



**COUNCIL OF  
THE EUROPEAN UNION**

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2008/0244 (COD)**

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### **OUTCOME OF PROCEEDINGS**

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of:	Asylum Working Party
on:	26 September 2011
No Cion proposal:	11214/11 ASILE 46 CODEC 981
Subject:	Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast)

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At its meeting on 26 September 2011, the Asylum Working Party examined several compromise suggestions of the Presidency (document 13102/11) with regard to above mentioned amended proposal for a Directive laying down standards for the reception of asylum seekers. 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 Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

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↓ 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 seekers<sup>3</sup>. In the interests of clarity, that Directive should be recast.

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↓ 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. ⇐

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↓ 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. ⇐

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<sup>3</sup> OJ L 31, 6.2.2003, p. 18.

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↓ 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.~~

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↓ 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.~~

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↴ 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 Council<sup>4</sup>, 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.

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↓ 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~~.

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<sup>4</sup> OJ L 132, 29.5.2010, p.11.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 2003/9/EC recital 9 (adapted)

⇒ new

- (14) ⇒ The immediate 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.

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↓ new

- (15) 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. In particular, Member States should not impose penalties on asylum seekers on account of illegal entry or presence and any restrictions to movement should be necessary. In this respect, detention of asylum seekers should only be possible under very clearly defined exceptional circumstances laid down in this Directive 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.

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↓ 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. ⇐

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↓ 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.

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↓ 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.

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↓ new

- (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) 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.

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↓ 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 ⇐.

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↓ 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.

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↓ 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.

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↓ 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.

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↓ 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.~~

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↓ 2003/9/EC recital 17

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

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↓ 2003/9/EC recital 18 (adapted)

(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.

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↓ 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.~~

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↓ 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.~~

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↓ new

- (28) In accordance with 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 paragraph 2 of that Article, so long as the United Kingdom has not notified its wish to accept this measure, in accordance with Article 4 of that Protocol, it is not bound by it and continues to be bound by Directive 2003/9/EC.
- (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.

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↓ 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.

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↓ 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 ⇐.

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↓ 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.

HAVE ADOPTED THIS DIRECTIVE<sup>5</sup>:

## 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.

#### *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;~~

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<sup>5</sup> General scrutiny reservation: **CY, CZ, DE, EL, FI, IT, LT, MT, PT, RO, SE, SK**  
Parliamentary scrutiny reservation: **CZ, LT, MT**  
Linguistic reservation: **CZ, HU, LT**

~~(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;~~

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↓ 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];

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↓ 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)<sup>6</sup> "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  ;

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<sup>6</sup> **Cion** commented that the Reception Conditions Directive enables family members, that have not applied for international protection, to be accommodated together and that, from that point of view, a restricted family member definition would not be appropriate. Furthermore, **Cion** underlined that, on the basis of Article 23(5), Member States are obliged to ensure that minor children of applicants or applicants who are minors are lodged with their parents or with the adult responsible for them. Moreover, Article 12 lays down the obligation for Member States to take appropriate measures to maintain as far as possible family unity if applicants are provided with housing. In that light, a restricted definition of family members could result in an increase of the number of applications. Cion also noted that most Member states allow unmarried siblings to be accommodated with family members covered by the definition. Finally, **Cion** indicated that the family members in the Qualification Directive and those in the Reception Conditions Directive constitute two different groups and that a broader definition in case of the latter directive would not add to financial burden of Member States.

Reservation: **FR** proposing to maintain the definition in the directive currently in force and arguing that the family member definition in the Qualification Directive does not set a precedent for the Reception Conditions Directive.

Scrutiny reservation: **DE** expressing a preference for the definition in the directive currently in force.

**BE, CZ, HU, IT NL, SE, SK** could agree to include unmarried siblings in the definition of family members arguing this could reduce secondary movements between Member States and that this would assure the best rights of the child..

**AT, BG, CY, EE, ES, FI, LT, LU, LV, MT, PT, RO, SI** supported the definition proposed by the Presidency. **SI** argued that extending the definition would lead to practical difficulties in determining whether a person is a family member.



~~(ii) = 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;

↓ 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;~~

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↓ new

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

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↓ 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)(i)<sup>7</sup> "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;

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<sup>7</sup> Reservation: **ES**

Scrutiny reservation: **SI** proposing to make it possible to grant instead of a financial allowance a daily expenses allowance in kind. **Cion** indicated in response that already the current directive contains the obligation to grant a daily expenses allowance.

(h)(k) "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)(l) "accommodation centre" ~~shall mean~~ ☒ means ☒ any place used for collective housing of asylum seekers;=

↓ new

☒ Council

(j)<sup>8</sup> "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)<sup>9</sup> "applicant with special reception needs" means a vulnerable<sup>10</sup> 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.

<sup>8</sup> Reservation: **NL** proposing to re-insert "to act as a legal guardian". **NL** wanted to distinguish between a legal representative and a guardian. In response, **Cion** explained that the definition is not aimed at obliging Member States to use lawyers as representatives but to specify that the representative should be able to legally act as representative of the unaccompanied minor.

Scrutiny reservation: **CZ, FI, SE**

**EE** proposed "representative of an unmarried minor" instead of "representative".

<sup>9</sup> Reservation: **AT, BG, ES, IT, PT, SK** in connection with Article 11

Scrutiny reservation: **CZ, FR, SI**

<sup>10</sup> **SI** requested clarification as regards the term "vulnerable".

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↓ 2003/9/EC (adapted)

⇒ new

Article 3<sup>11</sup>

*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~~<sup>12</sup>, ~~in~~ ⇒ in the territorial waters or in the transit zones<sup>13</sup>, ~~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 ~~asylum~~ according to the national law.

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↓ 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.
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<sup>14</sup> are applied.

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<sup>11</sup> Scrutiny reservation: **HU**

<sup>12</sup> Reservation **DE, ES** considering that airport procedures should not be part of the scope of the Directive.

<sup>13</sup> Reservation **MT** on the inclusion of phrase "in the territorial waters or in the transit zones" considering this specification confusing as territorial waters and transit zones are already included in a Member State's territory.

<sup>14</sup> OJ L 212, 7.8.2001, p. 12.

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.

## **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.

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↓ 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 ⇒ for international protection ⇐ is lodged ~~with the competent authority,~~ 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.<sup>15</sup> 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.

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<sup>15</sup> In response to a request for clarification of **CZ**, **Cion** indicated that paragraph 4 needs to be read in combination with Article 2 point (h) and that, consequently, detention in paragraph 4 refers to administrative detention in the framework of an asylum application and not to detention resulting from a conviction for a crime.

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↓ new

- 6.<sup>16</sup> Member States shall not impose any documentation or other administrative requirements on asylum seekers before granting the rights to which they are entitled under this Directive for the sole reason that they are applicants for international protection.
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↓ 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 ⇐.

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<sup>16</sup> Reservation: **CY**  
**CY** wanted Member States to be able to request the asylum seeker to proceed with the procedure as applied by law, such as fingerprinting, medical examination, before all rights are granted.  
Scrutiny reservation: **FR** wanting to clarify the administrative implications given that in France other formalities exist than only the certificate referred to in paragraph 1



~~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.<sup>17</sup>~~

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.

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<sup>17</sup> Scrutiny reservation: **AT, DE** on the proposed deletion of this paragraph.

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↓ new

→ Council

*Article 8<sup>18</sup>*

**Detention<sup>19</sup>**

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.

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<sup>18</sup> Reservation: **ES, SE, SI**  
Scrutiny reservation: **AT, BG, EE, EL, FR, HU, RO, SK**  
**ES, PT** questioned if provisions on detention are best placed in the Reception Conditions Directive. In this context, **PT** expressed a preference for the Asylum Procedures Directive, considering however the content of the provisions more important than the directive in which they are included. **CY** preferred to have all detention provisions in one instrument.

<sup>19</sup> **SE** proposed to have as title of Article 8: "Detention and alternatives to detention".

3. Without prejudice to Article 11 and to detention in the framework of criminal proceedings, an applicant may only be detained<sup>20</sup>:

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

(b) in order to determine, within the context of a preliminary interview, the elements on which the application for international protection is based which could not be obtained in the absence of detention;

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

⇒ (d)<sup>21</sup> when he/she is detained in order to prepare the return and/or carry on the removal process and it can reasonably be considered that he/she makes an application for international protection merely in order to delay or frustrate the enforcement of that return or removal process. ☹

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Reservation: **BG, ES, SE, SI**

Scrutiny reservation: **AT, CZ, DE, EE, EL, HU, FI, FR, NL, RO, SK**

**DE, FI, HU, SI** considered that additional grounds for detention might be needed.

**DE** submitted a proposal for amending Article 8 (document 14574/11) which received preliminary positive comments of **CY, CZ, EE, FR, SI, SK**.

**NL** expressed concerns about this provision considering that it seems to be applicable to persons who fall outside the scope of the directive as defined in Article 3.

**BE, NL** wanted to avoid that persons who are in detention are automatically released when they make an application for international protection. In response, **Cion** referred to the detention grounds in paragraph 3 of the Reception Conditions Directive which provides for a basis for Member States to detain a person.

21

Reservation: **HU** considering this provision too broad.

Scrutiny reservation: **AT, CZ, DE, EL, ES, FI, IT, NL, RO, SI** requesting in particular clarification which persons are covered by point (d). More specifically, **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.

**Cion** opposed the new ground in point (d) arguing that, on the basis of international case-law, detention grounds in the Reception Conditions Directive need to be asylum-related.

Furthermore, **Cion** expressed concerns that such "catch-all" provision could lead to systematic detention which would be against the general rule in paragraph 1 that an asylum seeker shall not be held in detention for the sole reason of his application. Finally, **Cion** remarked that the recommendation of the Council of Europe on grounds for detention of asylum seekers does not include a ground similar to the one proposed by the Presidency.

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

☞ (f)<sup>22</sup> in accordance with Regulation (EC) No [.../...] [Dublin Regulation], where a risk exists that the applicant may abscond in order to delay or frustrate his/her transfer, once the take back or take charge request has been sent to the Member State considered to be responsible for examining the application. ☞

These grounds shall be laid down in national law<sup>23</sup>.

4.<sup>24</sup> Member States shall ensure that ☞ any ☞<sup>25</sup> 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.

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<sup>22</sup> Reservation: **CY, DE, EL, ES, HU, RO**  
Scrutiny reservation: **CZ, PT, SI** (given the ongoing discussion on the provision that is to be included in the Dublin Regulation)  
**DE** proposed to clarify that point (f) does not replace Article 26 of the Dublin Regulation.  
**DE**, supported by **AT**, proposed to determine the moment as of when a person can be detained on the basis of ground (f) in national law (document 14574/11). In response, **Cion** advocated the need to establish a clear point of depart in time.

<sup>23</sup> In response to a request for clarification of **PT**, **Cion** indicated that given the severe consequences detention has on a person's rights, it is necessary to lay down the grounds for detention in national law.

<sup>24</sup> **CY, DE, SI** considered this paragraph not to have any added value given the conditions for detention included in paragraph 2.  
**ES** requested clarification how this provision would work in practice.

<sup>25</sup> **HU** requested clarification of the grounds for inserting "any". In response, the **Presidency** indicated it had intended to make the provision more flexible for Member States.

**Guarantees for detained asylum seekers**

1.<sup>27</sup> Detention shall be for as short a period<sup>28</sup> 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.

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<sup>26</sup> Scrutiny reservation: **ES, FR, RO, MT**

**SI** proposed to put paragraph 4 before paragraph 2.

**ES** considered that Article 9 would be difficult to apply given the distance between the authorities at the border that decide to detain a person and the court or tribunal that is competent for reviewing this decision.

<sup>27</sup> Scrutiny reservation: **SE**

<sup>28</sup> **RO** proposed to delete "as short a period as possible" considering that, given the reference to the grounds for detention set out in Article 8(3), otherwise a double standard would be created for assessing the legality of the duration of detention

2.<sup>29</sup> Detention shall be ordered by judicial or administrative authorities. Where detention is ordered by administrative authorities, it shall be confirmed by judicial authorities within 3 working days [...] from the beginning of the detention. Where the judicial authority finds detention to be unlawful, or there is no decision within 3 working days [...], the asylum seeker concerned shall be released immediately.

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<sup>29</sup> Reservation: **AT, BE, CY, CZ, ES, FR, MT, NL, LU, LV, RO, SE, SI, SK** suggesting to align this paragraph with the text of Article 9.3 as laid down in document 13935/10. In response, **Cion** argued that the detention in the framework of the Return Directive is different from detention in the framework of the Reception Conditions Directive as in the former the person who is to be removed has been issued a decision to which effective remedy and has been afforded an effective remedy to appeal against that or seek review of that decision.

**NL** argued that setting a deadline in the directive would result in very significant costs for the judicial authorities and could, moreover, reduce the quality of both the legal assistance provided to the applicant and of the decision of the court or tribunal. Furthermore, **NL** expressed the view that a speedy review would be balanced out by the provision on free legal assistance. Also **MT** expressed concern about additional administrative burden **BE** indicated that the Belgian system does not know an ex officio review and that the court needs to decide on the legality of the detention within 5 days.

**BE, CY** (wanting a similar deadline as for its own nationals), **CZ, ES, FI** (suggesting "4 working days"), **FR, LU, RO, SI** opposed in particular the 3 working days deadline for confirmation by judicial authorities of the detention order of administrative authorities. **HU** preferred the 72 hours deadline above the 3 working days deadline considering the latter could lead to discrimination because the actual length of the period for confirming a detention would depend on the moment of the week the detention would begin.

**DE** explained that in Germany only a judge can decide on a detention order and that this order should be submitted at the latest one day after the detention has started. For that reason, **DE** wanted to continue to be able to apply this procedure, which is more beneficial to the asylum seeker than the provisions in the modified recast of the Reception Conditions Directive and made a proposal as laid down in document 14574/11.

**SI** considered it not clear whether this paragraph allowed ex officio review and/or review on the request of the applicant. In response the **Presidency** indicated that the provision referred to ex officio review.

**SI** further remarked that the time limit should start as of the request and not as of the detention.

**RO** argued that, in the case of border procedures, confirmation of judicial authorities would not be needed because in these cases judicial authorities always grant such confirmation.

3.<sup>30</sup> 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.<sup>31</sup> Detention shall be reviewed by a judicial authority at reasonable intervals of time, ☞ [...] ☞ ex officio ☞ and/ ☞ or on request <sup>32</sup>by the asylum seeker concerned, in particular whenever it is of a prolonged duration<sup>33</sup> or relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

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<sup>30</sup> Reservation: **CY** considering that the executive cannot impose rules as included in paragraph 3 on independent judicial authorities.

<sup>31</sup> Reservation: **CY** considering that the executive cannot impose rules as included in paragraph 3 on independent judicial authorities.

Scrutiny reservation: **FI, SE**

In this context, **Cion** noted that paragraph 4 is not completely aligned with the Return Directive as no standards are established for a maximum duration of detention.

<sup>32</sup> **MT** suggested "ex officio or on request" instead of "either ex officio or on request".

<sup>33</sup> **CZ** requested clarification of the term "prolonged duration".

5.<sup>34</sup> ➔ As regards access to free legal assistance and representation in cases of an appeal or review of the detention order the rules set out in Article 26 (2) shall apply. ◀ ➔ [...] ▶

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<sup>34</sup>

Reservation: **FR, MT, SE**

Scrutiny reservation: **AT, CZ, ES, SK**

**Cion** considered a merits test on tangible chances of success of an appeal or a review and free legal assistance and representation on the request of the applicant not appropriate in case of an appeal or a review of a detention order in the framework of the Reception Conditions Directive, because a judge has to look at all aspects (such as is the detained person a minor or are there alternatives to detention possible). For that reason, he cannot perform a *prima facie* test as is possible in the case of an appeal in the framework of the Asylum Procedures Directive.

**DE** wanted to be able to recuperate costs made for legal assistance in case it would become clear later on that the asylum seeker would have been able to pay for the assistance himself.



**Conditions of detention**

1.<sup>36</sup> Detention shall [...] take place as a rule in specialised detention facilities.<sup>37</sup>

<sup>38</sup> In the specialised detention facilities, asylum seekers shall be kept separately from other third country nationals who have not lodged an application for international protection unless it is necessary to ensure family unity and the applicant consents thereto.

2.<sup>39</sup> Detained asylum seekers shall have access to open-air spaces.

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<sup>35</sup> Scrutiny reservation: **FR, RO**

<sup>36</sup> **CY** proposed to add at the end of the first sentence: "where such facilities are available in Member States or in any other appropriate detention centres".

**EE, MT** indicated that, given the limited number of asylum seekers, an obligation to have specialised facilities would be disproportionate.

<sup>37</sup> **HU** proposed to add: "specialised for the detention of third-country nationals for reasons of immigration control or for administrative reasons. Within these facilities asylum seekers shall be kept..."

<sup>38</sup> Reservation **AT, BE, CZ, DE, EE, ES, FI, FR, IT, LT, MT, NL, RO, SE, SK** wondering why asylum seekers should be kept separated from other third country nationals.

Scrutiny reservation: **HU**.

**RO**, supported by **FI**, proposed to add at the beginning of the second subparagraph "wherever possible".

**ES, SE** expressed concerns about the situation in which a person who is in detention applies for asylum.

<sup>39</sup> **CZ** expressed concerns about implications of this obligation.

- 3.<sup>40</sup> 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 State<sup>41</sup>.
- 4.<sup>42</sup> 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.
- 5.<sup>43</sup> Member States shall ensure that asylum seekers in detention are systematically<sup>44</sup> 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.

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<sup>40</sup> **CZ** requested clarification why the reference to UNHCR was needed.

<sup>41</sup> **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.

<sup>42</sup> Reservation: **NL**

Scrutiny reservation: **CY**

<sup>43</sup> Reservation: **CY**

<sup>44</sup> **CY, EL, ES, SK** proposed to delete "systematically". In response, **Cion** indicated that "systematically" also appears in Article 16.5 of the Return Directive.

6.<sup>45</sup> In duly justified cases and for a reasonable period which shall be as short as possible Member States may derogate:

- (a) from the first subparagraph of paragraph 1 where accommodation in specialised detention facilities is temporarily not available and, as a consequence, Member States are obliged to resort to prison accommodation, provided that asylum seekers in detention are kept separately from ordinary prisoners; unaccompanied minors shall not, however, be kept in prison accommodation;
- (b) from paragraph 5 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].<sup>46</sup>

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<sup>45</sup> Reservation: **SE**  
**DE** proposed to delete point (a).

**SE** indicated that it should also be possible to detain an asylum in a non specialised detention facility for transport reasons.

<sup>46</sup> Scrutiny reservation: **DE** requesting clarification on the reference to Article 43 of the Asylum Procedures Directive.

## Article 11<sup>47</sup>

### Detention of vulnerable persons and persons with special reception needs

1.<sup>48</sup> ☞ Vulnerable ☞ [...] ☞ persons shall not be detained unless it is established that their health, including their mental health<sup>49</sup>, ☞ [...] ☞ will not significantly deteriorate as a result of the detention.

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

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<sup>47</sup> Scrutiny reservation: **RO**

**DE** made a proposal to amend Article 11 (document 14574/11). This proposal is aimed at revoking the general exemption of vulnerable persons from detention and establishing a regime where vulnerable persons can be detained whilst taking into account their special needs.

<sup>48</sup> Reservation: **AT, FI, SK**. Furthermore, **BE, DE, EE, ES, FR, IT, LU, NL, RO, SE, SI** expressed concerns about the implications of this provision considering its potential scope too broad and its obligations too strict. In response, **Cion** indicated that, in particular in the light of Article 3 of the Convention on the protection of human rights and fundamental freedoms, it would be difficult to defend that human rights are respected in case the health of a vulnerable person would significantly deteriorate.

**SK** argued, supported by **AT, BE, FI, RO**, that, in practice, it is not possible to provide for a medical expert who confirms before the actual detention that the health of the vulnerable person will not significantly deteriorate as a result of the detention. For that reason, **SK** proposed "if it can be presumed" instead of "if it is established".

**NL** wanted to avoid a medical test preceding the decision to detain a vulnerable person. In that light, **NL** proposed to delete the first subparagraph and to indicate in the second subparagraph that a medical intake will be done as soon as possible after the person has been detained.

**AT** expressed concerns because of the link with the concept of a vulnerable person.

**BE** requested clarification on Article 11 in relation to Article 22 in particular as regards the reference in that article of a "reasonable period" after the application within which the identification of the vulnerable person needs to take place.

<sup>49</sup> **RO** expressed concerns about the reference to "mental health".

2.<sup>50</sup> Minors shall not be detained unless it is established in an individual case that it is in the minor's best interests, as prescribed in Article 23(2).

Detention of minors shall be a measure of last resort, after having established that other less coercive alternative measures cannot be applied effectively. It shall be for as short a period as possible and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

Detention of unaccompanied minors shall be resorted to only in particularly exceptional cases.

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

Minors shall have access to open-air spaces.

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

3.<sup>51</sup> Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

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<sup>50</sup> Reservation: **DE, FR, NL, RO** and scrutiny reservation: **CZ, EE, SI** expressing concerns about the implications of this provision and wanting to align this paragraph with paragraph 17.1 of the Return Directive. In this context, being in particular concerned about possible implications for its airport procedure, **DE** submitted a proposal (document 14574/11). **CY** does not allow detention of minors under any circumstances.

<sup>51</sup> Scrutiny reservation: **CY**  
**DE**, supported by **SI**, suggested to align this paragraph with paragraph 17(2) of the Return Directive.

4.<sup>52</sup> 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].

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↓ 2003/9/EC

⇒ new

*Article 12 <sup>g</sup>*

### **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<sup>53</sup> by the Member State concerned. Such measures shall be implemented with the asylum seeker's agreement.

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<sup>52</sup> Scrutiny reservation: **CY**

<sup>53</sup> **CY** proposed to refer also to reception facilities.

*Article ~~13~~ <sup>9</sup>*

**Medical screening**

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

*Article ~~14~~ <sup>54</sup>*

**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.

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 ~~asylum~~ ⇒ international protection ⇐ 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.~~<sup>55</sup>

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<sup>54</sup> Scrutiny reservation: **ES**

<sup>55</sup> 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.

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↓ new

→ Council

Preparatory classes, including language classes, shall<sup>56</sup> be provided to minors where it is necessary to facilitate their access → [...] ← to the national education system → as set out in paragraph 1 ← .<sup>57</sup>

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↓ 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 ⇐.

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<sup>56</sup> **CY, ES, NL** proposed "may" instead of "shall".

<sup>57</sup> 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.



## 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.~~

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<sup>58</sup> Reservation: **AT, DE, ES, FR, LT, MT, RO, SI, SK** expressing concerns that access to the labour market would be a pull factor and lead to abuse. In response, **Cion** indicated that the pull factor argument would not be 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 would result in an increased number of applications.

Scrutiny reservation: **CZ**

**LT** rejected EU-rules on access for asylum seekers to the national labour market.

**FR, SI** proposed to maintain the provision on employment included in the directive currently in force.

**DE** proposed to maintain the text of the directive currently in force.

**MT, NL** proposed a 1-year period.

**CZ, EL, LV, SK** considered that a 6-months period would not be long enough.

**SK** proposed include the condition that a first instance decision has not been taken.

**BG** would prefer a 1 year period but might agree with 6 months in case the condition that a first instance decision has not been taken would be included.

**BE, LT**, whilst supporting the 6-months period and the cases in which this period can be extended, proposed to include the condition that a first instance decision has not been taken so as to avoid access to the labour market becoming a pull factor.

**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 withhold.

**LU** could accept a 6-months period.

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↓ new

1.<sup>59</sup> 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].

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↓ 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 law<sup>60</sup>, while ensuring asylum seekers have effective access to the labour market. ⇐.

3.<sup>61</sup> 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.

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<sup>59</sup> Reservation: **BG**

<sup>60</sup> **CY**, supported by **NL**, proposed to replace the phrase ", while ensuring asylum seekers have effective access to the labour market" with "or/and practice".

<sup>61</sup> **NL**, whilst acknowledging that paragraph 3 concerns text which the Commission does not propose to amend, expressed a preference for deletion of this paragraph.

~~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.~~<sup>62</sup>

*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~~ 14.

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<sup>62</sup> Reservation: **AT, CY, CZ, DE, EL, LT, 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.

**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 ⇐.
- 

↓ 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.~~

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↓ 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.~~

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↓ new

→ Council

5.<sup>63</sup> 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, such as the minimum level of social welfare assistance. 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 .

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<sup>63</sup> Reservation: **DE, NL, SE**  
Scrutiny reservation: **AT, CZ, EL, FI, FR, LT, PT, SK**  
**FR** indicated that in France no national point of reference on social welfare exists.  
**DE, NL** considered that the Commission 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, **NL** preferred the Council text contained in document 13935/10. **DE** proposed to maintain the text of Article 17(5) of the directive currently in force..  
In response, **Cion** indicated that the new provision does not oblige Member States to provide equal treatment to nationals and asylum seekers 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.

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↓ 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.<sup>64</sup> ⇒ 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.~~

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<sup>64</sup> Scrutiny reservation: **AT** preferring the text in the directive currently in force. Furthermore, **AT** requested clarification of the term "communicating". In response, **Cion** indicated that this term - which can include communication by telephone - is already included in the directive currently in force.



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↓ 2003/9/EC article 14(7) (adapted)

⇒ new

(c)<sup>65</sup> ⇒ 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 <sup>66</sup>of ⊗ these  
premises ⊗ ~~the centres and facilities~~ and of the asylum seekers.

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↓ new

3.<sup>67</sup> 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).

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<sup>65</sup> 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.

<sup>66</sup> **NL** proposed to insert in conformity with Article 10.4 the phrase: ", the public order or administrative management".

<sup>67</sup> **AT** requested clarification about the implementation of paragraph 3.

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↓ 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 assault<sup>68</sup>,  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.

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<sup>68</sup> Scrutiny reservation: **FR, LV, RO, SE**  
**FR, RO** opposed the proposed specification considering 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**<sup>69</sup>

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness ⇒ or ⇒ mental disorders ◀ ⇒ [...] ◀ <sup>70</sup>◀.
2. Member States shall provide necessary medical or other assistance to applicants who have special ⇒ reception ◀ needs, ⇒ including appropriate mental health care where needed ◀.

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<sup>69</sup> Scrutiny reservation: **CZ, EL, ES, LV, PT**

**DE** submitted a proposal contained in document 14574/11.

<sup>70</sup> Reservation: **EE**

Scrutiny reservation: **AT, DE, ES, LV**

**AT, DE, EE** rejected distinguishing mental disorders / illness / health care / psychological treatment explicitly in the Reception Conditions Directive.

## CHAPTER III

# REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article ~~20~~ ~~16~~<sup>71</sup>

### 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

~~<sup>72</sup>(c)~~ = has ~~already~~ lodged ~~⇒~~ a subsequent application as defined in Article 2(q) of [...]/.../EU] [the Asylum Procedures Directive] ~~←~~ ~~an application in the same Member State~~ ~~.~~ , or

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<sup>71</sup> Scrutiny reservation: **AT**

In Austria, this provision concerns a competence of the Länder which therefore need to be consulted.

<sup>72</sup> Scrutiny reservation: **CY, EL, ES, FR, SI** 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.

~~73~~

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.<sup>74</sup>~~

~~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.<sup>75</sup>~~

2. ~~3~~ Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.

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<sup>73</sup> **DE** proposed as additional ground a refusal of a job offer. **Cion** did not see the need for such additional ground.

<sup>74</sup> Scrutiny reservation: **HU**  
In response of a request for clarification of **CY, DE, NL, Cion** indicated that this subparagraph has been transferred to Article 17.4.

<sup>75</sup> **CY** proposes to re-insert this paragraph.

- ~~3.~~ ~~4.~~ Decisions for reduction, withdrawal or refusal of  material  reception conditions or sanctions referred to in paragraphs 1, ~~2~~ and ~~3~~ ~~2~~ 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 ⇐~~.
- ~~4.~~ ~~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 .

## CHAPTER IV

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

Article ~~21~~ <sup>76</sup>

#### 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 physical illnesses<sup>77</sup>, ~~⇒ [...] ⇐~~ 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.~~

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<sup>76</sup> Reservation: **AT, DE, FR**

**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 examples listed only concern the most serious categories of vulnerable persons.

**DE, FR** proposed to maintain the text of the directive currently in force which reflects Article 3(9) of the Return Directive.

**LU** pointed to the particular position of victims of human trafficking and, for that reason, questioned if it would be appropriate to include this group in the list of vulnerable persons mentioned in Article 21, and if so, **LU** questioned whether this group should not be further qualified.

<sup>77</sup> **FI, SE** supported aligning the enumeration in the Reception Conditions Directive with the one in the Qualifications Directive and, for that reason, proposed to delete the reference to "persons with serious physical illnesses".

<sup>78</sup> **SE** proposed to maintain paragraph 2 of the directive currently in force.



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↓ new

→ Council

*Article 22<sup>79</sup>*

**Identification of the special reception needs of vulnerable persons**

1. Member States shall identify [...] whether the applicant is a vulnerable person and, if so, has special reception needs, also indicating the nature of such needs. The identification process<sup>80</sup> [...] 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.

Member States shall ensure that the support<sup>81</sup> 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.

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<sup>79</sup> Scrutiny reservation: **AT, BG, CZ, DE, EL, FI, FR, IT, SE, SK, LT, LU, MT, RO**  
**DE** argued that a new formal screening is not necessary to identify the special reception needs of a vulnerable person and submitted a proposal (14574/11). This proposal received preliminary support of **AT, FR, MT, RO**. In response, **Cion** indicated that the approach of a non exhaustive list of persons who are vulnerable as well as the identification of persons with special needs already exists in Article 17 of the directive currently in force and that the proposal of **DE** would result in lower standards than those provided by the directive currently in force.

<sup>80</sup> **BG, FI, HU, PT** proposed to delete "process".

<sup>81</sup> **AT** requested clarification of the term "support". In response, **Cion** suggested to clarify this term by adding: "as described in this directive".

2. The identification mechanisms<sup>82</sup> provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive [.../.../EU] [the Qualification Directive].<sup>83</sup>

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↓ 2003/9/EC

⇒ new

Article ~~23~~<sup>18</sup><sup>84</sup>

### Minors

1.<sup>85</sup> 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. ⇐

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↓ new

⇒ Council

2.<sup>86</sup> In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

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<sup>82</sup> **BG, HU, PT** proposed to delete "mechanisms".

<sup>83</sup> **CZ** suggested to include a reference to persons with special procedural needs as contained in the Asylum Procedures Directive.

<sup>84</sup> Scrutiny reservation: **CZ** suggesting to specify that Member States are not obliged to provide better conditions to minor asylum applicants than to their own minor nationals.

<sup>85</sup> Reservation: **RO**

<sup>86</sup> **DE** proposed, under reference to the compromise text on the Qualification Directive, to delete paragraph 2 inserting the content of this paragraph in the recitals (14574/11).

(b) the minor's well-being and social development ☞ [...] ☞,<sup>87</sup>

(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.

↓ 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.

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<sup>87</sup> **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" .

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↓ 2003/9/EC article 14(3)

⇒ new

5. 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~~ ⇒ the national practice of the Member States concerned, provided this is in the best interests of the minors concerned ⇐.
- 

↓ 2003/9/EC

⇒ new

*Article 24 ~~19~~*

**Unaccompanied minors<sup>88</sup>**

- 1.<sup>89</sup> 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 and<sup>90</sup> assists the unaccompanied minor to enable him/her to benefit from the rights and comply with the obligations provided for in this Directive<sup>91</sup>. The representative shall have the necessary expertise<sup>92</sup> 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). ⇐

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<sup>88</sup> Scrutiny reservation: **FI**

<sup>89</sup> Scrutiny reservation: **ES**

<sup>90</sup> **FR** proposed "and/or" instead of "and".

<sup>91</sup> Reservation: **NL** wishing to distinguish between a legal representative and a guardian.

<sup>92</sup> **EL** requested clarification as to the term "necessary expertise".

Regular assessments shall be made by the appropriate authorities.

2.<sup>93</sup> 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.

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<sup>93</sup> Scrutiny reservation: **DE** requesting clarification on the geographical scope of the tracing.

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↓ 2003/9/EC (adapted)

⇒ new

⇒ Council

3.<sup>94</sup>

⇒ 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.

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<sup>94</sup>

Scrutiny reservation: **AT, CY, CZ, DE, ES, EL, FI, SK** because of potential organisational and financial implications.

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↓ 2003/9/EC

⇒ new

- 4.<sup>95</sup> Those working with unaccompanied minors shall have had ⇒ and shall continue to<sup>96</sup> ⇐ ⇒ 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~~ ~~20~~<sup>97</sup>*

### **Victims of torture and violence**

- 1.<sup>98</sup> 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 rehabilitation services that should allow for obtaining medical and psychological treatment ⇐.

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<sup>95</sup> Scrutiny reservation: **EL**

<sup>96</sup> **NL** requested clarification of the phrase: "and shall continue to".

<sup>97</sup> Scrutiny reservation: **AT, FI, 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.

<sup>98</sup> Scrutiny reservation: **ES, CZ, DE, LV** considering the provision to contain too much detail. Moreover **CZ, LV** expressed concerns that the provision seems to offer higher standards to asylum seekers than to own nationals.

As in Article 19, **DE** underlined the need to focus on the examination of the asylum application and not on the examination of the special (medical) needs.

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↓ new

2.<sup>99</sup> Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to<sup>100</sup> 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.<sup>101</sup>

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↓ 2003/9/EC (adapted)

⇒ new

## CHAPTER V

### APPEALS

*Article ~~26~~ 21*

#### 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.

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<sup>99</sup> Scrutiny reservation: **DE, ES** considering this provision too detailed. Moreover, **DE** considered that this subject matter can better be treated at national level.

<sup>100</sup> **NL** requested clarification of the implications of the phrase "and shall continue to".

<sup>101</sup> **CZ, ES** remarked that confidentiality should be taken into consideration for all applicants for asylum and not only for victims of torture and violence.



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↓ new

↻ Council

2.<sup>102</sup> In relation to the cases referred to in paragraph 1, Member States shall ensure that asylum seekers have access to free legal assistance and representation, where they ↻ lack sufficient resources ↻ ↻ [...] ↻ and in so far as it is necessary to ensure their effective access to justice.

<sup>103</sup> ↻ Member States may provide that free legal assistance and representation not be granted if the applicant's appeal is considered by a court or tribunal 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. ↻

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<sup>102</sup> Reservation: **AT, FR, LT, LV, MT**

**AT** indicated that in Austria no free legal assistance exists for equivalent cases in, for instance, the field of social welfare. **AT** also expressed doubts about the need for free legal assistance and representation at all appeal levels.

Scrutiny reservation: **CY, CZ, EL, ES, FI, LV, NL, PL, RO, SE, SK** in particular in relation to the rules on legal assistance and representation in Article 9 of this modified recast of the Reception Conditions Directive and in the modified recast of the Asylum Procedures Directive.

In response to a question of **CZ**, **Cion** indicated that the rules on free legal assistance are only relevant in case of judicial authorities and not before administrative authorities.

**Cion** considered a merits test on tangible chances of success of an appeal or a review and free legal assistance and representation on the request of the applicant not appropriate in case of an appeal or a review in the framework of the Reception Conditions Directive, because a court cannot do a *prima facie* test as is possible in the case of an appeal in the framework of the Asylum Procedures Directive.

**SE, LV, MT** expressed concerns about a general provision on free legal assistance and representation.

<sup>103</sup> Reservation: **FR** proposing to delete the second subparagraph.

Scrutiny reservation: **HU, LT** requesting clarification how to determine that a case has no tangible prospect of success and who should make that determination.

Legal assistance and representation shall include at least preparation of the required procedural documents and representation before the judicial authorities.

⇒ Member States may provide that the legal assistance and representation are provided by nongovernmental organisations, government officials or specialised services of the State. ◀

Legal assistance and representation may be restricted to legal advisers or counsellors specifically designated by national law to assist and represent asylum seekers.

↓ 2003/9/EC

⇒ new

⇒ Council

2 Procedures for access to legal assistance ⇒ and representation ⇐ in such cases shall be laid down in national law.

⇒ Member States may also: ◀

⇒ (a) impose monetary and 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 and legal assistance and representation; ◀

➤ (b) provide that, as regards fees and other costs<sup>104</sup>, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. ◀

➤ <sup>105</sup> 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. ◀

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<sup>104</sup> DE proposed "free legal assistance and representation" instead of "fees and other costs".  
<sup>105</sup> 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.~~

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↓ 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.

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↓ 2003/9/EC

⇒ new

Article 28 ~~23~~<sup>106</sup>

### Guidance, monitoring and control system

1.<sup>107</sup> 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.<sup>108</sup> 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.

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<sup>106</sup> Scrutiny reservation: **DE, EL, PT, SK**

<sup>107</sup> Parliamentary scrutiny reservation: **LU** in relation to the competences of the Ombudsman in Luxemburg.

<sup>108</sup> Reservation: **AT**

Scrutiny reservation: **FR, LU**

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

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↓ 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.

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↓ 2003/9/EC (adapted)

⇒ new

## **CHAPTER VII**

### **FINAL PROVISIONS**

*Article 30 ~~25~~*

#### **Reports**

By ⇒ [two years after the transposition deadline] 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.

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 ~~⇒ [.../.../...] ⇐ 6 February 2006~~.

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.

↓ 2003/9/EC (adapted)

Article ~~31~~ <sup>109</sup> ~~26~~

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 6 February 2005~~  Articles [...] [The articles which have been changed as to the substance by comparison with the earlier Directive] and Annex I by [...] at the latest . They shall forthwith ~~inform~~  communicate to  the Commission ~~thereof~~  the text of those provisions and a correlation table between those provisions and this Directive .

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.

<sup>109</sup> **CY, DE, EL, ES, FR, LV, PT** opposed the obligation to submit a correlation table.

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.

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*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.

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 2003/9/EC (adapted)

*Article ~~33~~ 27*

**Entry into force**

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

Articles [...] [*The articles which are unchanged 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)].



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 I<sup>110</sup>**

**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.

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<sup>110</sup> Scrutiny reservation: **CZ, EL, SK**

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.<sup>111</sup>

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.

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**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
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-	Article 26 (2)
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-	Annex I
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