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THE EUROPEAN UNION**

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of:	JHA Counsellors
on:	23 January 2012
No Cion proposal:	11214/11 ASILE 46 CODEC 981
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Subject:	Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast)

At their meeting on 23 January 2012, the Justice and Home Affairs Counsellors examined several compromise suggestions of the Presidency (document 5463/12) with regard to above mentioned amended Reception Conditions Directive. The result of this examination is set out below with delegations' comments in the footnotes.

New text to the Commission proposal is indicated by underlining the insertion and including it within Council tags: **☞_☞**; deleted text is indicated within underlined square brackets as follows: **☞[...]**.

ANNEX

↓ 2003/9/EC

2008/0244 (COD)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down ~~minimum~~ standards for the reception of asylum seekers

(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 point 2(f) of Article 78 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

↓ new

- (1) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers³. In the interests of clarity, that Directive should be recast.

↓ 2003/9/EC recital 1 (adapted)

⇒ new

- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the ☒ European Union ☒ Community. ⇒ It should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. ⇐

↓ 2003/9/EC recital 2

⇒ new

- (3) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, 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, thus maintaining the principle of non-refoulement. ⇒ The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments foreseen in the Treaties, including Directive 2003/9/EC. ⇐

³ OJ L 31, 6.2.2003, p. 18.

↓ 2003/9/EC recital 3

~~The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of asylum seekers.~~

↓ 2003/9/EC recital 4

~~The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy.~~

↴ new

- (4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase instruments and to submit the second-phase instruments and measures to the Council and the European Parliament.
- (5) The European Council at its meeting of 10-11 December 2009 adopted the Stockholm programme which reconfirmed the commitment to establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures by 2012. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for asylum is made, are offered an equivalent level of treatment as regards reception conditions.

- (6) The resources of the European Refugee Fund and of the European Asylum Support Office, established by Regulation (EU) No 439/2010 of the European Parliament and of the Council⁴, should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular 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 the light of the results of the evaluations undertaken on the implementation of the first phase instruments, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for asylum seekers.
- (8) In order to ensure equal treatment of asylum seekers throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection and in all locations and facilities hosting asylum seekers.
- (9) Member States should seek to ensure full compliance with the principles of the best interests of the child and the importance of family unity, in the application of this Directive, in line with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.

⁴ OJ L 132, 29.5.2010, p.11.

↓ 2003/9/EC recital 6

- (10) 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 ~~and which prohibit discrimination.~~

↓ 2003/9/EC recital 7

- (11) ~~Minimum~~ Standards for the reception of asylum seekers that will ~~normally~~ suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

↓ 2003/9/EC recital 8

- (12) The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.

↓ new

- (13) In view of ensuring equal treatment amongst all applicants for international protection as well as in order to guarantee consistency with current EU asylum acquis, in particular with Directive [.../.../EU] [the Qualification Directive], it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

↓ 2003/9/EC recital 9 (adapted)

⇒ new

⇒ Council

(14)⁵ ⇒ The ⇒ [...] C identification and monitoring of persons ⇐ Reception of groups with special ⇒ reception ⇐ needs should be ⇒ a primary concern of national authorities in order to ensure that their reception is ⇐ specifically designed to meet ☒ their special reception ☒ these needs.

↓ new

⇒ Council

(15)⁶ Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that are seeking international protection, notably in accordance with Article 31 of the Geneva Convention relating to the Status of Refugees of 28 July 1951. ⇒ [...] C ⇒ Detention C of asylum seekers should only be possible under very clearly defined exceptional circumstances laid down in this Directive ⁷ and subject to the principle of necessity and proportionality with regard both to the manner and to the purpose of such detention. Where an asylum seeker is held in detention he/she should be able to have effective access to the necessary procedural guarantees such as judicial remedy before a national court.

⁵ Reservation: **AT, DE**

Scrutiny reservation: **EL, FR**

DE, supported by **AT, FR**, proposed to delete the phrase "The identification and monitoring of persons" and to start the recital with "Reception of groups with ..."

Cion suggested to align the recital with Article 22 by including a reference to a reasonable time.

⁶ Reservation: **DE, ES**

Scrutiny reservation: **FR, SE**

⁷ **DE**, supported by **ES**, proposed to insert: ", as far as they are laid down in national law".

⇒ (15a)⁸ The grounds for detention set out in this Directive are without prejudice to other grounds for detention applicable in the national legal order unrelated to the third country national's or stateless person's application for international protection. ⇐

↓ 2003/9/EC recital 10 (adapted)

⇒ new

(16) ~~Reception of a~~ Applicants who are in detention ⇒ should be treated with full respect of human dignity and their reception ⇐ should be specifically designed to meet their needs in that situation. ⇒ In particular, Member States should ensure that Article 37 of the 1989 UN Convention on the Rights of the Child is applied. ⇐

↓ new

(17) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographic location or the specific structure of the detention facility. However any derogation to these guarantees should be of a temporary nature and applied only under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances; they 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 concerned individual.

⁸ Scrutiny reservation: **FR**

↓ 2003/9/EC recital 11

- (18) In order to ensure compliance with the ~~minimum~~ 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.
-

↓ new

→ Council

- [(19) In order to promote asylum-seekers' self-sufficiency and to limit wide discrepancies between Member States, it is essential to provide clear rules on the access of asylum seekers to the labour market. These rules should be consistent with the rules on the duration of the examination procedure as stipulated in Directive [.../.../EU/] [Asylum Procedures Directive].]

- (20)⁹ To ensure that the material support provided to asylum seekers is in line with the principles set out in this Directive, it is necessary that Member States determine the level of such support on the basis of relevant and measurable points of reference.

⁹ Reservation: **FR**
Scrutiny reservation: **DE**
Cion opposed the deletion of the phrase ", such as the minimum level of social welfare assistance".

↓ 2003/9/EC recital 12 (adapted)

⇒ new

- (21) The possibility of abuse of the reception system should be restricted by ☒ specifying the circumstances in which ☒ ~~laying down cases for the reduction or withdrawal of~~ reception conditions for asylum seekers ☒ may be reduced or such reception withdrawn ☒
⇒ while at the same time ensuring a dignified standard of living for all asylum seekers ⇐.

↓ 2003/9/EC recital 13

- (22) The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.

↓ 2003/9/EC recital 14

- (23) Appropriate coordination should be encouraged between the competent authorities as regards the reception of asylum seekers, and harmonious relationships between local communities and accommodation centres should therefore be promoted.

↓ 2003/9/EC recital 15 (adapted)

- (24) ~~It is in the very nature of minimum standards that~~ 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.

↓ 2003/9/EC recital 16

⇒ new

- (25) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that emanating from ⇒ Directive [.../.../EU] [The Qualification Directive] ⇐ ~~the Geneva Convention for third-country nationals and stateless persons.~~

↓ 2003/9/EC recital 17

- (26) The implementation of this Directive should be evaluated at regular intervals.

↓ 2003/9/EC recital 18 (adapted)

↻ Council

(27) Since the objectives of the proposed action, namely to establish ~~minimum~~ standards on the reception of asylum seekers in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the ☒ Union ☒ Community, the ☒ Union ☒ Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty on European Union . 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 those objectives.

↻(27a)¹⁰ In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, 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.↻

¹⁰ Scrutiny reservation: **AT, DE, EL, ES, FR, IT, LV, NL, PT, SI**
Cion announced to submit a justification of the need for explanatory documents

↓ 2003/9/EC recital 19

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 18 August 2001, of its wish to take part in the adoption and application of this Directive.~~

↓ 2003/9/EC recital 20

~~In accordance with Article 1 of the said Protocol Ireland, is not participating in the adoption of this Directive. Consequently, and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.~~

↓ new

↻ Council

(28) In accordance with ↻ [...] ↻ Articles 1, 2 and ↻ ↻ Article ↻ 4a(1) 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 ↻ ↻ [...] ↻.

(29) In accordance with Article 1 of the said Protocol, Ireland is not taking part in the adoption of this Directive. Without prejudice to Article 4 of that Protocol, Ireland is therefore not bound by this Directive.

↓ 2003/9/EC recital 21

(30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union ~~establishing the European Community~~, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.

↓ 2003/9/EC recital 5

⇒ new

(31) 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 ⇒, 6, 7, ⇐ ~~and~~ 18 ⇒, 21, 24 and 47 ⇐ of the said Charter ⇒ and has to be implemented accordingly ⇐.

↓ new

(32) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(33) This Directive should be 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 II, Part B.

↓ 2003/9/EC

HAVE ADOPTED THIS DIRECTIVE¹¹:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down ~~minimum~~ standards for the reception of asylum seekers in Member States.

¹¹ General scrutiny reservation: **CY, DE, EL, FI, IT, MT, PT, RO, SE, SK**
Parliamentary scrutiny reservation: **MT**
Linguistic reservation: **HU, LT**

Article 2

Definitions

For the purposes of this Directive:

~~(a) "Geneva Convention" shall mean the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;~~

~~(b) "application for asylum" shall mean the application made by a third country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum unless a third country national or a stateless person explicitly requests another kind of protection that can be applied for separately;~~

↓ new

(a) "application for international protection" means an application for international protection as defined in point (h) of Article 2 of Directive [...]/.../EU [the Qualification Directive];

↓ 2003/9/EC (adapted)

⇒ new

↻ Council

~~(b)(e)~~ "applicant" ☒, "applicant for international protection" ☒ or "asylum seeker" ~~shall mean~~ ☒ means ☒ a third country national or a stateless person who has made an application for ~~asylum~~ ⇒ international protection ⇐ in respect of which a final decision has not yet been taken;

(c)(d)¹² "family members" ~~shall mean~~ means , in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for ~~asylum~~ international protection :

[...]

- = the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to ~~aliens~~ third country nationals ;
- = the minor children of ~~the couple~~ couples referred to in the first indent point (i) or of the applicant for international protection , on condition that they are unmarried ~~and dependent~~ and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

¹² Reservation: **FR** proposing to maintain the definition of the directive currently in force. Scrutiny reservation: **DE** expressing a preference for the definition of the directive currently in force.
BE, CZ, HU, IT NL, SE could agree to include unmarried siblings in the definition of family members arguing this could reduce secondary movements between Member States and assure that the best rights of the child are taken into consideration..
Cion considered good reasons exist for having a broader definition.

↓ new

→ Council

→ [...] ←

→ [...] ←

- the father, mother → [...] ← or → another ← → [...] ← adult responsible for the applicant → for international protection ← whether by law or by the national practice of the Member State concerned → , when the latter is a minor and unmarried. ←

→ [...] ←

→ [...] ←

↓ 2003/9/EC

~~(e) "refugee" shall mean a person who fulfils the requirements of Article 1(A) of the Geneva Convention;~~

~~(f) "refugee status" shall mean the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;~~

~~(g) "procedures" and "appeals", shall means the procedures and appeals established by Member States in their national law;~~

↓ new

(d) "minor" means a third-country national or stateless person below the age of 18 years;

↓ 2003/9/EC (adapted)

⇒ new

(e)(h) "unaccompanied minors" ~~shall mean~~ means ⇒ a minor ~~persons below the age of eighteen~~ who arrive arrives in the territory of the Member States unaccompanied by an adult responsible for ~~them~~ him/her whether by law or by ~~the national practice of the Member State concerned~~ ~~custom~~, and for as long as they are he/she is not effectively taken into the care of such a person; it ~~shall include minors~~ includes a minor who is ~~are~~ left unaccompanied after ~~they have~~ he/she has entered the territory of Member States;

(f)(i) "reception conditions" ~~shall mean~~ means the full set of measures that Member States grant to asylum seeker in accordance with this Directive;

(g)(j)¹³ "material reception conditions" ~~shall mean~~ means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, ~~or a combination of the three~~ , and a daily expenses allowance;

¹³ Reservation: **ES**

~~(h)(e)~~ "detention" ~~shall mean~~ ☒ means ☒ confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

~~(i)(f)~~ "accommodation centre" ~~shall mean~~ ☒ means ☒ any place used for collective housing of asylum seekers;u

↓ new

→ Council

(j)¹⁴ "representative" means a person or an organisation appointed by the competent bodies ☐ [...] ☐ in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary. Where an organisation ☐ is appointed ☐ ☐ [...] ☐ as a representative, it shall ☐ designate ☐ ☐ [...] ☐ a person responsible for carrying out the duties of ☐ this organisation ☐ ☐ [...] ☐ in respect of the minor, in accordance with this Directive;

(k)¹⁵ "applicant with special reception needs" means a vulnerable applicant, in line with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.

¹⁴ Scrutiny reservation: **CZ, SE**
CZ requested clarification on the difference between the representative and the guardian and in particular wanted to be clarified if the unaccompanied minor should have both a representative and a guardian.

¹⁵ **EE** proposed "representative of an unaccompanied minor" instead of "representative".
Reservation: **AT, BG, ES, IT, PT** in connection with Article 11.
Scrutiny reservation: **FR**

↓ 2003/9/EC (adapted)

⇒ new

Article 3¹⁶

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for ~~asylum~~ ⇒ international protection ~~at the border, or~~ in the territory, ~~including at the border~~¹⁷, ~~in~~ ⇒ in the territorial waters or in the transit zones, ~~of a~~ Member State, as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for ⇒ international protection ~~at the border~~ according to the national law.

↓ 2003/9/EC

⇒ new

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

¹⁶ Scrutiny reservation: **HU**

¹⁷ Reservation **DE, ES** considering that airport procedures should not be part of the scope of the directive. **DE** submitted a proposal contained in document 14574/11.

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof¹⁸ are applied.
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 ~~⇒ Directive [...]/.../EU [the Qualification Directive] ⇐ the Geneva Convention for third-country nationals or stateless persons who are found not to be refugees.~~

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and other close relatives of the applicant who are present in the same Member State when they are dependent on him or for humanitarian reasons insofar as these provisions are compatible with this Directive.

¹⁸ OJ L 212, 7.8.2001, p. 12.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for ~~international protection~~ ~~asylum with the competent authority~~, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

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

↓ 2003/9/EC (adapted)

⇒ new

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, ~~as far as possible~~, in a language that the applicants ~~understand or may~~ ~~are~~ ~~reasonably be~~ supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6

Documentation

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

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

2. Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for ⇒ international protection ⇐ asylum made at the border or within the context of a procedure to decide on the right of the applicant ~~legally~~ to enter the territory of a Member State. In specific cases, during the examination of an application for ⇒ international protection ⇐ asylum, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.
3. The document referred to in paragraph 1 need not certify the identity of the asylum seeker.
4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory of the Member State concerned ~~or at the border thereof~~.

5. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State.

↓ new

↻ [...] ↻

↓ 2003/9/EC

⇒ new

Article 7

Residence and freedom of movement

1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.
2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application ⇒ for international protection ⇐.

~~3. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.~~¹⁹

3.4. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation.

4.5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and ~~4~~3 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

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

5.6. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

¹⁹ Scrutiny reservation: **AT, DE** on the proposed deletion of this paragraph.

↓ new

→ Council

Article 8²⁰

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Directive [...]/.../EU [the Asylum Procedures Directive].
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.

²⁰ Reservation: **ES, SI**
Scrutiny reservation: **AT, EE, FR, HU, RO, SK**
ES questioned if provisions on detention are best placed in the Reception Conditions Directive. **CY** preferred to have all detention provisions in one instrument.

3. [...] An applicant may²¹ only be detained²²:

(a) in order to determine or verify his/her identity or nationality;

²³(b) in order to determine [...] the 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;

(c)²⁴ in the context of a procedure, to decide on the right to enter the territory;

²¹ DE proposed to insert "with regard to his/her application for international protection".

²² Reservation: SE proposing a non exhaustive list.

Scrutiny reservation: EL, FR, RO

EE proposed to add a new ground that would cover cases where the applicant fails to comply with the surveillance measures or other requirements of the authorities: "when the applicant fails to comply with the surveillance measures applied with respect to him or her, or fails to perform other duties provided by national law."

AT, supported by SE, proposed to add as a ground cases in which it is clear that the decision on the application for international protection will be negative. In response, Presidency indicated that such ground would result in standards that are lower than those of the Return Directive.

²³ Reservation: FI, SE

SE proposed to have a provision enabling Member States to detain an applicant in cases where it is probable that he/she will be refused entry or expelled and there is a risk of absconding.

FI wanting to have similar grounds for detention for asylum seekers and Dublin cases, proposed to replace the text of ground (b) by "when there are reasonable grounds to consider that he/she will prevent or considerably hinder a decision concerning him/her". In response, Cion indicated that the detention grounds of the Dublin Regulation are not more limited than those of the Reception Conditions Directive but, on the contrary, more extensive.

²⁴ Reservation: ES

☐(c1)²⁵ when there is a risk of the applicant absconding in order to hamper or to avoid the execution of a decision regarding his/her right to stay on the territory of the Member State; ☐

25

Scrutiny reservation: **CZ, EL, FI, NL, SI**

Cion strongly opposed the proposed ground for detention for the following reasons:

First, the proposed ground is so wide that in practice it would amount to making detention the principle rather than the exception. In particular, it allows the application of detention of any asylum seeker from the moment he submits an application until a final decision is taken on his right to stay on the territory. The criterion of "risk of absconding" introduced in this ground is defined in a very vague and broad manner on the basis of a series of hypothetical scenarios (the asylum application might be rejected; the failed applicant might wish to abscond to prevent his return etc.) and in the absence of a concrete, objective assessment of the situation of the applicant at the moment detention takes place (in fact, detention may be applied even before the examination of the asylum application has started). It is thus difficult for the Commission to see on which basis national authorities and/or courts are requested to make an assessment of the risk of absconding and of the possibility of success of the asylum application (in particular, since the submission of an asylum application signifies a wish to stay on the territory).

The proposed ground may therefore lead to the systematic detention of asylum applicants. This is not in line with the EU asylum acquis (asylum seekers shall not be detained merely on the fact that they submitted an application) or developing case-law of the European Courts which states that detention may only be applied in exceptional circumstances (see for relevant case law document 15540/11). Secondly, the proposed ground is not asylum related but concerns the effective implementation of a return procedure. In particular, the ground suggests that you may detain an asylum seeker with a view to preventing him from absconding at the (hypothetical) point in time that he becomes an irregular and he needs to be returned.

This issue falls outside the scope of this Directive; introducing legal rules in one instrument which in fact serve the objectives of another is at the very least legally ambiguous.

Directive 2008/115/EC ("the Return Directive") allows the detention of irregular persons in case there is a risk of absconding. However detention is not automatic: there has to be a return decision issued against that person, detention can only be applied for a maximum period of time, detention cannot be applied in cases of voluntary returns etc. In this respect the application of detention due to the risk of absconding in the Return Directive is based on more guarantees than what the ground proposed by the Presidency would entail. The Commission considers that it is legally ambiguous to ensure higher standards of treatment for persons irregularly on the territory of a Member State than for asylum seekers.

Thirdly, the proposed ground suggests that the asylum applicant/potential irregular/potential "abscondee" can be detained from the moment he submits an application until the moment he is returned to his country of origin, irrespective of the duration of these procedures. This is clearly an infringement of current case law which states that detention shall be for the shortest period possible (see document 1554/11).

As a general point: detention cannot be used as a measure against any potential/future abuse of the asylum system. The developing case law of the European Courts states clearly that detention may only be applied as a measure of last resort, under clearly defined and objective grounds and proportionate to the interest of the society. At the very least, detention shall be the exception and not the rule. It should also be recalled that the asylum acquis, and the amended proposals discussed in the EP and the Council, already include various tools to address abusive applications (withdrawal of reception conditions, application of accelerated/border procedures etc.).

(d)²⁶ when he/she is already detained subject to a return procedure in order to prepare the return and/or carry on the removal process and there are reasonable grounds to believe that [...] he/she makes the [...] application for international protection merely in order to delay or frustrate the enforcement of the [...] return decision [...] ;

(e)²⁷ [...] when protection of national security or public order so requires.

(f)²⁸ in accordance with Article 27 of Regulation (EC) No [...] [Dublin Regulation [...] .

[...] Grounds for detention shall be laid down in national law²⁹.

4.³⁰ Member States shall ensure that any³¹ 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.

²⁶ Scrutiny reservation: **CZ, DE, FR, HU, SE**
DE, FR expressed concerns that ground (d) would be difficult to apply in practice. **DE** proposed to either delete this ground or to clarify it.
SI noted that point (d) seemed to cover only persons who are in detention and suggested, with a view to clarifying this point, to include also other people who are in the removal process.
NL, supported by **BE**, proposed to put the condition that the application is to be treated "within a reasonable period not exceeding 2 months".

²⁷ **Cion** opposed the ground in point (d).
DE requested clarification about the need for this ground given that other grounds which are not related to asylum can be applied on the basis of other legislation than the provisions in the Reception Conditions Directive.

²⁸ **AT, BG, DE, EL, ES, HU, FI, NL, MT, PT, RO, SE, SI** noted that support for the reference to Article 27 of the Dublin Regulation depended on the outcome of the negotiations of that article.

²⁹ Scrutiny reservation: **AT, DE** (linked to recital 15)

³⁰ **CY, DE, SI** considered this paragraph not to have any added value given the conditions for detention included in paragraph 2.

³¹ **DE, HU** proposed to delete "any" and **MT** proposed to keep "any".

Article 9³²

Guarantees for detained asylum seekers

1.³³ Detention shall be for as short a period as possible and shall only be maintained for as long as the grounds set out in Article 8(3) are applicable.

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

2.³⁴ Detention shall be ordered by judicial or administrative authorities. Where detention is ordered by administrative authorities, ☞ Member States shall provide for a speedy judicial review of the lawfulness of detention conducted ex officio and/or on the request of the applicant. ☞ The review of the lawfulness of detention shall be decided on as speedily as possible from the beginning of detention in the case of the *ex officio* review. In the case of a review on the request of the applicant, the lawfulness of the detention shall be subject to a review to be decided on as speedily as possible after the launch of the relevant proceedings. To this end, ☹ Member States shall define in national law a ☞ [...] ☹ period within which the ex officio review and/or the review on request of the applicant shall be conducted. ☹

³² Scrutiny reservation: **EL, ES, FR**
ES considered that Article 9 would be difficult to apply given the distance that often exists between the authorities at the border that decide to detain a person and the court or tribunal that is competent for reviewing this decision.

³³ Scrutiny reservation: **SE**

³⁴ Scrutiny reservation: **FR**

HU proposed to specify the period of time within a decision needs to be taken by the judicial authorities.

☞ [...] ☞ ☞ The applicant ☞ concerned shall be released³⁵ immediately ☞ if the detention is not lawful ☞³⁶.

3. Detention shall be ordered in writing. The detention order shall state the reasons in fact and in law on which it is based ☞ . ☞

☞ Detained asylum seekers shall immediately be informed of the reasons for detention and the procedures laid down in national law for challenging the detention order ☞ ☞ [...] ☞, in a language ☞ they understand ☞ ☞ [...] ☞ or ☞ are ☞ ☞ [...] ☞ reasonably supposed to understand. ☞ [...] ☞.

4. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ☞ [...] ☞ ex officio ☞ and/ ☞ or on request by the asylum seeker concerned, in particular whenever it is of a prolonged duration or relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

³⁵ DE proposed "suspended" instead of "released". In response, Cion indicated that Article 15 of the Return Directive also uses the term "released".

³⁶ DE proposed ", unless there is a detention order independent from the procedure on international protection" instead of "if the detention is not lawful". In response, Presidency indicated that the proposed new recital (15a) aims to address this concern.

5.³⁷ ⇒ In cases of ⇒ [...] ⇒ a ⇒ review³⁸ of the detention order ⇒ provided for in paragraph 2 ⇒³⁹, Member States shall ensure that asylum seekers have access to free legal assistance and representation ⇒ . This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant. ⇒⁴⁰ ⇒

⇒ Free legal assistance and representation shall be provided by such persons as admitted or permitted under national law. ⇒⁴¹

⇒ 6. Member States may also provide that free legal assistance and representation are granted: ⇒

⇒ (a) only to those who lack sufficient resources; and/or ⇒

⇒ (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants for international protection. ⇒

³⁷ Reservation: **FR**

³⁸ **DE** requested clarification whether the "review was to be performed by judicial or by administrative authorities and suggested to use similar wording as in Article 26.2 "appeal before a judicial body").

³⁹ **Cion** noted that the term "detention order" referred to paragraph 2 and paragraph 4.

⁴⁰ In response to a query of **LV and MT**, **Cion** indicated that the specification relating to the hearing does not imply that a hearing needs to take place. In this context, **MT** suggested to add "any" before "hearing".

⁴¹ **BG, HU, IT, SI** proposed to insert a phrase on legal assistance and representation by non governmental organisations as in Article 26.2. ". In response, **Cion** indicated that the broad formulation of the current text leaves it to Member States to decide whether they allow free legal assistance by non governmental organisations. In this context, **BG, HU, IT** suggested to keep the broad formulation but to mention non governmental organisations as well.

☞ [...] ☞

☞ [...] ☞⁴²

⁴³

☞_☞_7 ☞ ☞ [...] ☞. Member States may also: ☞

☞ (a) impose monetary and ☞ [...] ☞⁴⁴ time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to the provision of legal ☞ [...] ☞ assistance and representation; ☞

☞ (b) provide that, as regards fees and other costs⁴⁵, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance ☞ [...] ☞⁴⁶. ☞

☞_☞_8 ☞ ☞ [...] ☞. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably⁴⁷ or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant. ☞

☞_☞_9 ☞ ☞ [...] ☞. Procedures for access to legal assistance and representation in ☞ [...] ☞ such ☞ cases ☞ as referred to above ☞ ☞ [...] ☞ shall be laid down in national law. ☞☞ [...] ☞

⁴² SE opposed the deletion of the phrase: "and in so far as it is necessary to ensure their effective access to justice".

⁴³ DE proposed to insert a provision containing a merits test as in Article 20.3 of the Asylum Procedures Directive. DE argued that not having such a test would put asylum seekers in a better position than own nationals.

⁴⁴ Reservation: HU, IT, LU, SK wanting to re-insert "/or".

⁴⁵ DE proposed "free legal assistance and representation" instead of "fees and other costs".

⁴⁶ Pres indicated that the phrase " and representation" should be re-inserted.

⁴⁷ HU suggested to clarify the phrase "has improved considerably".

Article 10⁴⁸

Conditions of detention

1.⁴⁹ Detention 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 asylum seeker in detention shall be kept separately⁵¹ from ordinary prisoners.

[...]

2.⁵² Detained asylum seekers shall have access to open-air spaces.

3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees have the possibility to communicate with applicants and to have access to detention facilities. This also applies to an organisation which is working in the territory of the Member State concerned on behalf of the United Nations High Commissioner for Refugees pursuant to an agreement with that Member State⁵³.

⁴⁸ Scrutiny reservation: **FR**

⁴⁹ Scrutiny reservation: **FI, FR**.

⁵⁰ **HU** and **Cion** opposed the deletion of "temporarily" recalling further that the conditions "In duly justified cases" and "for a reasonable period of time" had already been deleted from its proposal.

⁵¹ **DE** remarked that the Return Directive uses the term "separated" instead of "separately".

⁵² **ES** proposed to add "Where possible, detained".

⁵³ **SK** proposed to add at the end of the end of the paragraph: "Member States may lay down rules on the access of persons representing these organisations in detention facilities."

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 applicants and have access to detention facilities. Limits to access 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 limited or rendered impossible.⁵⁴
- 5.⁵⁵ Member States shall ensure that asylum seekers in detention are systematically⁵⁶ provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language 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 when the asylum seeker is detained at a border or in a transit zone ➔ . This derogation shall not apply in ➔ ➔ [...] ➔ cases referred to in Article 43 of Directive [...] [the Asylum Procedures Directive]. ➔⁵⁷

⁵⁴ Reservation: **NL** proposing to replace the phrase: ", provided that .. impossible" with "unless temporarily necessary". In response, **Cion** referred to the phrase in Article 16.2 of the Asylum Procedures Directive currently in force: "provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible" indicating that the purpose of the provision is that access is not limited all the time. Moreover, **Cion** indicated that paragraph 4 concerns the possibility to communicate which is already referred to in Article 14 of the directive currently in force.

Scrutiny reservation: **AT** (preferring the text of the Return Directive), **CY**

⁵⁵ Reservation: **CY**

Scrutiny reservation: **DE, EL**

⁵⁶ **SK** proposed to delete "systematically". In response, **Cion** indicated that "systematically" also appears in Article 16.5 of the Return Directive.

⁵⁷ Scrutiny reservation on second and third sentence: **DE**.

Cion indicated that when a Member State opts to apply a border procedure, it needs to ensure all necessary guarantees that come with such procedure, including explanation of the rules that are applied in the detention facility.

☞ [...] ☞

☞ [...] ☞

☞ [...] ☞.

Article 11

Detention of vulnerable persons and persons with special reception needs

1.⁵⁸ ☞ The health, including the mental health⁵⁹, of applicants ☞ in detention ☞ ☞ [...] ☞ who are vulnerable persons shall be of primary concern to national authorities. ☞ ☞ [...] ☞

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation including their health.

⁵⁸ Scrutiny reservation: **BE, EL, RO, SE**

Cion strongly opposed paragraph 1 considering it appropriate in the light of case law to have an obligatory check whether the health of a vulnerable applicant could deteriorate as a consequence of being in detention before putting him/her in detention. Furthermore, **Cion** argued that the health of applicants should always be a primary concern for Member States, irrespective whether the applicant is vulnerable or not.

⁵⁹ **ES, RO** proposed to delete the reference to "mental health".

2.⁶⁰ Minors shall only⁶¹ [...] be detained [...] as a measure of last resort and for the shortest period of time [...] The minor's best interests, as prescribed in Article 23(2), shall be⁶² a [...] primary consideration.

Unaccompanied minors shall be detained only in particularly exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible. [...]

Unaccompanied minors shall not be kept in prison accommodation.⁶³

[...]

Where minors are detained, they shall have the possibility to engage in leisure-activities, including play and recreational activities appropriate to their age.

⁶⁰ Reservation: **DE, ES** and scrutiny reservation: **EL, FR**
FR, supported by **DE, ES**, indicated that detention of unaccompanied minors is needed for an effective border procedure and proposed to specify in the second subparagraph that Member States may consider cases under Article 8.3(c) as particularly exceptional circumstances. In response, **Cion** indicated that the text in paragraph 2 corresponds with the Convention of the Rights of the Child. In this context, **FR** referred to its suggestion, which was supported by **ES**, to add at the end of the paragraph: "These provisions do not affect national provisions governing borders.". In response, **Cion** indicated that case-law makes clear that detention is not assessed on the basis of the geographical location of the applicant but on the basis of basic principles such as necessity and proportionality. Moreover, **Cion** considered that the issue of detention of minors at borders should be part of the discussions on the Asylum Procedures Directive more than on the Reception Conditions Directive. **BE** expressed the position that detention of children should be avoided as much as possible and should only be allowed in very exceptional situations.

⁶¹ Scrutiny reservation: **CZ**, supported by **Cion**, on "shall only" considering "may only" more correct wording.

⁶² **DE** proposed "must be considered" instead of "shall be". In reaction, **Cion** pointed out that this proposal would not be in line with the Convention of the rights of the child..

⁶³ Reservation: **AT** proposing "Unaccompanied minors below the age of 14 years..."

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

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

4.⁶⁶ Where female asylum seekers are detained, Member States shall ensure that they are accommodated separately from male asylum seekers, unless these are family members and all concerned individuals consent thereto.

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

5. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the fourth subparagraph of paragraph 2, paragraph 3 and the first subparagraph of paragraph 4, when the asylum seeker is detained at a border post or in a transit zone, with the exception of cases referred to in Article 43 of Directive [...] /EU] [the Asylum Procedures Directive].

⁶⁴ NL proposed to insert at the end of paragraph 2 the same exception as contained in the second subparagraph of paragraph 4.

⁶⁵ Scrutiny reservation: **CY**

⁶⁶ Scrutiny reservation: **CY**

↓ 2003/9/EC

⇒ new

Article 12 ~~8~~

Families

Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing ⁶⁷by the Member State concerned. Such measures shall be implemented with the asylum seeker's agreement.

Article 13 ~~9~~

Medical screening

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

Article 14 ~~10~~⁶⁸

Schooling and education of minors

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

⁶⁷ **CY** proposed to refer also to reception facilities.

⁶⁸ Scrutiny reservation: **ES**

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

~~Minors shall be younger than the age of legal majority in the Member State in which the application for asylum was lodged or is being examined.~~ Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Access to the education system shall not be postponed for more than three months from the date the application for ~~⇒ international protection ⇐~~ ~~asylum~~ was lodged by ~~⇒ or on behalf of ⇐~~ the minor ~~or the minor's parents~~. ~~This period may be extended to one year where specific education is provided in order to facilitate access to the education system.~~⁶⁹

↓ new

→ Council

Preparatory classes, including language classes, shall⁷⁰ be provided to minors where it is necessary to facilitate their access ~~→ [...] ⇐~~ to the national education system ~~→ as set out in paragraph 1 ⇐~~.⁷¹

⁶⁹ Reservation: **RO** proposing to re-insert the phrase "This period...education system" considering the possibility to extend the period for access to the education system in some cases beneficial for the asylum seeker.

⁷⁰ **CY, ES, NL** proposed "may" instead of "shall".

⁷¹ Scrutiny reservation: **AT, DE, FI**. In response, **Cion** indicated that this subparagraph does not concern integration in the host society but integration into the national education system.

↓ 2003/9/EC

⇒ new

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State ⇒ shall ⇐ ~~may~~ offer other education arrangements ⇒ in accordance with national law and practices ⇐.

Article ~~15~~ ~~11~~⁷²

Employment

- ~~1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged during which an applicant shall not have access to the labour market.~~

⁷² Reservation: **AT, CZ, DE, FR, HU, LT, LV, MT, RO, SI, SK** expressing concerns that access to the labour market would be a pull factor and lead to abuse. Also **FR, SK** found the provision difficult to implement in practice and **DE, SK** expressed concerns about possible discrimination between asylum seekers and legal immigrants looking for work. In response, **Cion** indicated that the pull factor argument would be less valid in case of rapid decisions on asylum applications. Furthermore, **Cion** indicated that 9 Member States already allow access after 6-months and that there is no evidence that shorter periods for labour market access lead to increased numbers of applications. **AT, DE, FR, SI, SK** proposed to maintain the provision on employment included in the directive currently in force. **LT** wanted to assess access to the national labour market on a case-by-case basis. **MT** proposed a 1-year period. **BE, BG, CY** (support a 6-months period) and **LV** (supporting a 12-month period) proposed to maintain the condition in the directive currently in force that access is refused in case a negative first instance decision is taken within the period of 6 months irrespective whether the applicant appeals against that decision. **SE** could accept a 6-months period but proposed to clarify that if the asylum seeker does not cooperate in the asylum procedure, access to the labour market could be withheld. **LU** could accept a 6-months period.

↓ new

1.⁷³ Member States shall ensure that applicants have access to the labour market no later than 6 months following the date when the application for international protection was lodged.

Member States may extend that time limit for a period not exceeding a further six months, in the cases provided for in points (b) and (c) of Article 31(3) of Directive [...]/.../EU [the Asylum Procedures Directive].

↓ 2003/9/EC

⇒ new

2. ~~If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant,~~ Member States shall decide the conditions for granting access to the labour market for the applicant ⇒, in accordance with their national law⁷⁴, while ensuring asylum seekers have effective access to the labour market. ⇐.

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

⁷³ Reservation: **BG**

⁷⁴ **CY** proposed to replace the phrase ", while ensuring asylum seekers have effective access to the labour market" with "or/and practice".

~~4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.~~⁷⁵

Article ~~16~~ ~~12~~

Vocational training

Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article ~~15~~ ~~11~~.

Article ~~17~~ ~~13~~

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for ~~asylum~~ ⇨ international protection ⇐.

⁷⁵ Reservation: AT, CY, CZ, DE, EL, LV, NL, RO, SK on the proposed deletion. In response, **Cion** indicated that this provision should be deleted from the Reception Conditions Directive in order to avoid confusion with the principle of EU preference and other relevant EU law. In that light, a reference to labour market policies in the Reception Conditions Directive is no longer considered appropriate.

↓ 2003/9/EC (adapted)

2. Member States shall ☒ ensure that ☒ ~~make provisions on~~ material reception conditions ☒ provide an adequate ☒ ~~to ensure a~~ standard of living ☒ for applicants for international protection, which guarantees their subsistence and protects their physical and mental health ☒ ~~adequate for the health of applicants and capable of ensuring their subsistence.~~
-

↓ 2003/9/EC

⇒ new

Member States shall ensure that that standard of living is met in the specific situation of ⇒ vulnerable ⇐ persons ~~who have special needs~~, in accordance with Article ⇒ 21 ⇐ ~~17~~, 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 and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.
4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

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

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

~~Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.~~

↓ new

→ Council

5.⁷⁶ Where Member States provide material reception conditions in the form of financial allowances and vouchers, the amount thereof shall be determined on the basis of the point(s) of reference established by the Member State concerned either by law or practice to ensure adequate standards of living for nationals → [...] ←. Member States may grant less favourable treatment to asylum seekers ← → [...] ← compared to nationals in this respect, where it is duly justified →, in particular where material support is partially provided in kind or where the abovementioned point(s) of reference, applied for nationals, aim to ensure a standard of living higher than what is prescribed for asylum seekers under this Directive ←.

⁷⁶ Reservation: **DE, EL, FR, NL**

Scrutiny reservation: **AT, EL, SE**

FR indicated that in France no national point of reference on social welfare exists. **DE, NL** expressed concerns that the Presidency proposal would inject the differences between Member States in social welfare into the material reception conditions for asylum seekers expressing concerns this would result in making Member States which offer a higher level of material reception conditions more attractive to asylum applicants. For that reason, **DE** proposed to replace the last sentence of paragraph 5 with "This provision does not imply that the amount should be the same as for nationals.". Alternatively, **DE** proposed to maintain the text of Article 17(5) of the directive currently in force. **NL** - whilst preferring the text contained in document 13935/10 - proposed obliging Member States to specify which indicators - such as social welfare assistance - they apply for determining the level of material reception conditions. In response, **Presidency** indicated that material reception conditions for asylum seekers need not be equivalent to the level of social welfare as social welfare assistance is referred to in recital (20) as an example of a point of reference and that other points of reference are possible. Moreover, the application of a point of reference does not imply that the material reception conditions need to be equivalent to the chosen point of reference but that it is possible to grant asylum seekers for instance a percentage of the social welfare nationals receive as long as this ensures an adequate standard of living and it is duly justified.

↓ 2003/9/EC (adapted)

⇒ new

Article 18 ~~14~~

Modalities for material reception conditions

1. Where housing is provided in kind, it should 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 ⇐ ~~asylum lodged~~ ⇒ made ⇐ at the border ⇒ or in transit zones ⇐;
 - (b) accommodation centres which guarantee an adequate standard of living;
 - (c) private houses, flats, hotels or other premises adapted for housing applicants.
- 2.⁷⁷ ⇒ Without prejudice to any specific conditions of detention as stipulated in Articles 10 and 11, ⇐ ☒ in relation to housing referred to in paragraph 1(a), (b) and (c), ☒ Member States shall ensure that ~~applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:~~
 - (a) ☒ applicants are guaranteed ☒ protection of their family life;
 - (b) ☒ applicants have ☒ the possibility of communicating with relatives, legal advisers ⇒ or counsellors ⇐, ☒ persons representing ☒ ~~and representatives of the~~ United Nations High Commissioner for Refugees (UNHCR) and ⇒ other relevant national, international and non-governmental organisations and bodies ⇐ ~~non governmental organisations (NGOs) recognised by Member States.~~

⁷⁷ Scrutiny reservation: AT preferring the text in the directive currently in force.

↓ 2003/9/EC article 14(7) (adapted)

⇒ new

(c)⁷⁸ ⇒ Family members ⇐, legal advisers ~~advisors~~ or counsellors ~~of asylum seekers~~,
⊗ persons representing ⊗ ~~and representatives of~~ the United Nations High
Commissioner for Refugees ⊗ (UNHCR) ⊗ ⊗ and ⊗ ~~or~~ ⇒ relevant ⇐ non-
governmental organisations ~~designated by the latter and~~ recognised by the Member
State concerned ⊗ are ⊗ ~~shall be granted access to accommodation centres and~~
~~other housing facilities~~ in order to assist the said asylum seekers. Limits on such
access may be imposed only on grounds relating to the security ⁷⁹of ⊗ these
premises ⊗ ~~the centres and facilities~~ and of the asylum seekers.

↓ new

3.⁸⁰ Member States shall take into consideration gender and age specific concerns and the
situation of vulnerable persons in relation to applicants within the premises and
accommodation centres referred to in paragraph 1(a) and (b).

⁷⁸ Scrutiny reservation: **AT** expressing concerns about the addition of "family members". In response, **Cion** indicated that the addition of "family members" is in line with the Return Directive.

⁷⁹ **NL** proposed to insert in conformity with Article 10.4 the phrase: ", the public order or administrative management".

⁸⁰ **AT** requested clarification about the implementation of paragraph 3.

↓ 2003/9/EC (adapted)

⇒ new

⇒ Council

4. Member States shall take appropriate measures to prevent pay particular attention to the prevention of assault ⇒ and gender based violence including sexual assault⁸¹, ⇐ within the premises and accommodation centres referred to in paragraph 1(a) and (b).
- ~~3.~~ ~~Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.~~
- 5.4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers ~~advisors~~ ⇒ or counsellors ⇐ of the transfer and of their new address.
- 6.5. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work.
- 7.6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

⁸¹ Scrutiny reservation: **FR, RO, SE**
FR, RO opposed the proposed specification arguing it added unnecessary detail.

~~7. Legal advisors or counsellors of asylum seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist the said asylum seekers. Limits on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum seekers.~~

8. ⇒ In duly justified cases, ⇐ Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

(a) = an initial assessment of the specific needs of the applicant is required ⇒ , in accordance with Article 22 ⇐ ,

~~material reception conditions, as provided for in this Article, are not available in a certain geographical area,~~

(b) = housing capacities normally available are temporarily exhausted;

~~the asylum seeker is in detention or confined to border posts.~~

These different conditions shall cover in any case basic needs.

Article 19 ~~15~~

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness ➡ [...] ⬅ ↵.
- 2.⁸² Member States shall provide necessary medical or other assistance to applicants who have special ➡ reception ⬅ needs, ➡ including appropriate mental health care where needed ↵.

⁸² Scrutiny reservation: **DE, ES**

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article ~~20~~ ~~16~~⁸³

Reduction or withdrawal of material reception conditions

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

~~(a)~~ where an asylum seeker:

(a) = abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or

(b) = does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or

⁸⁴(c) = ~~has already~~ lodged \Rightarrow a subsequent application as defined in Article 2(q) of [...]/.../EU] [the Asylum Procedures Directive] \Leftarrow ~~an application in the same Member State.~~ , or

⁸³ Scrutiny reservation: **AT, CZ**

AT stated that in Austria this provision concerns a competence of the Länder which therefore need to be consulted.

⁸⁴ Reservation: **SI** and scrutiny reservation: **CY, EL, ES, FR** because of the reference to subsequent applications in the Asylum Procedures Directive. In response, **Cion** indicated this point is merely a clarification of the text already included in the directive currently in force.

☒ (d) has concealed financial resources and has therefore unduly benefited from material reception conditions. ☒

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☒ In relation to cases (a) and (b), ☒ ~~W~~ when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the ☒ material ☒ reception conditions ☒ withdrawn or reduced ☒;

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

~~If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.⁸⁶~~

~~2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.⁸⁷~~

⁸⁵ **DE** proposed as additional ground a refusal of a job offer and submitted a proposal thereto in document 14574/11. **Cion** did not see the need for such additional ground.

SI proposed as additional ground: "has entered and/or resided legally in the Member State and has asked for protection.

⁸⁶ Scrutiny reservation: **HU** noting its opposition to the Commission proposal to delete the last subparagraph of paragraph 20.1 ("If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund").

⁸⁷ **CY, FR** proposed to re-insert this paragraph.

⁸⁸ ⇒ 2. **Member States may reduce or withdraw material reception conditions in clearly abusive cases, particularly when the applicant has entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has not filed an application for asylum as soon as possible. Member States shall continue to provide a dignified standard of living for these applicants.** = Ⓒ

⇒ 3. Ⓒ ⇒ [...] Ⓒ Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.

⇒ 4. Ⓒ ⇒ [...] Ⓒ = Decisions for reduction, withdrawal or refusal of ☒ material ☒ reception conditions or sanctions referred to in paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article ⇒ 21 ⇐ 17, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to emergency health care ⇒ in accordance with Article 19 ⇐.

⇒ 5. Ⓒ ⇒ [...] Ⓒ = Member States shall ensure that material reception conditions are not withdrawn or reduced before a ~~negative~~ decision is taken ☒ in accordance with paragraph 3 ⇐.

⁸⁸ Reservation: **CZ, FR, HU**

Scrutiny reservation: **BE, LU, NL, PT, SI**

Cion opposed the new paragraph 2 considering it to lower standards in comparison to the directive currently in force.

FR submitted a proposal for a new text of paragraph 2: "Member States may, on the basis of a duly motivated decision, reduce or withdraw access to material reception conditions in clearly abusive cases, particularly when the applicant has entered the territory unlawfully or prolonged his/her stay unlawfully and, without good reasons, has not filed an application for asylum as soon as possible." . In response, **Cion** pointed out that, on the basis of paragraph 4 such decisions need to be motivated.

DE, RO could support the Presidency proposal.

AT could support the Presidency proposal but proposed to delete the last sentence of paragraph 2 as this is already ensured by Article 3 of the Convention on Fundamental Freedoms and Human Rights.

CHAPTER IV

PROVISIONS FOR ⇒ VULNERABLE PERSONS ⇐ ~~PERSONS WITH SPECIAL NEEDS~~

Article 21 ~~17~~⁸⁹

General principle

~~1.~~ Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children ⇒, victims of trafficking, persons with serious ⇐ [...] ⇐ illnesses, ⇐ [...] ⇐ ⇐ persons with mental disorders ⇐ ⇐ [...] ⇐, ⇐ and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing ⇒ this Directive ⇐ ~~the provisions of Chapter II relating to material reception conditions and health care.~~

~~2.~~ ~~Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.~~

⁸⁹ Scrutiny reservation: **AT, DE, FR** preferring the text of the directive currently in force and Article 3(9) of the Return Directive.

AT expressed concerns about the potentially broad scope of the group of vulnerable persons which could have financial implications. In response, **Cion** indicated that the listed examples only concern the most serious categories of vulnerable persons.

⁹⁰ **SE** proposed to maintain paragraph 2 of the directive currently in force as already agreed in Article 20 of the recast of the Qualification Directive.

↓ new

→ Council

Article 22⁹¹

Identification⁹² of the special reception needs of vulnerable persons

1. → Member States shall assess through an individual evaluation whether applicants belonging to vulnerable categories pursuant to Article 21 have special reception needs. In such cases, Member States shall establish the nature of those needs and the necessary support to be provided. The assessment ← → [...] ← shall be initiated within a reasonable time after an application for international protection is made. Member States shall ensure that these special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

⁹¹ Scrutiny reservation: **AT, DE, EL, FR, IT, LU, PT, RO, SI** opposing an identification procedure within the procedure for examining the asylum application.
FR, NL, PT preferred text in document 17832/11.
AT, DE proposed to re-insert the text of the directive currently in force.
Cion opposed the text of paragraph 1 considering it to lower standards in comparison to the directive currently in force.

⁹² **DE, IT** proposed to replace "identification" in the title and in paragraph 2 with "assessment".

Member States shall ensure that the support⁹³ provided to such persons takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The identification provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive [.../.../EU] [the Qualification Directive].

↓ 2003/9/EC

⇒ new

Article 23 ~~18~~

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. ⇒ Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development. ⇐

⁹³ AT requested clarification of the term "support". In response, Cion suggested to clarify this term by adding: "as described in this directive".

↓ new

↻ Council

- 2.⁹⁴ 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 ↻ [...] ↻;⁹⁵
 - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of trafficking;
 - (d) the views of the minor in accordance with his/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 within the premises and accommodation centres referred to in Article 18(1)(a) and (b) and to open-air activities.

⁹⁴ **DE** proposed, under reference to the Qualification Directive, to delete paragraph 2 inserting the content of this paragraph in the recitals (14574/11).

⁹⁵ **Cion** regretted the deletion of the phrase "taking into particular consideration the minor's ethnic, religious, cultural and linguistic background" given that it has been taken from the general comments of the United Nations Convention on the rights of the child" .

↓ 2003/9/EC

4. ~~2~~ 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.

↓ 2003/9/EC article 14(3)

⇒ new

⇒ Council

5.⁹⁶ Member States shall ensure, ~~if appropriate,~~ that minor children of applicants or applicants who are minors are lodged with their parents ⇒, ~~their unmarried minor children~~ ⇒ or with the adult ⇒ [...] ⇒ responsible for them whether by law or ~~by custom~~ ⇒ the national practice of the Member States concerned, provided this is in the best interests of the minors concerned ⇐.

⁹⁶ Scrutiny reservation: **DE, SI**. In response, **Cion** explained that family reunification in the framework of this directive only concerned family members already present on the territory of the Member State.

↓ 2003/9/EC

⇒ new

Article 24 ~~19~~

Unaccompanied minors

- 1.⁹⁷ Member States shall as soon as possible take measures to ensure ~~the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation~~ ⇒ that a representative represents and⁹⁸ assists the unaccompanied minor to enable him/her to benefit from the rights and comply with the obligations provided for in this Directive. The representative shall have the necessary expertise⁹⁹ in the field of childcare and shall perform his/her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2). ⇐

Regular assessments shall be made by the appropriate authorities.

⁹⁷ Scrutiny reservation: **ES**

⁹⁸ **FR** proposed "and/or" instead of "and".

⁹⁹ **EL** requested clarification as to the term "necessary expertise".

2.¹⁰⁰ Unaccompanied minors who make an application for ⇒ international protection ⇐
~~asylum~~ shall, from the moment they are admitted to the territory to the moment they are
obliged to leave the host Member State in which the application for ⇒ international
protection ⇐ ~~asylum~~ 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 asylum seekers, ⇒ if it is in their best interests, as prescribed in Article 23(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.

¹⁰⁰ Scrutiny reservation: **DE** requesting clarification on the geographical scope of the tracing.

↓ 2003/9/EC (adapted)
⇒ new
⇒ Council

3.¹⁰¹ ⇒ Member States ⇒ [...] ⇐ ⇒ [...] ⇐ ~~Member States protecting the unaccompanied minor's best interest shall endeavour~~ ⇒ start ⇐ to trace, the members of ⊗ the unaccompanied minor's ⊗ ~~his or her~~ family ⇒, where necessary with the assistance of international or of other relevant organisations, ⇐ as soon as possible ⇒ after an application for international protection is made whilst protecting his/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 jeopardizing their safety.

¹⁰¹ Scrutiny reservation: **AT, DE, ES, EL** because of potential organisational and financial implications.

↓ 2003/9/EC

⇒ new

⇒ Council

4.¹⁰² Those working with unaccompanied minors shall have had ⇒ and shall continue to ⇐ ~~or~~ receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.

Article ~~25~~ ~~26~~¹⁰³

Victims of torture and violence

1.¹⁰⁴ Member States shall ensure that, ~~if necessary,~~ persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts ⇒, in particular access to ⇐ [...] ⇐ ⇐ relevant ⇐ medical and psychological treatment ⇐ ⇐ or care ⇐.

¹⁰² Scrutiny reservation: **EL**

¹⁰³ Scrutiny reservation: **AT, FR**

AT requested clarification how victims of torture and violence related to vulnerable persons. In response, **Cion** indicated that these terms already existed in the directive currently in force.

¹⁰⁴ Scrutiny reservation: **ES, LT** considering the provision to contain too much detail.

Cion considered its own proposal clearer and more effective for achieving harmonisation between Member States.

↓ new

2.¹⁰⁵ Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in the relevant national law, in relation to any information they obtain in the course of their work.¹⁰⁶

↓ 2003/9/EC (adapted)

⇒ new

CHAPTER V

APPEALS

Article 26 ~~21~~¹⁰⁷

Appeals

1. Member States shall ensure that ~~negative~~ decisions relating to the granting ⇒, withdrawal or reduction ⇐ of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review ⇒, in fact and in law, ⇐ before a judicial body shall be granted.¹⁰⁸

¹⁰⁵ Scrutiny reservation: **ES** considering this provision too detailed.

¹⁰⁶ **ES** remarked that confidentiality should be taken into consideration for all applicants for asylum and not only for victims of torture and violence.

¹⁰⁷ Scrutiny reservation: **LT, SE**

¹⁰⁸ Reservation: **PL**

↓ new

↻ Council

2.¹⁰⁹ ↻ Member States shall ensure that free legal assistance and representation is granted on request, in the procedures¹¹⁰ referred to in paragraph 1. This shall include, 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 such persons as admitted or permitted under national law. ↻ ↻ [...] ↻

↻ 3. Member States may also provide that free legal assistance and representation is granted: ↻

↻ (a) only to those who lack sufficient resources; and/or ↻

↻ (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants for international protection ↻

¹⁰⁹ Reservation: **FR, LT, MT**

Scrutiny reservation: **AT, CY, EE, EL, ES, LV, PL, RO, SE**

AT indicated that in Austria no free legal assistance exists for equivalent cases in, for instance, the field of social welfare.

AT proposed to use the same terminology throughout the article: "judicial bodies".

FR proposed to allow Member States to refuse free legal assistance when the request seems unrelated to a need for protection, therefore justifying a procedure on inadmissible applications or an accelerated procedure, without prejudice that authorities take into account individual situations that are particularly worthy of interest.

¹¹⁰ **DE** proposed "in cases of an appeal before a judicial body" instead of "in the procedures".

¹¹¹ ➔ Member States may provide that free legal assistance and representation not be granted if the ➔ appeal or review ◐ ➔ [...] ◐ is considered by a court or tribunal ¹¹²to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered. ◐

➔ [...] ◐

➔ [...] ◐

➔ [...] ◐

-
- ¹¹¹ Reservation: **FR** proposing to delete this subparagraph.
Scrutiny reservation: **HU** requesting clarification how to determine that a case has no tangible prospect of success and who should make that determination.
IT would oppose a preliminary examination of the chances of success of an appeal.
- ¹¹² **HU** proposed to insert: "or administrative authority". In response, **Cion** indicated that a merits test can only be performed by a court or tribunal.
CZ wanted it to be possible that free legal assistance and representation is also provided before administrative authorities. **IT** would oppose this.

↓ 2003/9/EC
 ↻ Council

↻ 4. [...] ↻ Member States may also: ↻

↻ (a) impose¹¹⁴ monetary and¹¹⁵ time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and¹¹⁶ legal assistance and representation; ↻

↻ (b) provide that, as regards ↻ free legal assistance and representation ↻ [...] ↻¹¹⁷, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. ↻

↻¹¹⁸ Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant. ↻

¹¹³ CZ suggested to re-insert the phrase "Procedures for access to legal assistance and representation in such cases shall be laid down in national law".

¹¹⁴ Scrutiny reservation: FR on "impose".

¹¹⁵ Reservation: HU, IT, LU, SK wanting to re-insert "/or".

¹¹⁶ Cion considered the phrase "legal and procedural information and" not relevant in this context.

¹¹⁷ EE suggested "free legal assistance and representation including fees and other costs". Cion indicated that "fees and other costs" would be the correct term instead of "free legal assistance and representation".

¹¹⁸ Scrutiny reservation: HU considering that for instance the phrase "when the applicant's financial situation has improved considerably" is not clear.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 22

Cooperation

~~Member States shall regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions and provide full information on the type, name and format of the documents provided for by Article 6.~~

↓ new

Article 27

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.

↓ 2003/9/EC

⇒ new

Article 28 ~~23~~¹¹⁹

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.

↓ new

- 2.¹²⁰ Member States shall submit relevant information to the Commission in the form set out in Annex I, by [1 year after the transposition deadline] at the latest.

¹¹⁹ Scrutiny reservation: **DE, EL, LU, PT**

¹²⁰ Reservation: **AT**

Scrutiny reservation: **FR**

DE proposed to delete paragraph 2 because of doubts whether the requested information is available and on the proportionality of delivering such information..

↓ 2003/9/EC

Article ~~29~~ 24

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

↓ 2003/9/EC (adapted)

⇒ new

CHAPTER VII

FINAL PROVISIONS

Article ~~30~~ 25¹²¹

Reports

By ⇒ [two years after the transposition deadline as set out in the first subparagraph of Article 31(1) of this Directive] at the latest ⇐ ~~6 August 2006~~, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

¹²¹ Scrutiny reservation: **AT, DE, FR, SE**

Member States shall send the Commission all the information that is appropriate for drawing up the report, ~~including the statistical data provided for by Article 22~~ by \Rightarrow [.../.../...] ¹²² \Leftarrow ~~6 February 2006~~.

After presenting the \boxtimes first \boxtimes report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

↓ 2003/9/EC (adapted)

Article ~~31~~ ~~26~~ ^{123 124}

Transposition

1. ¹²⁵ Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 6 February 2005~~ \boxtimes Articles [2, 3, 5, 6, 7, 8, 9, 10, 11, 14, [15], 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28] [The articles which have been changed as to the substance by comparison with the earlier Directive] and Annex I by [...] ¹²⁶ at the latest \boxtimes . They shall forthwith ~~inform~~ \boxtimes communicate to \boxtimes the Commission ~~thereof~~ \boxtimes the text of those provisions \boxtimes .

¹²² 36 months from the date of publication in the *Official Journal of the European Union*.
DE, with preliminary support of **SE**, considered the period of 36 months too short.

¹²³ Scrutiny reservation: **AT, DE, EL, ES, FR, IT, PT, SI**

¹²⁴ Scrutiny reservation: **AT, CY, IT, SE**. In response, **Cion** indicated that a transposition period of 24 months is normally applied and that the transposition of the Directive currently in force was set at 24 months as well.

¹²⁵ Reservation: **FR**

¹²⁶ 24 months from the date of publication in the *Official Journal of the European Union*.

When ~~the~~ Member States adopt ~~these measures~~ ☒ those provisions ☒, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made. ☒ 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 ~~relating to the enforcement of~~ ☒ covered by ☒ this Directive.



Article 32

Repeal

Directive 2003/9/EC is repealed for the Members States bound by this Directive with effect from [day after the date set out in the first subparagraph of Article 31(1) of this Directive], 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 II, Part B.

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

↓ 2003/9/EC (adapted)

Article 33 ~~27~~¹²⁷

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.

☒ Articles [2, 3, 5, 6, 7, 8, 9, 10, 11, 14, [15], 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28] [*The articles which are changed by comparison with the earlier Directive*] and Annex I shall apply from [day after the date set out in the first subparagraph of Article 31(1)]. ☒

¹²⁷ Scrutiny reservation: **CY, FR**

Article ~~34~~ ~~28~~

Addressees

This Directive is addressed to the Member States in accordance with the Treaties ~~in accordance with the Treaty establishing the European Union.~~

Done at [...]

For the European Parliament

The President

[...]

For the Council

The President

[...]

ANNEX I¹²⁸

Reporting form on the information to be submitted by Member States, as required under Article 28(2) of Directive [...]/.../EU. After the date referred to in Article 28(2) of this Directive this information shall be re-submitted to the Commission when there is a substantial change in the national law or practice that outdate the provided information.

1. On the basis of Articles 2(k) and 22 of Directive [...]/.../EU, please explain the different steps for the identification of persons with special reception needs, including the moment it is triggered and its consequences in relation to addressing such needs, in particular for unaccompanied minors, victims of torture, rape or other serious forms of psychological, physical or sexual violence and victims of trafficking.

2. Provide full information on the type, name and format of the documents provided for in Article 6 of Directive [...]/.../EU.

3. With reference to Article 15 Directive [...]/.../EU, please indicate to the extent that any particular conditions are attached to labour market access for asylum seekers, and describe in detail such restrictions.

¹²⁸ Scrutiny reservation: **EL**

4. With reference to Article 2(g) of Directive [.../.../EU], please describe how material reception conditions are provided (i.e. which material reception conditions are provided in kind, in money, in vouchers or in a combination of these elements) and indicate the level of the daily expenses allowance provided to asylum seekers.¹²⁹

5. Where applicable, with reference to Article 17(5) Directive [.../.../EU], please explain the point(s) of reference applied by national law or practice with a view to determining the level of financial assistance provided to asylum seekers. To the extent that there is a less favourable treatment of asylum seekers compared to nationals, explain the reasons in this respect.



ANNEX II

Part A

Repealed Directive

(referred to in Article 32)

Council Directive 2003/9/EC

(OJ L 31, 6.2.2003, p. 18)

Part B

Time-limit for transposition into national law

(referred to in Article 31)

Directive	Time-limit for transposition
2003/9/EC	6 February 2005





ANNEX III

CORRELATION TABLE

Directive 2003/9/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	-
Article 2(b)	-
-	Article 2(a)
Article 2(c)	Article 2(b)
Article 2(d) introductory words	Article 2(c) introductory words
-	Article 2(c) point (i) introductory words
Article 2(d), point (i)	Article 2(c), point (i) first indent
Article 2(d), point (ii)	Article 2(c), point (i) second indent
-	Article 2(c), point (i) third indent
-	Article 2(c) point (ii) introductory words
-	Article 2(c) point (ii) first indent
-	Article 2(c) point (ii) second indent
-	Article 2(c) point (iii)
Article 2 (e), (f) and and (g)	-
-	Article 2(d)
Article 2(h)	Article 2(e)

Article 2(i)	Article 2(f)
Article 2(j)	Article 2(g)
Article 2(k)	Article 2(i)
Article 2(l)	Article 2(j)
-	Article 2(k)
-	Article 2(l)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6 (1) –(5)	Article 6(1)-(5)
-	Article 6(6)
Article 6 (2) to (5)	Article 6(2) to 6 (5)
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(3)	-
Article 7(4) to (6)	Article 7(3) to (5)
-	Article 8
-	Article 9
-	Article 10
-	Article 11
Article 8	Article 12
Article 9	Article 13
Article 10(1)	Article 14(1)
Article 10(2)	Article 14(2) first subparagraph
-	Article 14(2) second subparagraph

Article 10 (3)	Article 14(3)
Article 11(1)	-
-	Article 15(1)
Article 11(2)	Article 15(2)
Article 11(3)	Article 15(3)
Article 11(4)	-
Article 12	Article 16
Article 13(1) to (4)	Article 17 (1) to (4)
Article 13(5)	-
-	Article 17 (5)
Article 14 (1)	Article 18 (1)
Article 14 (2) introductory words, paragraphs (a) and (b)	Article 18 (2) introductory words, paragraphs (a) and (b)
- [<i>old Article 14)7) adapted</i>]	Article 18 (2)(c)
Article 14(2) second subparagraph	Article 18 (4)
Article 14(3)	-
Article 14(4)	Article 18(5)
Article 14(5)	Article 18(6)
Article 14(6)	Article 18(7)
Article 14(8) introductory words, first indent	Article 18 (8) introductory words, paragraph (a)
Article 14(8) second indent	-
Article 14(8) third indent	Article 18(8) point (b)
Article 14(8) first subparagraph,	Article 18 (8) first subparagraph,
Article 14(8) third and fourth intend	Article 18(8) points (b) and (c)

Article 14(8) fourth indent	-
Article 14 (8) second subparagraph	Article 18(8) second subparagraph
Article 15	Article 19
Article 16 (1) introductory wording	Article 20(1) introductory wording
Article 16 (1) (a)	-
Article 16 (1) (a) first, second and third indent	Article 20(1) paragraphs (a), (b) and (c)
-	Article 20(1) point (d)
Article 16(1) second sub-paragraph	Article 20 second sub-paragraph
Article 16 (1) (b) first subparagraph	-
Article 16 (1) (b) second subparagraph	-
Article 16 (2)	-
Article 16 (3) to (5)	Article 20(2) to (4)
Article 17 (1)	Article 21
Article 17 (2)	-
-	Article 22
Article 18 (1)	Article 23(1)
-	Article 23(2) and (3)
Article 18 (2)	Article 23(4)
	Article 23(5)
Article 19	Article 24
Article 20	Article 25(1)
-	Article 25(2)
Article 21 (1)	Article 26 (1)

-	Article 26 (2)
Article 21 (2)	Article 26 (2)
Article 22	-
-	Article 27
Article 23	Article 28 (1)
-	Article 28 (2)
Article 24	Article 29
Article 25	Article 30
Article 26	Article 31
-	Article 32
Article 27	Article 33 first subparagraph
-	Article 33 second subparagraph
Article 28	Article 34
-	Annex I
-	Annex II
-	Annex III