

III

(Preparatory acts)

COUNCIL

POSITION (EU) No 6/2013 OF THE COUNCIL AT FIRST READING**with a view to the adoption of a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)****Adopted by the Council on 6 June 2013**

(2013/C 179 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(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 seekers ⁽⁴⁾. In the interests of clarity, that Directive should be recast.

(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 Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

(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 (hereinafter referred to as 'the Geneva Convention'), thus affirming the principle of non-refoulement. The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments, including Directive 2003/9/EC, provided for in the Treaties.

(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 European Parliament and the Council.

(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 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. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.

⁽¹⁾ OJ C 317, 23.12.2009, p. 110 and OJ C 24, 28.1.2012, p. 80.

⁽²⁾ OJ C 79, 27.3.2010, p. 58.

⁽³⁾ Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 348) and position of the Council at first reading of 6 June 2013. Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...

⁽⁴⁾ OJ L 31, 6.2.2003, p. 18.

- (6) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing 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 of 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 applicants for international protection (hereinafter referred to as 'applicants').
- (8) In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants.
- (9) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.
- (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.
- (11) Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.
- (12) The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.
- (13) With a view to ensuring equal treatment amongst all applicants for international protection and guaranteeing consistency with current EU asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted⁽¹⁾, it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.
- (14) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.
- (15) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority.
- (16) With regard to administrative procedures relating to the grounds for detention, the notion of 'due diligence' at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention shall not exceed the time reasonably needed to complete the relevant procedures.
- (17) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national's or stateless person's application for international protection.
- (18) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied.

⁽¹⁾ OJ L 337, 20.12.2011, p. 9.

- (19) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. However, any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned.
- (20) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non-custodial alternative measures to detention have been duly examined. Any alternative measure to detention must respect the fundamental human rights of applicants.
- (21) In order to ensure compliance with the procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.
- (22) When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of any applicant who is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State.
- (23) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market.
- (24) To ensure that the material support provided to applicants complies 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 references. That does not mean that the amount granted should be the same as for nationals. Member States may grant less favourable treatment to applicants than to nationals as specified in this Directive.
- (25) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which material reception conditions for applicants may be reduced or withdrawn while at the same time ensuring a dignified standard of living for all applicants.
- (26) The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured.
- (27) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
- (28) 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.
- (29) 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 provided for under Directive 2011/95/EU.
- (30) The implementation of this Directive should be evaluated at regular intervals.
- (31) Since the objective of this Directive, namely to establish standards for the reception of applicants in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at the Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (32) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011⁽¹⁾, 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.

⁽¹⁾ OJ C 369, 17.12.2011, p. 14.

- (33) 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 TEU, and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (34) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (35) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.
- (36) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2003/9/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.
- (37) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2003/9/EC set out in Annex II, Part B,
- HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down standards for the reception of applicants for international protection (hereinafter referred to as 'applicants') in Member States.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'application for international protection' means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;
- (b) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (c) 'family members' 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 international protection:
- the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;
 - the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;
 - the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried;
- (d) 'minor' means a third-country national or stateless person below the age of 18 years;
- (e) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (f) 'reception conditions' means the full set of measures that Member States grant to applicants in accordance with this Directive;

- (g) 'material reception conditions' 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;
- (h) 'detention' means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;
- (i) 'accommodation centre' means any place used for the collective housing of applicants;
- (j) '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 best interests of the child 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 representative in respect of the unaccompanied minor, in accordance with this Directive;
- (k) 'applicant with special reception needs' means a vulnerable person, in accordance 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.

Article 3

Scope

1. This Directive shall apply to all third-country nationals and stateless persons who make an application for international

protection on the territory, including at the border, 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 applicants, as well as to family members, if they are covered by such application for international protection according to national law.

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

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 thereof⁽¹⁾ 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 2011/95/EU.

Article 4

More favourable provisions

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

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform applicants, within a reasonable time not exceeding fifteen days after they have lodged their application for international protection, 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.

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

Article 6

Documentation

1. Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on 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.

⁽¹⁾ OJ L 212, 7.8.2001, p. 12.

2. Member States may exclude application of this Article when the applicant is in detention and during the examination of an application for international protection made at the border or within the context of a procedure to decide on the right of the applicant to enter the territory of a Member State. In specific cases, during the examination of an application for international protection, 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 applicant.

4. Member States shall adopt the necessary measures to provide applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain on the territory of the Member State concerned.

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

6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive for the sole reason that they are applicants for international protection.

Article 7

Residence and freedom of movement

1. Applicants 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 applicant 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. 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 law.

4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 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. 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.

Article 8

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive .../.../EU of the European Parliament and of the Council of ... on common procedures for granting and withdrawing international protection (*) (1).

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.

3. An applicant may be detained only:

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

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(*) Doc 8260/13 [Asylum Procedures Directive].

(1) OJ L

- (c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
- (d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals ⁽¹⁾, in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;
- (e) when protection of national security or public order so requires;
- (f) in accordance with Article 28 of Regulation (EU) No .../... of the European Parliament and of the Council of ...establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ^(*) ⁽²⁾.

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

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

Article 9

Guarantees for detained applicants

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

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

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the applicant. When conducted *ex officio*, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review *ex officio* and/or the judicial review at the request of the applicant shall be conducted.

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

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

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

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants 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.

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

7. 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.

⁽¹⁾ OJ L 348, 24.12.2008, p. 98.

^(*) Doc. 15605/2/12 REV 2 [Dublin Regulation].

⁽²⁾ OJ L...

8. Member States may also:
- (a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;
 - (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.
9. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.
10. Procedures for access to legal assistance and representation shall be laid down in national law.

Article 10

Conditions of detention

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

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

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

2. Detained applicants shall have access to open-air spaces.
3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in

conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article 43 of Directive .../.../EU (*).

Article 11

Detention of vulnerable persons and of applicants with special reception needs

1. The health, including mental health, 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.

2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures can not be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.

(*) Directive in Article 8 [Asylum Procedures Directive].

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

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

Unaccompanied minors shall never be detained in prison accommodation.

As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

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

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

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

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

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article 43 of Directive .../.../EU (*).

Article 12

Families

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

Article 13

Medical screening

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

(*) Directive in Article 8 [Asylum Procedures Directive].

Article 14

Schooling and education of minors

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

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

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 on which the application for international protection was lodged by or on behalf of the minor.

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1.

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 concerned shall offer other education arrangements in accordance with its national law and practice.

Article 15

Employment

1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.

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

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.

Article 16

Vocational training

Member States may allow applicants 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.

Article 17

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 international protection.
2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, 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 those basic needs were being covered, Member States may ask the applicant for a refund.

5. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.

Article 18

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 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. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that:
 - (a) applicants are guaranteed protection of their family life;
 - (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;

(c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

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

4. Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b).

5. Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.

6. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.

7. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

8. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

9. 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 assessment of the specific needs of the applicant is required, in accordance with Article 22;

(b) housing capacities normally available are temporarily exhausted.

Such different conditions shall in any event cover basic needs.

Article 19

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 illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 20

Reduction or withdrawal of material reception conditions

1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

(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

(c) has lodged a subsequent application as defined in Article 2(q) of Directive .../.../EU (*).

In relation to cases (a) and (b), 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.

(*) Directive in Article 8 [Asylum Procedures Directive].

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article 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, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.

CHAPTER IV

PROVISIONS FOR VULNERABLE PERSONS

Article 21

General principle

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 human 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, such as victims of female genital mutilation, in the national law implementing this Directive.

Article 22

Assessment of the special reception needs of vulnerable persons

1. In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those 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.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs

throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.

3. Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive.

4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive 2011/95/EU.

Article 23

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.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor in accordance with his or her age and maturity.

3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article 18(1)(a) and (b) and to open-air activities.

4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.

Article 24

Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development referred to in Article 23(2)(b), the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

Regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor.

2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

(a) with adult relatives;

(b) with a foster family;

(c) in accommodation centres with special provisions for minors;

(d) in other accommodation suitable for minors.

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

3. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

4. Those working with unaccompanied minors shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

*Article 25***Victims of torture and violence**

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

2. 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 national law, in relation to any information they obtain in the course of their work.

CHAPTER V

APPEALS

*Article 26***Appeals**

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

Member States may provide that free legal assistance and representation not be made available if the appeal or review is considered by a competent authority to 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.

2. In cases of an appeal or a review before a judicial authority referred to in paragraph 1, Member States shall ensure that free legal assistance and representation is made available on request in so far as such aid is necessary to ensure effective access to justice. 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.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

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

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

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

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

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

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

6. Procedures for access to legal assistance and representation shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

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.

Article 28

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.

2. Member States shall submit relevant information to the Commission in the form set out in Annex I, by ... (***) at the latest.

Article 29

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 law implementing this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 30

Reports

By ... (*) at the latest, 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.

Member States shall send the Commission all the information that is appropriate for drawing up the report by ... (**).

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

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30 and Annex I by ... (***) at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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

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

Article 32

Repeal

Directive 2003/9/EC is repealed for the Members States bound by this Directive with effect from ... (****), 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.

(*) 48 months from the date of entry into force of this Directive.

(**) 36 months from the date of entry into force of this Directive.

(***) 24 months from the date of entry into force of this Directive.

(****) Day after 24 months from the date of entry into force of this Directive.

*Article 33***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 13 and 29 shall apply from ... (*).

*Article 34***Addressees**

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

Done at ...

For the European Parliament

The President

...

For the Council

The President

...

(*) Day after 24 months from the date of entry into force of this Directive.

ANNEX I

Reporting form on the information to be submitted by Member States, as required under Article 28(2)

After the date referred to in Article 28(2), the information to be submitted by Member States shall be re-submitted to the Commission when there is a substantial change in the national law or practice that supersedes the information provided.

1. On the basis of Articles 2(k) and 22, please explain the different steps for the identification of persons with special reception needs, including the moment when 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 human trafficking.
 2. Provide full information on the type, name and format of the documents provided for in Article 6.
 3. With reference to Article 15, please indicate the extent to which any particular conditions are attached to labour market access for applicants, and describe such restrictions in detail.
 4. With reference to Article 2(g), 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 those elements) and indicate the level of the daily expenses allowance provided to applicants.
 5. Where applicable, with reference to Article 17(5), 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 applicants. To the extent that there is less favourable treatment of applicants compared with nationals, explain the reasons for it.
-

ANNEX II

Part A

Repealed Directive

(referred to in Article 32)

Council Directive 2003/9/EC

(O) L 31, 6.2.2003, p. 18)

Part B

Time-limit for transposition into national law

(referred to in Article 32)

| 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 wording | Article 2, introductory wording |
| Article 2(a) | — |
| Article 2(b) | — |
| — | Article 2(a) |
| Article 2(c) | Article 2(b) |
| Article 2(d), introductory wording | Article 2(c), introductory wording |
| Article 2(d)(i) | Article 2(c), first indent |
| Article 2(d)(ii) | Article 2(c), second indent |
| — | Article 2(c), third indent |
| Article 2(e), (f) 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(h) |
| Article 2(l) | Article 2(i) |
| — | Article 2(j) |
| — | Article 2(k) |
| Article 3 | Article 3 |
| Article 4 | Article 4 |
| Article 5 | Article 5 |
| Article 6(1) to (5) | Article 6(1) to (5) |
| — | Article 6(6) |
| 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 |

| Directive 2003/9/EC | This Directive |
|---|--|
| 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), first subparagraph, introductory wording, points (a) and (b) | Article 18(2), introductory wording, points (a) and (b) |
| Article 14(7) | Article 18(2)(c) |
| — | Article 18(3) |
| Article 14(2), second subparagraph | Article 18(4) |
| Article 14(3) | — |
| — | Article 18(5) |
| Article 14(4) | Article 18(6) |
| Article 14(5) | Article 18(7) |
| Article 14(6) | Article 18(8) |
| Article 14(8), first subparagraph, introductory wording, first indent | Article 18(9), first subparagraph, introductory wording, point (a) |
| Article 14(8), first subparagraph, second indent | — |
| Article 14(8), first subparagraph, third indent | Article 18(9), first subparagraph, point (b) |
| Article 14(8), first subparagraph, fourth indent | — |
| Article 14(8), second subparagraph | Article 18(9), second subparagraph |
| Article 15 | Article 19 |

| Directive 2003/9/EC | This Directive |
|---|--|
| Article 16(1) introductory wording | Article 20(1), introductory wording |
| Article 16(1)(a), first subparagraph, first, second and third indents | Article 20(1), first subparagraph, points (a), (b) and (c) |
| Article 16(1)(a), second subparagraph | Article 20(1), second subparagraph |
| Article 16(1)(b) | — |
| Article 16(2) | — |
| — | Article 20(2) and (3) |
| Article 16(3) to (5) | Article 20(4) to (6) |
| 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) to (5) |
| Article 21(2) | Article 26(6) |
| 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 |

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 7 June 2011, the Council received from the Commission an amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (recast) (11214/11). The Commission amended its initial proposal for a recast of the Reception Conditions Directive of 9 December 2008 (16913/1/08 REV1), taking into account the European Parliament's first-reading position voted on 7 May 2009 (9333/09) and the views expressed in the Council.

With a view to avoiding delays, the European Parliament established its negotiating position on the amended Commission proposal by considering the amended proposal in light of its position at first reading on the initial proposal.

On 16 July 2009, the European Economic and Social Committee adopted an Opinion on the initial Commission proposal (SOC/332 - CESE 1209/2009). The Committee decided on 26 and 27 October 2011 not to draw up a new opinion on the amended proposal. The Committee of the Regions adopted an Opinion on the initial proposal at its plenary session on 6 and 7 October 2009 (CdR 90/2009 fin) and decided on 18 October 2011 not to issue an Opinion on the amended proposal but to inform the Council of its views in the form of a letter to the Secretary-General of the Council (18840/11).

At its meeting on 25 and 26 October 2012, the Council confirmed a Political agreement on the amended proposal (14112/1/12 REV1).

In accordance with Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland are not taking part in the adoption of the recast of the Reception Conditions Directive. Denmark is not taking part in its adoption and is not bound by it or subject to its application in accordance with the Protocol on the position of Denmark.

II. OBJECTIVE OF THE PROPOSAL

The Reception Conditions Directive sets standards for the reception of applicants for international protection. The recast of the Reception Conditions Directive is part of a series of legislative proposals in the field of asylum submitted by the Commission in keeping with the commitment of the European Council to establish a Common European Asylum System by 2012.

The objectives of the recast of the Reception Conditions Directive are to guarantee adequate and comparable reception conditions in the Member States bound by the Directive, to respect fundamental rights having regard to developing case law of the Court of Justice of the European Union and the European Court of Human Rights, and to ensure consistency with the other asylum instruments.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. *General observations*

On the basis of the amended proposal of the Commission, the European Parliament and the Council have conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading. The text of the Council position fully reflects the compromise reached between the two co-legislators. This compromise ensures higher and more harmonised standards of reception for applicants for international protection, in particular for vulnerable persons with special reception needs. At the same time, the compromise reflects the need for rules allowing for effective implementation given the different national legal systems and rules capable of fighting abuse of the asylum process. The compromise also aims at avoiding any unnecessary administrative and financial burden for the Member States.

B. Key issues

The compromise text reflected in the Council position at first reading adapts the Directive currently in force ⁽¹⁾ as to the following key issues:

1. Definition of family members and joint housing

The compromise text reflected in the position at first reading provides for coherence between the different asylum instruments by aligning the definition of family members with the definition in the recast of the Qualifications Directive ⁽²⁾. Compared to the definition of the Reception Conditions Directive currently in force, which covers the spouse or unmarried partner and the unmarried children, the definition is extended to include the father, mother or another adult responsible for an applicant provided that the latter is a minor and unmarried.

Furthermore, the Council position at first reading contains new provisions in relation to joint housing. Firstly, Member States must ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them by law or by the national practice of the Member State concerned. Secondly, Member States must ensure that minor children of applicants or applicants who are minors are accommodated, provided that this is in their best interests, with their parents or with the adult responsible for them, or with their unmarried siblings.

2. Detention

The compromise text reflected in the position at first reading introduces an extensive legislative framework governing the detention of applicants for international protection. This framework includes rules on grounds for detention, guarantees for detained applicants, conditions of detention and the detention of vulnerable persons and persons with special reception needs.

2.1. Grounds for detention

The list of detention grounds has been drawn up in light of international law and jurisprudence of the European Court of Justice and the European Court of Human Rights, taking into account the need for Member States to effectively counter abusive applications. The list consists of the detention grounds included in the recommendation of the Council of Europe, supplemented by a reference to detention under the Dublin Regulation. In addition, the Council position contains a ground for detention for persons who are detained subject to a return procedure under the Return Directive ⁽³⁾ in order to prepare the return and/or carry out the removal process. In such cases, Member States must substantiate, on the basis of objective criteria, including the fact that the detained applicant has already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application merely in order to delay or frustrate the enforcement of the return decision.

2.2. Guarantees for detained asylum seekers

In view of the different national legal systems, the compromise text reflected in the position at first reading contains a provision that Member States must provide for a speedy judicial review of the lawfulness of detention ordered by administrative authorities which can be conducted *ex officio* or at the request of the applicant for international protection. In the event of an *ex officio* review, the review

⁽¹⁾ Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18).

⁽²⁾ Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

⁽³⁾ Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

must be decided on as speedily as possible from the beginning of the detention. In the event of a review at the request of the applicant, the lawfulness of the detention must be subject to a review that is decided on as speedily as possible after the launch of the relevant proceedings. Member States must define in national law a period within which the reviews must be conducted.

With a view to safeguarding the right to an effective remedy, detained applicants for international protection must immediately be informed in writing of the reasons for detention, the procedures laid down in national law for challenging the detention order and the possibility to request free legal assistance and representation. This must be done in a language the applicant understands or is reasonably supposed to understand.

Finally, as regards access to free legal assistance and representation, the position at first reading aligns the text of the Reception Conditions Directive with the text of the Asylum Procedures Directive currently in force ⁽¹⁾ but without a merits test for assessing whether free legal assistance and representation must be made available given the likelihood that the review will succeed. It is further specified that free legal assistance and representation must be provided by suitably qualified persons as admitted or permitted under national law without any conflict of interests vis-à-vis the applicant for international protection.

2.3. *Conditions of detention*

The provisions on detention conditions define the rights of applicants for international protection who are detained taking into account asylum practice. Against that background, applicants are, as a rule, detained in special reception facilities. Applicants are also, as far as possible, to be kept separate from other third-country nationals. If applicants are detained in prison accommodation, they must always be kept separate from criminals. Irrespective of their conditions of detention, applicants maintain the rights provided for in the Directive, including the right to privacy when communicating with representatives or family members.

2.4. *Detention of vulnerable persons and persons with special reception needs*

The compromise reflected in the position at first reading contains specific provisions in relation to the detention of vulnerable persons and of persons with special reception needs. The health - including the mental health - of detained applicants who are vulnerable persons must be of primary concern to national authorities. Moreover, where vulnerable persons are detained, Member States must ensure regular monitoring and adequate support, taking into account their particular situation including their health.

In accordance with the United Nations Convention on the Rights of the Child, it is specified that minors may only be detained as a measure of last resort and that unaccompanied minors may only be detained in exceptional circumstances and never in prison accommodation.

3. **Access to the labour market**

The compromise text reflected in the position at first reading reduces the time limit for access of applicants for international protection to the labour market from twelve to nine months. Allowing access three months earlier is based on two counter-balancing considerations: on the one hand, the considerations that earlier access makes applicants economically independent sooner - thereby lowering the risk of exploitation on the black market and decreasing the need for public support - and that earlier access allows them to integrate more effectively in the host society; on the other hand, the consideration that earlier access possibly makes it attractive for economic migrants who do not qualify for international protection to attempt to exploit the asylum system.

⁽¹⁾ Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

4. **Material reception conditions**

The compromise reflected in the position at first reading provides that, in cases where Member States grant applicants for international protection material reception conditions in the form of financial allowances or vouchers, the amount must be determined on the basis of the level(s) established by the Member State concerned either by law or practice so as to ensure adequate standards of living for nationals. It is further specified that Member States may grant less favourable treatment to asylum seekers compared to nationals, in particular where material support is partially provided in kind or where the abovementioned level(s) applied for nationals aim(s) to ensure a standard of living higher than that prescribed for applicants for international protection.

Furthermore, the position at first reading provides for an adapted regime for reducing and withdrawing material reception conditions. Member States must provide applicants for international protection with a dignified standard of living. They are also allowed to reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant abandons his place of residence, fails to report adequately or when he has lodged a subsequent application. Furthermore, reduction of material reception conditions remains possible when a person has not lodged an application as soon as possible. Finally, as in the Directive currently in force, Member States have the possibility to reduce or withdraw conditions if an applicant has concealed financial resources.

5. **Vulnerable persons with special reception needs**

The compromise reflected in the position at first reading provides for the obligation for Member States to assess the special reception needs of vulnerable persons. Victims of female genital mutilation are added to the non-exhaustive list of categories of vulnerable persons. Furthermore, with a view to avoiding any unnecessary administrative burden, it is specified that such assessment need not take the form of an administrative procedure and that Member States may integrate the assessment into existing national procedures.

6. **Free legal assistance and representation**

Applicants for international protection have the right of access to an effective remedy when they appeal against decisions relating to the granting, withdrawal or reduction of benefits and decisions relating to residence and freedom of movement. In those cases, the conditions for granting free legal assistance and representation are the same as in the case of a review of a detention order, with the exception that Member States may provide that free legal assistance and representation is not made available if the appeal is considered by a competent authority to have no tangible prospect of success.

7. **Other important issues**

Other important issues in the Council position at first reading on which the Council and the European Parliament reached a compromise concern:

- Specification of the qualifications of the 'representative' with a view to enabling unaccompanied minors to benefit more fully from the rights and comply with the obligations provided in the Reception Conditions Directive.
- Member States may not make the granting of reception conditions conditional on unnecessary and disproportionate documentation or other administrative requirements.
- Member States must provide applicants for international protection with the necessary health care which must include, at least, emergency care and essential treatment of illness and serious mental disorders. It is further specified that Member States must provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

- Member States must start to trace the members of an unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting the minor's best interests.
- Member States must ensure that persons who have been subject to torture, rape or other serious acts of violence receive the necessary treatment, in particular access to appropriate medical and psychological treatment or care. Furthermore, those working with such persons must have had and continue to receive the appropriate training and be bound by the confidentiality rules.
- Member States must submit the information on implementation of the Directive so as to enable the Commission to monitor its implementation.

IV. CONCLUSION

The Council's position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter of the Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) to the Chairman of the Permanent Representatives Committee (13885/12). In this letter, the LIBE Chair indicates that he will recommend to the members of the LIBE Committee, and subsequently to the plenary, that they accept the Council's position at first reading without amendments at Parliament's second reading, subject to verification by the lawyer-linguists of both institutions. By amending the Reception Conditions Directive, the European Union puts into place another essential building block for the establishment of the Common European Asylum System.
