;
- (b) a representative to carry out the tasks referred to in Article 2 (12), as soon as possible but no later than within fifteen working days from when the application is made.

The representative and the person referred to in point (a) shall meet with the unaccompanied minor and take into account the minor's own views about his or her needs.

Where a Member State has assessed that an applicant who claims to be a minor is without any doubt above the age of eighteen years, it need not designate a representative in accordance with the first sub-paragraph.

Member States shall include in their contingency plans referred to in Article 28, measures to be taken to ensure the designation of representatives and persons provisionally acting as representatives in accordance with this Article in cases where the Member State is confronted with a disproportionate number of unaccompanied minors.

Where the implementation of measures referred to in the first subparagraph is insufficient to respond to a disproportionate number of applications made by unaccompanied minors, or in other exceptional situations, the designation of representatives can be delayed for further ten working days and the number of unaccompanied minors per representative may be increased, up to a maximum of fifty unaccompanied minors, where needed.

When applying the previous sub-paragraph Member States shall inform the Commission and the European Union Agency for Asylum.

The duties of the representative shall cease where the competent authorities, following the age assessment referred to in [Article 24(1) of Regulation (EU) XXX/XXX (Asylum Procedures Regulation)], do not assume that the applicant is a minor or consider that the applicant is not a minor, or where the applicant is no longer an unaccompanied minor.

- 1-a. Member States shall ensure that the person referred to in paragraph 1, first subparagraph, point (a) is immediately informed when an application for international protection is made by an unaccompanied minor, as well as of any relevant facts pertaining to the minor, where available. Persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be designated to provisionally act as the representative. The unaccompanied minor shall also be immediately informed that such a person has been designated.
- 1a. Where an organisation is designated as a representative, it shall designate a natural person for carrying out the tasks of the representative in respect of the unaccompanied minor, in accordance with this Directive.
- 1b. The representative provided for in paragraph 1 of this Article may be the same person as provided for in [Article 22[...] (4) of Regulation (EU) No XXX/XXX [...] (Asylum Procedure Regulation[...])].

- 1c. The competent authorities shall immediately:
- (a) inform the unaccompanied minor of the designation of his or her representative and about how to lodge a complaint against him or her in confidence and safety in an age-appropriate manner and in such a way as to ensure that the minor understands it;
  - (b) inform the authority responsible for providing reception conditions that a representative has been designated for the unaccompanied minor; and
  - (c) inform the representative of relevant facts pertaining to the unaccompanied minor.
- 1e. The representative shall only be changed where necessary, in particular when the competent authorities consider that he or she has not adequately performed his or her tasks.

Organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be designated as a representative.

- 1f. Member States shall place a natural person who is designated as representative or the person referred to in paragraph 1, first subparagraph, point (a), in charge of a proportionate and limited number of unaccompanied minors and, under normal circumstances, of no more than thirty at the same time to ensure that he or she is able to perform his or her tasks effectively.

- 1g. Member States shall ensure that there are administrative or judicial authorities or other entities responsible to supervise that the representative properly performs his or her tasks, including by reviewing the criminal records of designated representatives at certain intervals in order to identify potential incompatibilities with their role. Those administrative or judicial authorities or other entities shall review complaints lodged by an unaccompanied minor against his or her representative.
2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:
- (a) with adult relatives;
  - (b) with a foster family;
  - (c) in accommodation centres with special provisions for minors;
  - (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article 22 (2).

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 shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her 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.

## Article 24

### *Victims of torture and violence*

1. Member States shall ensure that persons who have been subjected to trafficking in human beings, torture, rape or other serious acts of psychological, physical or sexual violence, including sexual-, gender-, racist- or religious-motivated violence, are provided with necessary medical and psychological treatment and care, including where needed necessary rehabilitation services and counselling, for the damage caused by such acts, with the support, where needed, of oral translation in accordance with Article 21(2)(c).

Access to such treatment shall be provided as early as possible after the victim's needs have been identified.

2. Those working with the persons referred to in paragraph 1, including health professionals, shall have had and shall continue to receive appropriate training concerning these persons' needs and appropriate treatments, including necessary rehabilitation services. They shall also be bound by the confidentiality rules provided for in national law and applicable professional ethics codes, in relation to any information they obtain in the course of their work.

## CHAPTER V

### APPEALS

#### Article 25

##### *Appeals*

1. Member States shall ensure that decisions relating to the granting, withdrawal or reduction of benefits under this Directive, refusals to grant permission as referred to in subparagraph 1 of Article 6b, paragraph 5, sub-paragraph 1 (5), or decisions taken under Article 7, which affect applicants individually, may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, shall be granted before a judicial authority.
2. In cases of an appeal or a review before a judicial authority referred to in paragraph 1, and in case of judicial review referred to in Article 9(3) and (5) Member States shall ensure that free legal assistance and representation is made available as necessary to ensure effective access to justice. Such legal assistance and representation shall consist of the preparation of the appeal, including, at least, the preparation of the required procedural documents, and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by legal advisers or other suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the applicant.

3. The provision of free legal assistance and representation may be denied by Member States where:
- (a) the applicant has sufficient resources; or
  - (b) the appeal is considered to have no tangible prospect of success, in particular if the appeal is at a second level of appeal or higher.

Where a decision not to grant free legal assistance and representation is taken by an authority which is not a court or tribunal on the ground that the appeal is considered as having no tangible prospect of success, the applicant shall have the right to an effective remedy before a court or tribunal against that decision, and for that purpose he or she shall be entitled to request free legal assistance and representation.

Member States may also provide that free legal assistance and representation are granted only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants, which may include non-governmental organisations accredited under national law to provide free legal assistance and representation.

4. Member States may also:
- (a) impose monetary or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to free legal assistance and representation;
  - (b) provide that, as regards fees, and other costs and reimbursements, the treatment of applicants shall be equal to but not more favourable than the treatment generally given to their nationals in matters pertaining to legal assistance.
5. Without prejudice to Article 16(2), Member States may request, total or partial reimbursement of any costs incurred where the applicant's financial situation has improved considerably within the duration of the asylum procedure in accordance with the Asylum Procedure Regulation or where the decision to provide free legal assistance and representation was taken on the basis of false information supplied by the applicant.
6. Member States shall lay down specific procedural rules governing how requests for free legal assistance and representation are filed and processed, or they shall apply the existing rules for domestic claims of a similar nature, provided that those rules do not render access to free legal assistance and representation impossible or excessively difficult.

## CHAPTER VI

# ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

### Article 26

#### **Competent authorities**

Each Member State shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

### Article 27

#### ***Guidance, monitoring and control system***

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established. Member States shall take into account available, non binding [operational standards on reception conditions and indicators developed by the European Asylum Support Office/ and any other reception conditions operational standards, indicators, guidelines **or** best practices established in accordance with Article 12 of Regulation (EU) No XXX/XXX [(Regulation on the European Union Agency for Asylum[...])], without prejudice to Member States' competence for organising their reception systems in line with this Directive.

2. Member States' reception systems shall be subject to the monitoring mechanism set out in [Chapter 5 of Regulation (EU) No XXX/XXX [...](Regulation on the European Union Agency for Asylum[...])].

## Article 28

### *Contingency planning*

1. Each Member State shall draw up a contingency plan in consultation with local and regional authorities, civil society and international organisations, as appropriate. The contingency plan shall set out the measures to be taken to ensure an adequate reception of applicants in accordance with this Directive in cases where the Member State is confronted with a disproportionate number of applicants for international protection, including of unaccompanied minors. The contingency plan shall also include measures to address situations referred to in Article 17(9)(b) in as short a period as possible. [The applicants for international protection are to be understood as those required to be present on its territory,] [including those for whom the Member State is responsible in accordance with Regulation (EU) No XXX/XXX [...](Dublin Regulation[...]), taking into account the corrective allocation mechanism outlined in Chapter VII of that Regulation]

2. The plan referred to in paragraph 1 shall take into account the specific national circumstances, using a template to be developed by the European Union Agency for Asylum in accordance with Article 12 of Regulation on the European Union Agency for Asylum, and shall be notified to the European Union Agency for Asylum at the latest by [ten] months after entry into force of this Directive. The plan shall be reviewed when needed due to changed circumstances and in any case at least every three years and, if updated, notified to the European Union Agency for Asylum. The Member States shall inform the Commission and the European Union Agency for Asylum whenever its contingency plan is activated.
3. [Member States shall provide the European Union Agency for Asylum with information on their plan and the Agency shall assist Member States to prepare and review their contingency plans, upon their request or with their agreement.]

## Article 29

### *Staff and resources*

1. Member States shall take appropriate measures to ensure that personnel of authorities and other organisations directly in charge of implementing this Directive have received the necessary training with respect to the needs of both male and female applicants, including minors. To that end, Member States shall include relevant parts of the European asylum curriculum related to reception conditions as well as the tool for identification of persons with special needs developed by the European Union Agency for Asylum into the training of their personnel in accordance with Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum].

2. Member States shall allocate the necessary resources, including the necessary staff, translators and interpreters, for the implementation of this Directive, taking into account seasonal fluctuations in the numbers of applicants. Where local, regional, civil society or international organisations take part in the implementation of this Directive, they shall be allocated the necessary resources.

## Article 30

### **Monitoring and evaluation**

By [three years after the entry into force of this Directive] at the latest, and at least every five years thereafter, the Commission shall present a report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall at the request of the Commission send the necessary information for drawing up the report by [two years after the entry into force of this Directive] and every three years thereafter .

## Article 31

### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 8, 11, 15 to 25 and 27 to 30 by [24 months after the entry into force of this Directive]. They shall immediately communicate the text of those measures to the Commission.

When Member States adopt those provisions , they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

## Article 32

### *Repeal*

Directive 2013/33/EU is repealed, for the Member States bound by this Directive, with effect from [the day after the date in the first subparagraph of Article 31(1)] , without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.

Article 33

***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 Union.

Article 34

***Addressees***

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*