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2016/0222 (COD)**

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From:	Presidency
To:	Delegations
No. Cion doc.:	11318/1/16 REV 1
Subject:	Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)

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At its meetings on 9 and 21 November 2016, 16 March 2017, 10 May 2017 and 14 June 2017, the Asylum Working Party examined the proposal for a Directive laying down standards for the reception of applicants for international protection. The Asylum Working Party has further examined some of the articles in the framework of the thematic approach. The text was also examined by the JHA Counsellors at their meetings on 14 July and 13 September 2017.

New text for discussion at the JHA Counsellors meeting on 16 October 2017 is indicated with **➤addition in bold and underlined◐** and the newly deleted text is indicated in ~~strike~~**through** (**bold**). Text already introduced in the previous Presidency proposals (docs 7004/17, 6942/17, 8258/17, 9799/17, 11033/17 and 11494/17) is indicated with **➤addition underlined◐**, while text deleted in the previous Presidency proposals (docs 7004/17, 6942/17, 8258/17 and 9799/17, 11033/17 and 11494/17) is indicated in ~~strike~~**through**.

Comments made by delegations on the Commission proposal text, orally and in writing, appear in the footnotes of the Annex.

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2016/0222 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down standards for the reception of applicants for international protection (recast)<sup>1</sup>**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

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<sup>1</sup> Without prejudice to Ireland's right to opt in post-adoption as set out in Article 4 of Protocol 21 of the TFEU, Ireland has not opted into this proposal under Article 3 of Protocol 21 of the TFEU and as such does not have voting rights.

**AT, BG, CZ, EL, ES, FI, FR, HU, LT, PL, SI, SE** and **SK**: scrutiny reservation on the entire proposal. **HU**: parliamentary scrutiny reservation. **NL**: in the proposal a more logical and effective system of freedom restricted measures is envisaged. It fully supports this, but believes the text of the proposal could even be more improved if it contains a comprehensive system with a sliding scale of these measures. This will also render the proposed measures more effective, especially the measure of detention. **PL**: this proposal has many unclear and incomprehensible provisions. It is not uniform in terms of terminology. It is extremely difficult to determine what purpose have specific provisions of the directive, and in consequence what will the impact of the directive be for MS.

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

<sup>3</sup> OJ C , , p. .

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ 2013/33/EU recital 1 (adapted)

[(1) A number of ~~substantive changes~~  amendments  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>4</sup>  Directive 2013/33/EU of the European Parliament and of the Council<sup>5</sup> . In the interests of clarity, that Directive should be recast.

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↓ 2013/33/EU recital 2 (adapted)

(2) A common policy on asylum, including a Common European Asylum System<sub>III</sub>  (CEAS), which is based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967,  is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union , thus affirming the principle of *non-refoulement* . Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

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<sup>4</sup> ~~OJ L 31, 6.2.2003, p. 18.~~

<sup>5</sup> Directive 2013/33/EU of the European Parliament and of the Council of 29 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

(3) The Common European Asylum System (CEAS) is based on a system for determining the Member State responsible for applicants for international protection and common standards for asylum procedures, reception conditions and procedures and rights of beneficiaries of international protection. Notwithstanding the significant progress that has been made in the development of the CEAS, there are still notable differences between the Member States with regard to the types of procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. These divergences are important drivers of secondary movement and undermine the objective of ensuring that all applicants are equally treated wherever they apply in the Union.

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

↓ 2013/33/EU recital 4 (adapted)

~~(4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first phase instruments and to submit the second phase instruments and measures to the European Parliament and to the Council.~~

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↓ 2013/33/EU recital 5 (adapted)

~~(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.~~

- (4) In its Communication of 6 April 2016 entitled 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe',<sup>6</sup> the Commission underlined the need for strengthening and harmonising further the CEAS. It also set out options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member State responsible for applicants for international protection, to reinforce the Eurodac system, to achieve greater convergence in the Union asylum system, to prevent secondary movements within the Union and a new mandate for the European Union Agency for Asylum. This answers to calls by the European Council on 18-19 February 2016<sup>7</sup> and on 17-18 March 2016<sup>8</sup> to make progress towards reforming the Union's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (5) Reception conditions continue to vary considerably between Member States States ↻, **in particular** ↻ **both in terms of how the reception system is organised and in terms of** ↻ **as regards** ↻ the standards provided to applicants. The persistent problems in ensuring adherence to the reception standards required for a dignified treatment of applicants in some Member States has contributed to a disproportionate burden falling on a few Member States with generally high reception standards which are then under pressure to reduce their standards. More equal reception standards set at an appropriate level across all Member States will contribute to a more dignified treatment and fairer distribution of applicants across the EU.

<sup>6</sup> COM(2016) 197 final.

<sup>7</sup> EUCO 19.02.2016, SN 1/16.

<sup>8</sup> EUCO 12/1/16.

↓ 2013/33/EU recital 6 (adapted)

~~(6)~~ The resources of the ~~European Refugee~~  Asylum, Migration and Integration  Fund and of the European  Union Agency for  Asylum ~~Support Office~~ should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in ~~the second phase of the Common European Asylum System~~  this Directive  , ~~in particular~~  including  to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

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↓ 2013/33/EU recital 7 (adapted)

~~(7)~~ ~~In the light of the results of the evaluations undertaken of the implementation of the first phase instruments, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for applicants for international protection ('applicants').~~



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↓ 2013/33/EU recital 8

⇒ new

⇒ Council

(7) In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants. ⇒ It is necessary to clarify that material reception conditions should be made available to applicants as from the moment when the person expresses his or her wish to apply for international protection to officials of the determining authority, as well as any officials of other authorities which are designated as competent to receive and register applications or which assist the determining authority to receive such applications in line with Regulation (EU) No XXX/XXX [ ⇒ Asylum ◂ Procedures Regulation]. ⇐

⇒ (7a) A daily expenses allowance should **in all cases** be provided to applicants as part of the material reception conditions. ~~It should be a specified monetary amount based on a daily value, provided to applicants periodically for them to use at their free disposal. Where relevant, a~~ The daily expenses allowance ~~could~~ **may** be ~~provided given~~ in the form of ~~monetary allowances, vouchers or in kind. that applicants may use in designated premises. Where the daily expenses allowances is provided in the form of vouchers or in kind, Applicants should be able to freely dispose of the vouchers it should nevertheless be ensured that the applicants are able to freely dispose of a determined monetary amount, for example in designated premises, in a way that allows them to reach a minimum level of physical subsistence beyond housing, food, clothing or personal hygiene products and enable them to enjoy a certain degree of autonomy in their daily life and participation in the socio-cultural life of the Member State where they are residing.~~<sup>9</sup> ◂

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<sup>9</sup> DE and IT: scrutiny reservations. CZ felt that the content of this recital should be moved to the relevant Article. NL, supported by PT: it should be clarified that this is a possibility, not an obligation. HU did not support providing financial allowances or vouchers to applicants. ES wanted the words "based on a daily value" to be deleted. ES also wished the word "personal" before "hygiene products" to be deleted.

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↓ new

- (8) Where an applicant is present in another Member State from the one in which he or she is required to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], the applicant should not be entitled to the reception conditions set out in Articles 14 to 17.

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↓ 2013/33/EU recital 10

- (9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.

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↓ 2013/33/EU recitals 11 and 12  
(adapted)  
↻ Council

- (10)  Standard conditions  ~~Standards~~ for the reception of applicants that will suffice to ensure them a dignified  ~~an adequate~~<sup>10</sup>  standard of living  in accordance with Union law and international obligations  and comparable living conditions in all Member States should be laid down. The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.

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<sup>10</sup> FR: scrutiny reservation on the replacement of "dignified" by "adequate".

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↓ new

→ Council

~~(11)~~ In order to ensure that applicants are aware of the consequences of absconding, Member States should inform applicants **→ by making use of → in a uniform manner → practices and in good time →**, as soon as possible and at the latest when they lodge their application, of all **the → their rights, of →** obligations with which applicants must comply relating to reception conditions, including the circumstances under which the granting of material reception conditions **→ and of any benefits →** may be restricted **and of any benefits. → It is important that this information is provided in writing and in a language that the applicant understands or is reasonably supposed to understand, which may not be the applicants' native language. →**

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↓ 2013/33/EU recital 13 (adapted)

~~(13)~~ ~~With a view to ensuring equal treatment amongst all applicants for international protection and guaranteeing consistency with current EU asylum acquis, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted<sup>(11)</sup>, it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.~~

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<sup>11</sup> ~~OJL 180, 29.6.2013, p. 60.~~

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↓ new

↻ Council

(12) Harmonised EU rules on the documents to be issued to applicants make it more difficult for applicants to move in an unauthorised manner within the Union. It needs to be clarified that Member States should only provide applicants with a travel document when serious humanitarian or other imperative reasons arise. The validity of travel documents should also be limited to the purpose and duration needed for the reason for which they are issued. Serious humanitarian reasons could for instance be considered when an applicant needs to travel to another State for medical treatment or to visit relatives in particular cases, such as for visits to close relatives who are seriously ill, or to attend marriages or funerals of close relatives<sup>12</sup>. Other imperative reasons could include situations where ↻ employed ↻ applicants ~~who have been granted~~ ↻ effective ↻ ~~access to the labour market~~ are required to ~~perform essential~~ travel for work purposes, where applicants are required to travel as part of study curricula or where minors are travelling with foster families.

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<sup>12</sup> **RO:** the notion of close relatives should be defined. The travel document should be issued in the form of a Laissez-passer.

- (13) Applicants do not have the right to choose the Member State of application. An applicant must apply for international protection in the Member State either of first entry or, in case of legal presence, in the Member State of legal stay or residence. ➤ [ ] ➤ An applicant who has not complied with this obligation is less likely, following a determination of the Member State responsible under Regulation (EU) No XXX/XXX [Dublin Regulation], to be allowed to stay in the Member State where the application was made and consequently more likely to abscond. His or her whereabouts should therefore be closely monitored. ➤ **Appropriate measures should be taken to keep the applicant from absconding** [ ] ➤
- (14) Applicants are required to be present in the Member State where they made an application or in the Member State to which they are transferred in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation]. In case an applicant has absconded from this Member State and, without authorisation, travelled to another Member State, it is vital, for the purpose of ensuring a well-functioning Common European Asylum System that the applicant is swiftly returned to the Member State where he or she is required to be present. Until such a transfer has taken place, there is a risk that the applicant may abscond and his or her whereabouts should therefore be closely monitored.
- (15) The fact that an applicant has previously absconded to another Member State is an important factor when assessing the risk that the applicant may abscond. To ensure that the applicant does not abscond again and remains available to the competent authorities, once the applicant has been ➤ **transferred** ➤ ~~sent~~ back to the Member State where he or she is required to be present, his or her whereabouts should therefore be closely monitored. ➤ **Appropriate measures should be taken to keep the applicant from absconding again.** ➤

- ➔ **(15a) For reasons of public interest, Member States may, in accordance with this Directive, organise their reception systems by allocating applicants to within their territory and by restricting the applicants' freedom of movement to specific geographical areas. For reasons of public interest they should in certain situations decide that applicants must reside in a specific place and may require applicants to report to the competent authorities. ☹**
- ➔ **(15b) Where Member States allocate applicants to specific geographical areas within their territory for example in order to ensure geographical distribution of applicants, a swift processing of their applications for international protection or the management of available capacities in their reception systems, Member States are not required to adopt an administrative decision. Where Member States nevertheless adopt such a decision, it can be of informative nature only and Member States need not provide for the possibility to appeal this decision. Member States may also put in place procedures for assessing the needs of their reception systems and for planning the adequate resources within accommodation centres, including registration or reporting obligations to applicants in order to determine their possible whereabouts. Such mechanisms should not restrict the applicants' freedom of movement. ☹**
- ➔ **(15c) Also in view to ensure geographical distribution of applicants, a swift processing of their applications for international protection, the management of available capacities in their reception systems or to effectively prevent applicants from absconding, Member States may restrict the applicants' freedom of movement to specific geographical areas within their territory. The size of the assigned designated area should not affect the unalienable sphere of private life of the applicants and allow the applicants to access all benefits under this Directive. ☹**

(16) ~~For reasons of public interest or public order, for the swift processing and effective monitoring of his or her application for international protection, for the swift processing and effective monitoring of his or her procedure for determining the Member State responsible in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation] or in~~  ~~In~~ order to effectively prevent the applicant from absconding, Member States should, where necessary, ~~assign~~ ~~decide that~~ the applicant ~~should reside~~ ~~residence~~ in a specific place, such as an accommodation centre, a private house, flat, hotel or other premises adapted for housing applicants ~~, or and may require applicants to report to the competent authorities~~ ~~Such an~~ An assignment in a specific place should not result in the detention of the applicant, that is the confinement of the applicant within this specific place and deprivation of his or her freedom of movement. ~~Such a~~ ~~A~~ decision ~~to assign the applicant residence in a specific place~~ may be necessary to effectively prevent the applicant from absconding in particular in cases where the applicant has not complied with the obligations to: ~~make an application in the Member State of first irregular or legal entry; to~~<sup>13</sup> remain in the Member State where he or she is required to be present; or in cases where the applicant has been ~~sent~~ ~~transferred~~ ~~back~~ to the Member State where he or she is required to be present after having absconded to another Member State. In case the applicant is entitled to material reception conditions, such material reception conditions should ~~also~~ be provided subject to the applicant residing in this specific place.<sup>14</sup>

(17) Where there are reasons for considering that there is a risk that an applicant may abscond, Member States ~~should~~ ~~could~~ require applicants to report to the competent authorities as frequently as necessary in order to monitor that the applicant does not abscond. ~~To deter applicants from further absconding, Member States should also be able to grant material reception conditions, where the applicant is entitled to such material reception conditions, only in kind.~~<sup>15</sup>

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<sup>13</sup> HU: keep the deleted sentence.

<sup>14</sup> DE: scrutiny reservation on recital 16. FI: setting a possible maximum time for residence should be addressed.

<sup>15</sup> HU opposed the deletion of the last sentence of recital 17.

(18) All decisions restricting an applicant's freedom of movement need to **take into account** ~~be based on~~ the individual behaviour and particular situation of the person concerned, ~~taking into account~~ **including** any special reception needs of applicants and the principle of proportionality. Applicants must be duly informed of such decisions and of the consequences of non-compliance.

(19) In view of the serious consequences for applicants who have absconded or who are considered to be at risk of absconding, the meaning of absconding should be defined in view of encompassing both a deliberate action ~~which is not outside the applicant's control~~ to ~~avoid the applicable asylum procedures~~ and the factual circumstance ~~which is not beyond the applicant's control~~, of not remaining available to the relevant authorities, including by leaving the territory where the applicant is required to be present. **In accordance with this definition, Member States may consider that an applicant has absconded even if the applicant has previously not been considered as being at risk of absconding.**

**(19a)** An applicant should be considered as not being anymore available where he or she **repeatedly fails to respond to reasonable requests relating to the procedures under Regulation (EU) No XXX/XXX [Asylum Procedures Regulation] or the procedure under Regulation (EU) No XXX/XXX [Dublin Regulation] unless the applicant provides adequate justification as to why he or she was unable to respond to those requests, for example in case of medical or other unexpected reasons which are beyond his or her control.**



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↓ 2013/33/EU recital 15 (adapted)

⇒ new

- (20) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under ~~the~~ the ~~very~~ very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both ~~to~~ the manner and the purpose of such detention. ⇒ Detention of applicants pursuant to this Directive should only be ordered in writing by judicial or administrative authorities stating the reasons on which it is based, including in the cases where the person is already detained when making the application for international protection. ⇐ Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority<sup>16</sup>.

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↓ new

⇒ Council

- (21) Where an applicant has been assigned a specific place of residence but has not complied with this obligation, there ~~is~~ still ~~no~~ needs to be a **demonstrated** risk that the applicant may abscond in order for the applicant to be detained. In all circumstances, special care must be taken to ensure that the length of the detention is proportionate and that it ends as soon as the obligation put on the applicant has been fulfilled or there are no longer reasons for believing that he or she will not fulfil this obligation. The applicant must also have been made aware of the obligation in question and of the consequences of non-compliance.

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<sup>16</sup> DE: scrutiny reservation.

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↓ 2013/33/EU recital 16

- (22) With regard to administrative procedures relating to the grounds for detention, the notion of ‘due diligence’ at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention shall not exceed the time reasonably needed to complete the relevant procedures<sup>17</sup>.

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↓ 2013/33/EU recital 17

- (23) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national’s or stateless person’s application for international protection<sup>18</sup>.

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↓ 2013/33/EU recital 18

⇒ new

- (24) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that ⇒ **Article 24 of the Charter of Fundamental Rights of the European Union and** ⇐ Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied<sup>19</sup>.

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<sup>17</sup> **DE:** scrutiny reservation.

<sup>18</sup> **DE:** scrutiny reservation.

<sup>19</sup> **DE:** scrutiny reservation.

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↓ 2013/33/EU recital 19

- (25) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. However, any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned<sup>20</sup>.

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↓ 2013/33/EU recital 20

↻ Council

- (26) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non- custodial alternative measures to detention have been duly examined. ↻ This should not prejudice the use of detention where such alternatives measures, including residence and reporting obligations, cannot be applied effectively. ↻ Any alternative measure to detention must respect the fundamental human rights of applicants.<sup>21</sup>

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<sup>20</sup> **DE:** scrutiny reservation.

<sup>21</sup> **SE:** scrutiny reservation on recital 26. **DE:** scrutiny reservation.

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↓ 2013/33/EU recital 21

- (27) In order to ensure compliance with the procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.

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↓ 2013/33/EU recital 22

- (28) When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of any applicant who is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State.

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↓ 2013/33/EU recital 14

- (29) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.

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↓ 2013/33/EU recital 9

⇒ new

↻ Council

- (30) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively. ⇒ Reception conditions need to be adapted to the specific situation of minors, whether unaccompanied or within families, with due regard to their security, physical and emotional care and provided in a manner that encourages their general development. ↻ Representatives and temporary representatives should be designated in accordance with the procedure defined at national level, which may be different for representatives and temporary representatives, in particular depending on their tasks in the national system. The main role of a temporary representative should be to assist the unaccompanied minor in the initial stages of the procedure for international protection, which may not necessarily entail responsibility to act in the procedure on behalf of the unaccompanied minor. Member States may organise their national system in a way that only the representative would be able to act in the procedure on behalf of the minor<sup>22</sup>. ↻

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<sup>22</sup> DE: scrutiny reservation on the entire recital 30.

➤ As a general rule, a temporary representative or a representative should be **appointed designated** where an application is made by a person who claims to be a minor. A temporary representative or a representative should also be **appointed designated** in cases where, despite the fact that the person did not claim to be a minor, the responsible authorities have objective grounds to believe that the person is a minor in view of his or her physical appearance or behaviour or other relevant indications. On the other hand, in cases where a person claims to be a minor but is clearly above the age of eighteen years based on physical appearance or documentary evidence, a temporary representative or a representative need not be appointed. ↻ ↵

➤ **The temporary representative or a representative may for example need to further explain information provided to the unaccompanied minor, liaise with the authorities responsible for reception conditions to ensure immediate access for the unaccompanied minor to material reception conditions and health care, assist the unaccompanied minor in case of sanctions, of restrictions or measures related to freedom of movement, or in case of detention.** ↻

↓ new

➤ Council

(31) Member States should ensure that applicants receive the necessary health care which should include, at least, emergency care and essential treatment of illnesses, including of serious mental disorders. To respond to public health concerns with regard to disease prevention and safeguard the health of individual applicants, applicants' access to health care should also include preventive medical treatment, such as vaccinations. Member States may require medical screening for applicants on public health grounds. The results of medical screening should not influence the assessment of applications for international protection, which should always be carried out objectively, impartially and on an individual basis in line with Regulation (EU) No XXX/XXX [ ➤ Asylum ↻ Procedures Regulation].

(32) An applicant's entitlement to material reception conditions under this Directive may be curtailed ~~in~~ in certain circumstances such as where an applicant has absconded to another Member State from the Member State where he or she is required to be present. However, Member States should in all circumstances ensure access to health care and a dignified<sup>23</sup> standard of living for applicants ~~which is~~ in line ~~with~~ accordance with the ~~the~~ **Union Law and other international obligations, including** Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, in particular by providing for the applicant's subsistence and basic needs ~~both~~ both in terms of physical safety and dignity and in terms of interpersonal relationships, with due regard to the inherent vulnerabilities of the person as applicant for international protection and that of his or her family or caretaker. Due regard must also be given to applicants with special reception needs. The specific needs of children, in particular with regard to respect for the child's right to education and access to healthcare have to be taken into account. When a minor is in a Member State other than the one in which he or she is required to be present, Member States should provide the minor with access to suitable educational activities ~~which may include access to national education systems~~ pending the transfer to the Member State responsible. The specific needs of women applicants who have experienced gender-based harm should be taken into account, including via ensuring access, at different stages of the asylum procedure, to medical care, legal support, and to appropriate trauma counselling and psycho-social care.

(33) The scope of the definition of family member should reflect the reality of current migratory trends, according to which applicants often arrive to the territory of the Member States after a prolonged period of time in transit. The definition should therefore include families formed outside the country of origin, but before their arrival on the territory of the Member States.

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<sup>23</sup> DE: reservation on the deletion of “dignified”.

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↓ 2013/33/EU recital 23

⇒ new

↻ Council

(34) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market ⇒ and to ensure that such access is effective, by not imposing conditions that effectively hinder an applicant from seeking employment ↻ and by not unduly restricting access to specific sectors of the labour market ↻. ↻ Applicants who have effective access to the labour market and have been assigned a specific place of residence should be able to seek employment within a reasonable distance from the specific place of residence assigned. ↻ Labour market tests used to give priority to nationals or to other Union citizens or to third-country nationals legally resident in the Member State concerned should not hinder effective access for applicants to the labour market and should be implemented without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the applicable Acts of Accession ⇐<sup>24</sup>.

↻ (34a) Access to the labour market entitles the applicant to seek employment or establish oneself as self-employed while. Tthe Member State retains the possibility to verify the situation of its labour market before the applicant can fill a specific vacancy. ↻<sup>25</sup>

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<sup>24</sup> **AT** and **DE**: scrutiny reservation on recital 34. **AT** wanted to delete the words "and by not unduly restricting access to specific sectors of the labour market".

<sup>25</sup> **AT**, **DE** and **SE**: scrutiny reservation on recital 34a. **AT**, **BE**, **DE**, **FR** and **SK** supported the deletion of the reference to the self-employed persons, which was opposed by **IT**. **SE**, supported by **NL**, felt that this recital should cover both employed and self-employed persons.



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↓ new

↻ Council

(35) ~~The maximum time frame for access to the labour market should be aligned with the duration of the examination procedure on the merits.~~ In order to increase integration prospects and self-sufficiency of applicants, earlier access to the labour market is encouraged where the application is likely to be well-founded, including when its examination has been prioritised in accordance with Regulation (EU) No XXX/XXX [Procedures Regulation]. Member States should therefore consider reducing that time period as much as possible with a view to ensuring that applicants have access to the labour market no later than 3 months from the date when the application was lodged in cases where the application is likely to be well-founded. Member States should however not grant access to the labour market to applicants whose application for international protection is likely to be unfounded and for which ~~therefore~~ an accelerated examination procedure is applied ~~,~~ including in cases where they withhold relevant information or documents with respect to ~~do not cooperate with regard to the determination of their identity~~ <sup>26</sup>.

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<sup>26</sup> **AT, DE, ES, FI** and **SE**: scrutiny reservation on recital 35. **DE** and **ES** felt that this recital is not coherent with Article 15.

- (36) Once applicants are granted access to the labour market, they should be entitled to a common set of rights based on equal treatment with nationals ~~☞~~, ~~working~~ ~~☞~~ - Working conditions <sup>27</sup> should cover at least pay and dismissal, health and safety requirements at the workplace, ~~working time~~ ~~☞~~ ~~hours~~ ~~☞~~, and ~~leave~~ ~~☞~~ and ~~holidays~~ ~~☞~~, taking into account collective agreements in force. Applicants should also enjoy equal treatment as regards freedom of association and affiliation, education and vocational training, the recognition of professional qualifications and ~~☞~~, ~~with regard to employed applicants,~~ ~~☞~~ social security.<sup>28</sup> ~~☞~~ Member States may grant<sup>29</sup> access to the labour market as well as equal treatment also to applicants who are self-employed. ~~☞~~
- (37) A Member State should recognise professional qualifications acquired by an applicant in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and of the Council.<sup>30</sup> Special measures also need to be considered with a view to effectively addressing the practical difficulties encountered by applicants concerning the authentication of their foreign diploma, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures<sup>31</sup>.

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<sup>27</sup> **MT:** add "which" after working conditions.

<sup>28</sup> **IE:** scrutiny reservation on recital 36. **SE:** scrutiny reservation. SE does not accept any references to social security in recitals until it lifts reservation on Article 15 (3).

<sup>29</sup> In order to align recitals 35 and 36, **SK** suggested to replace here "grant" with "ensure". **DE:** scrutiny reservation on the last sentence.

<sup>30</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

<sup>31</sup> **SE:** scrutiny reservation.

(38) <sup>32</sup>The definition of branches of social security used in Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>33</sup> should apply.<sup>34</sup>

(39) <sup>35</sup>Due to the possibly temporary nature of the stay of applicants and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council, Member States should be able to exclude ~~social security benefits which are not dependent on periods of employment or contributions~~ ~~family benefits and unemployment benefits~~<sup>36</sup> from equal treatment between applicants and their own nationals ~~. Member States~~ ~~and~~ should ~~also~~ be able to limit the application of equal treatment in relation to education and vocational training ~~and the recognition of formal qualifications~~ .

~~In addition, the~~ ~~The~~ right to freedom of association and affiliation may ~~also~~ be limited by excluding applicants from taking part in the management of certain bodies and from holding a public office.

(40) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.

~~(40a)~~ ~~The right to equal treatment shall~~ should not give rise to rights in relation to situations which lie outside the scope of Union law, ~~such as in relation to family members residing in a third country.~~

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<sup>32</sup> **IE:** scrutiny reservation on recital 38.

<sup>33</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1.).

<sup>34</sup> **NL:** replace text with "Applicants who have been granted access to the labour market and who are engaged in work performed in an employment relationship under which they are subject to income tax enjoy equal treatment with nationals as regards branches of social security, as defined in Article 3 (1) and (2) of Regulation (EC) No 883/2004. [...]".

<sup>35</sup> **IE:** scrutiny reservation on recital 39.

<sup>36</sup> **AT:** opposed the deletion of "family benefits".

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↓ 2013/33/EU recital 24 (adapted)

⇒ new

↻ Council

- (41) To ensure that the material ⇒ reception conditions ⇐ ~~support~~ provided to applicants ~~complies~~ ☒ comply ☒ with the principles set out in this Directive, it is necessary ⇒ to further clarify the nature of those conditions, including not only housing, food and clothing but also ~~essential non-food items such as sanitary items~~ ↻ personal hygiene products ☹. It is also necessary ⇐ that Member States determine the level of ⇒ material reception conditions provided in the form of financial allowances or vouchers ⇐ ~~such support~~ on the basis of relevant references ⇒ to ensure adequate standards of living for nationals, such as ↻, depending on the national context, ☹ minimum income benefits, minimum wages, minimum pensions, unemployment benefits and social assistance benefits ⇐. That does not mean that the amount granted should be the same as for nationals. Member States may grant less favourable treatment to applicants than to nationals as specified in this Directive. ↻ Member States should also have the possibility to adapt the level of financial allowances or the vouchers granted to applicants in the region referred to in Article 349 TFEU, as long as the standard of reception conditions provided for in this Directive is ensured.<sup>37</sup> ☹

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<sup>37</sup> **AT, DE and SE:** scrutiny reservation on recital 41. **NL** wanted to delete the words "on the basis of relevant referenceto ensure adequate standards of living for nationals, such as, depending on the national context, minimum income benefits, minimum wages, minimum pensions, unemployment benefits and social assistance benefits". **ES** wanted to delete "personal" before "hygiene products".

↓ 2013/33/EU recital 25 (adapted)

⇒ new

↻ Council

(42) ⇒ In order to restrict the possibility of abuse of the reception system, Member States should be able to provide material reception conditions only to the extent applicants do not have sufficient means to provide for themselves. ↻ Applicants may be considered as having sufficient means to provide for themselves for example if they have been working for a reasonable period of time. ⌚ When assessing the resources of an applicant and requiring an applicant to cover or contribute to the material reception conditions, Member States should observe the principle of proportionality and take into account the individual circumstances of the applicant and the need to respect his or her dignity or personal integrity, including the applicant's special reception needs. Applicants should not be required to cover or contribute to the costs of their necessary health care ↻ where the healthcare is provided free of charge to nationals ⌚ . ⇐ The possibility of abuse of the reception system should ☒ also ☒ be restricted by specifying the circumstances in which ↻ material reception conditions ⌚ ~~material reception conditions for applicants~~ ⇒ accommodation, food, clothing and other essential non-food items provided in the form of financial allowances or vouchers may be replaced with reception conditions provided in kind and the circumstances in which the daily allowance ⇐ may be reduced or withdrawn, ↻ **including where the applicant does not cooperate with the competent authorities, in particular not complying with reporting duties, not lodging his or her application in accordance with the requirements of the Asylum Procedures Regulation, not respecting requests to provide information in order to facilitate the identification process or to give the authorities the contact information required as well as not cooperating during medical screening procedures,** ⌚ while at the same time ensuring a ~~dignified~~ standard of living for all applicants ↻ **in accordance with Union law and international obligations** ⌚ .

⇒ (42a) Member States should be able to apply other sanctions, including other disciplinary measures in accordance with the rules of the reception centre, such as warnings, temporary bans on access to certain activities or communal services, obligations to carry out tasks common to the residents of the reception centre and transfers to other reception facilities<sup>38</sup>. ↻

↓ 2013/33/EU recital 26

⇒ new

⇒ Council

(43) ⇒ Member States should put in place appropriate guidance, monitoring and control of their reception conditions. In order to ensure comparable living conditions, Member States should be required to take into account, in their monitoring and control systems, ⇒ available non binding ↻ operational standards on reception conditions and specific indicators developed by [the European Asylum Support Office / the European Union Agency for Asylum]. ⇐

⇒ As long as the material reception conditions provide for an adequate standard of living, conditions in premises for housing applicants may be considered ~~comparable~~ appropriate even if they differ, including depending on the expected length of stay of the applicants.<sup>39</sup> ↻

The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured ⇒, including through the Union network on reception authorities, which has been established by [the European Asylum Support Office / the European Union Agency for Asylum]⇐.

<sup>38</sup> DE: scrutiny reservation on recital 42a.

<sup>39</sup> DE: scrutiny reservation. NL, supported by DE, ES and IT, questioned the added value of this new sentence and suggested to delete it.

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↓ 2013/33/EU recital 27

- (44) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
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↓ new  
→ Council

- (45) Experience shows that contingency planning is needed to ensure → to the extent possible ↻ adequate reception of applicants in cases where Member States are confronted with a disproportionate number of applicants for international protection. Whether the measures envisaged in Member States' contingency plans are adequate should be ~~regularly~~ monitored and assessed<sup>40</sup>. → **Contingency planning is an integral part of the ongoing planning process done and should not be seen as an exceptional activity.** ↻

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<sup>40</sup> **DE:** scrutiny reservation on recital 45. **IE** wanted more practical details in relation to the contingency plan to be included in this recital.

The ~~☞~~ European Union Agency for Asylum shall assist Member States to prepare and review their ~~☞~~ contingency plans ~~☞~~, ~~upon their request~~, with the agreement of the Member States concerned. A contingency plan should consist of a comprehensive set of measures that are necessary in order to deal with a possible disproportionate pressure on the Members States' reception systems, and to enhance the efficiency of those systems. A situation of disproportionate pressure may be characterised by **a situation, where a large number of applicants place extreme pressure a sudden and massive influx of third-country nationals to the extent that the influx places extreme burden even on a well-prepared reception system or by a high risk of a sudden and massive influx of third-country nationals requiring immediate action.** ~~☞~~ and in particular the adequacy of the measures taken according to the plans, shall be monitored and assessed in accordance with the ~~☞~~ [second sub-paragraph 5 of Article 135] ~~☞~~ procedure set out in [Chapter 5] of Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum]. ~~☞~~ **The template developed by the European Union Agency for Asylum shall include guidance on how to identify possible scenarios, impacts, actions and available resources to ensure better readiness in such situations.** ~~☞~~

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↓ 2013/33/EU recital 28

- (46) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.



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↓ 2013/33/EU recital 29 (adapted)

- (47) ~~In this spirit,~~ Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that provided for under ~~Directive 2011/95/EU~~ Regulation (EU) No XXX/XXX [Qualification Regulation].

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↓ 2013/33/EU recital 30

⇒ new

- (48) The implementation of this Directive should be evaluated at regular intervals. ⇒ Member States should provide the Commission with the necessary information in order for the Commission to be able to fulfil its reporting obligations. ⇐

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↓ 2013/33/EU recital 31 (adapted)

- (49) Since the objective of this Directive, namely to establish standards for the reception ☒ conditions ☒ of applicants in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at the Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

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↓ 2013/33/EU recital 32

(50) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011<sup>41</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

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↓ 2013/33/EU recital 33 (adapted)

~~(33) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU, and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.~~

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<sup>41</sup> OJ C 369, 17.12.2011, p. 14.

(51) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this *Directive*]

OR

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

OR

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

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

OR

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

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

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↓ 2013/33/EU recital 34

(52) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

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↓ 2013/33/EU recital 35

(53) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.

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↓ 2013/33/EU recital 36 (adapted)

- (54) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive ~~change~~  amendment  as compared ~~with~~  to the earlier  Directive ~~2003/9/EC~~. The obligation to transpose the provisions which are unchanged arises under ~~that~~  the earlier  Directive.

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↓ 2013/33/EU recital 37 (adapted)

⇒ new

- (55) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for  the  transposition into national law of  the  Directive ~~2013/33/EU~~ set out in Annex III, Part B.]

HAVE ADOPTED THIS DIRECTIVE:<sup>42</sup>

## CHAPTER I

### ⊗ SUBJECT-MATTER ⊗ PURPOSE, DEFINITIONS AND SCOPE

#### *Article 1*

#### **Purpose**

~~The purpose of this Directive is to lay~~ ⊗ lays ⊗ down standards for the reception of applicants for international protection ('applicants') in Member States.

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<sup>42</sup> **EL, IT and ES:** comments on this proposal are without prejudice to their substantive reservations on the proposed Dublin Regulation and in particular the new pre-Dublin obligation of the first MS in which the application was lodged and the indefinite responsibility of the first MS. Therefore, wherever there is a reference to the proposed Dublin Regulation, EL maintains a substantive reservation.

Article 2

Definitions<sup>43</sup>

For the purposes of this Directive ~~(1)~~, the following definitions apply ~~(1)~~:

~~(1)(a)~~ [‘application for international protection’ ~~(1)~~ or ‘application’ ~~(1)~~ : means ~~an application for international protection as defined in Article 2(h) [4(2)(a)] of Directive 2011/95/EU Regulation (EU) No XXX/XXX [Asylum Procedures Regulation];~~ ~~(1)~~ a request made<sup>44</sup> by a third-country national or a stateless person for protection from a Member State, who can be understood as seeking to seek refugee status or subsidiary protection status. ~~(1)~~]

↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

~~(2)(b)~~ [‘applicant’: means ~~(1)~~ an applicant as defined in Article [4(2)(b)] of Regulation (EU) No XXX/XXX [Asylum Procedures Regulation] ] ~~(1)~~ a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken; ~~(1)~~ a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken. ~~(1)~~]<sup>45</sup>

<sup>43</sup> AT, CZ, EL and SE: scrutiny reservation on the whole Article. DE and ES: scrutiny reservation on latest amendments.

<sup>44</sup> IT, supported by ES: shall the status apply when the application is made or lodged? Clarification needed. In its view this question needs to be addressed in the scope, making a distinction with the normal conditions of arrival for migrants.

<sup>45</sup> EL: scrutiny reservation on the term "final decision". DE and FR: scrutiny reservation. FR: need to clarify the notion of 'final decision'. It should mean a decision that cannot be the object of appeals in fact or in law. BE: request lodged instead of made.

(3)(e) [‘family members’: means ⇒ family members as defined in Article [2(9)] of Regulation (EU) XXX/XXX [Qualification Regulation];] ⇐, ~~in so far as the family already existed in the country of origin, the following members of the applicant’s family who are present in the same Member State in relation to the application for international protection:~~

~~— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;~~

~~— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;~~

~~— the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried;~~

⇒ in so far as the family already existed before the applicant arrived on the territory of the Member States, in the country of origin before the applicant arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the same Member State as the applicant<sup>46</sup>: ☉

⇒ (a) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals; ☉

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<sup>46</sup> **BG, LV, FI** and **IE**: support restricting the scope. **IE** entered a scrutiny reservation on the current text. **PL**: prefers previous text.



⇒ (b) the minor children of the couples referred to in point (a) or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law; ☐

⇒ (c) the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried; ☐

(4)(d) 'minor': means a ⇒ third-country national or stateless person below the age of 18 years; ☐ minor as defined in Article [2(10)] of Regulation (EU) No XXX/XXX [Qualification Regulation] ⇐ ~~third-country national or stateless person below the age of 18 years;~~

(5)(e) 'unaccompanied minor': means ⇒ a ☐ ~~an~~ ☒ ~~unaccompanied~~ ☒ minor ⇒ who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such ⇒ an adult ☐ ~~a person~~<sup>47</sup>; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States; ☐ as defined in Article [2(11)] of Regulation (EU) No XXX/XXX [Qualification Regulation] ⇐ ~~who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;~~

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<sup>47</sup> IT: "such an adult" instead of "such a person".

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↓ 2013/33/EU

~~(6)(e)~~ ‘reception conditions’: means the full set of measures that Member States grant to applicants in accordance with this Directive;

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↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

~~(7)(e)~~ ‘material reception conditions’<sup>48</sup>: means the reception conditions that include housing, food, ~~and clothing~~ ⇒ ~~and other essential non-food items matching the needs of the applicants in their specific reception conditions, such as~~ ⇒ personal hygiene products ~~as well as daily expenses allowance~~ ⇒ sanitary items, bedding, and cleaning products ⇒ provided in kind, or as financial allowances or in vouchers, or a combination of the three, ~~and a daily expenses allowance~~ ⇒ provided as financial allowances or in vouchers, or a combination of the two ⇒<sup>49</sup>

⇒ (7a) "daily expenses allowance" means a determined monetary amount provided to applicants periodically as part of the material reception conditions for them to use at their free disposal in order to reach a minimum level of physical subsistence beyond housing, food, clothing or personal hygiene products and enable them to enjoy a certain degree of autonomy in their daily life; ⇒

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<sup>48</sup> **IT**: the link of the material reception conditions with the daily allowance expenses should be better clarified in point 7 and in recital 41. **ES**: clarify the provision of daily expenses allowances in recital 31.

<sup>49</sup> **BG, DE, ES, NL** and **SK**: daily expenses allowance should be laid down as an optional possibility for MS. **BE, CZ, DE** and **PL**: clarify notion of daily expenses allowances. In this respect **CZ**, supported by **BE** and **PL**, suggested moving the relevant parts of recital 7 a to this Article. **ES**: delete “personal”. **HU**: does not support the provision of financial allowances or vouchers to applicants.

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↓ 2013/33/EU

~~(8)(4)~~ 'detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;<sup>50</sup>

~~(9)(4)~~ 'accommodation centre': means any place used for the collective housing of applicants;

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↓ new

→ Council

~~(11)(4)~~ 'absconding': means the action by which an applicant does not remain available to the competent administrative or judicial authorities or **has left leaves**, without adequate justification, in order to avoid asylum procedures, either leaves the territory of the Member State where he or she is present without authorisation from the competent authorities, unless it is outside of the applicant's control<sup>51</sup> where he or she is required obliged to be present in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation] or without adequate justification<sup>52</sup>, without authorisation does not remain available to the competent administrative or judicial authorities or to the court or tribunal of the Member State where he or she is present;<sup>53</sup>

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<sup>50</sup> **HU**: scrutiny reservation. **IT**: wonders why this definition does not take into account alternatives to detention.

<sup>51</sup> **DE**: scrutiny reservation, clarify meaning of "outside the applicant's control". Does it mean "force majeure"?

<sup>52</sup> **DE**: scrutiny reservation on the deletion of "adequate justifications". **PT** and **SE**: this definition is too wide. Could there be "adequate justifications"? **SE** noted that there should be a reference to the purpose of avoiding asylum procedures.

<sup>53</sup> **BE, DE, EL** and **IT**: important to look at it from the Dublin Regulation point of view; consistency is needed. **SE**: prefers the text of the Commission proposal.

(10) (11) 'risk of absconding': means the existence of reasons in an individual case, which are based on objective criteria defined by national law, to believe that an applicant may abscond;

54

↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

(12)(j) 'guardian representative': means a person as defined in Article [4(2)(f)] of Regulation (EU) No XXX/XXX [Procedures Regulation] or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;

(13)(k) 'applicant with special reception needs': means an applicant a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive, such as applicants who are minors, unaccompanied minors, persons with disability disabilities disabled people, elderly persons people, pregnant women, single parents with minor children, victims of human trafficking in human beings, persons with serious illnesses<sup>55</sup>, persons with mental disorders, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation<sup>56</sup>.

<sup>54</sup> CZ: reservation; delete this definition which should be part of the national legislation. DE, ES and IE: scrutiny reservation. DE : in case of risk of absconding the responsibility relies within applicant's powers. IE, PL and PT: clarify "objective criteria". AT: further clarification is needed. FI: important to look at it from the Dublin Regulation point of view.

<sup>55</sup> PL: "persons with serious illnesses" is unprecise.

<sup>56</sup> DE: scrutiny reservation. ES: insert a reference to LGBTI applicants in recital. NL: Stop the sentence at "...mental disorders".

## Article 3

### Scope

1. This Directive ~~shall apply~~  applies  to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the  external  border, in the territorial ~~waters~~  ~~⇒ sea~~  or in the transit zones of  the  ~~Member State~~  States  , as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.
2. This Directive ~~shall~~  does  not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. This Directive ~~shall~~  does  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>57</sup> are applied~~  applies  .
4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from Directive 2011/95/EU Regulation (EU) No XXX/XXX [Qualification Regulation].

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<sup>57</sup> 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 (OJ L 212, 7.8.2001, p. 1).

Article 4

**More favourable provisions**

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

↓ 2013/33/EU

⇒ new

⇒ Council

**CHAPTER II**

**GENERAL PROVISIONS ON RECEPTION CONDITIONS**

Article 5<sup>58</sup>

**Information**

1. Member States shall inform applicants  of any rights and obligations relating to reception conditions set out in this Directive.  ~~within a reasonable time not exceeding 15 days after they have lodged~~ ⇒ as soon as possible and at the latest when they are lodging ⇐ ~~their application for international protection, of at least any established benefits and of the obligations with which they must comply relating to reception conditions~~ ⇒.

<sup>58</sup> **BG:** reservation in relation to the responsibility of the Member State of first entry.

~~⇒ This information shall be given as soon as possible and in good time<sup>59</sup> to enable applicants to benefit from these rights or comply with these obligations, in particular that :~~ ~~☐~~ ~~☐ In order to avoid absconding, Member States~~ ~~☐~~ ~~They shall~~ ~~☐ in particular ensure that~~ ~~☐ point out in the information provided that the applicants~~ ~~☐ understand that they are~~ ~~☐ is not entitled to the reception conditions set out in Articles 14 to 17 of this Directive<sup>60</sup>~~ ~~☐ only~~ ~~☐ as stated in Article 17a of the same Directive in~~ ~~☐ the~~ ~~☐ any Member State other than where~~ ~~☐ they are~~ ~~☐ he or she is required to be present in accordance with~~ ~~☐ Article 4 (2a) of~~ ~~☐ Regulation (EU) No XXX/XXX [Dublin Regulation]~~ ~~☐ in order for them to comply with the obligations set out in that Article<sup>61</sup>.~~

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

2. Member States shall ensure that the information referred to in paragraph 1 is in writing ⇒ using a standard template which shall be developed by the European Union Agency for Asylum ⇒ in accordance with Article 12 of Regulation (EU) XXX/XXX [EUAA Regulation], and adapted to the Member States' national systems. This information shall be provided ☐ ~~☐ and~~ in a language that the applicant understands or is reasonably supposed<sup>62</sup> to understand.<sup>63</sup> Where ⇒ necessary ~~☐ appropriate, this information~~ ~~☐ it~~ ~~☐ may~~ ⇒ shall ~~☐~~ also be supplied orally ⇒ and adapted ~~☐, where relevant~~ ~~☐~~, ~~☐ including~~ ~~☐~~ to the ~~☐ applicants'~~ ~~☐ needs of~~ ~~☐~~, including the needs of unaccompanied ~~☐~~ minors, ~~including unaccompanied minors~~ ~~☐~~.

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<sup>59</sup> SE, supported by BE and IT: delete "in good time" (superfluous).

<sup>60</sup> IT: reservation on the reference to Article 16

<sup>61</sup> DE: scrutiny reservation, linked with the scrutiny reservation on Article 17 a. IT: reservation on the reference to Article 4 (2a) of the Dublin Regulation.

<sup>62</sup> NL: "meant" instead of "supposed".

<sup>63</sup> SE: scrutiny reservation.

↻ Where, due to the particular language that an applicant understands or is reasonably supposed to understand, Member States are not able to provide in writing in good time the information referred to in paragraph 1 in good time in writing in view of due to the particular language that an applicant understands or is reasonably supposed to understand, the information may exceptionally, and pending the possibility to , and until such time as that information can be provided it in writing, be provided, only through oral translation with the assistance of the interpreter, only orally , in a language that the applicant understands or is reasonably supposed to understand. provided that the applicant confirm subject to the applicants' confirmation through oral translation through the interpreter that the this information given through translation has been understood.<sup>64</sup> If the information subsequently becomes available in writing, it shall be provided to the applicant.<sup>65</sup> ↻

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

#### Article 6

↻ Documentation ↻ ⊗ ~~Travel documents~~ ⊗ ~~Documentation~~

↻ 1. Member States shall ensure that the applicant is provided with the documents as set out in Article 29 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation]. ↻

<sup>64</sup> IT: need for better distinction of the two sub-paragraphs in paragraph 2. The same language cannot be used in both cases.

<sup>65</sup> DE: scrutiny reservation on the last sentence.



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

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

~~2. Member States may exclude application of this Article when the applicant is in detention and during the examination of an application for international protection made at the border or within the context of a procedure to decide on the right of the applicant to enter the territory of a Member State. In specific cases, during the examination of an application for international protection, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.~~

~~3. The document referred to in paragraph 1 need not certify the identity of the applicant.~~

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

~~5.~~ ~~2.~~ ~~C~~ Member States ~~may~~ ⇨ ⇨ ~~may~~ ~~C~~ ~~shall~~ ⇨ provide applicants with a travel document<sup>66</sup>  
⇨ only ⇨ when serious humanitarian ⇨ or other imperative ⇨ reasons arise that require their presence in another State. ⇨ The validity of the travel document shall be limited to the purpose and duration needed for the reason for which it is issued. ⇨<sup>67</sup>

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<sup>66</sup> **PL:** a uniform format for the travel document would help to diminish the risks of forgery.

<sup>67</sup> **DE, ES, IT, NL and PT:** all references to travel documents should be included in the APR.

**IT:** scrutiny reservation. This provision would lead to increase the administrative workload.

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

**⇒ Article 6a ⇐**

**⇒ Organisation of reception systems ⇐**

**⇒ 1. Member States may: ⇐**

**⇒ a) allocate applicants within their territory, including to a geographical area or to a place of residence where applicable, in order to ensure a geographical distribution of applicants, a swift processing of their application for international protection or the management of available capacities in their reception systems; ⇐**

**⇒ b) provide material reception conditions subject to actual residence by the applicants in the place allocated in accordance with point (a). ⇐**

**⇒ When acting in accordance with this paragraph, Member States shall take into account the individual situation of the person concerned, including with regard to applicants with special reception needs. ⇐**

**⇒ 2. Member States may also put in place mechanisms to assess and address the needs of their reception systems, including the registration obligation to the applicants for determining their actual presence in accommodation centres. ⇐**

**⇒ 3. In case housing is not provided in kind, Member States shall require them to inform the competent authorities of their current address, and a telephone number where they may be reached. Member States shall also require applicants to notify any change of address and telephone number to such authorities as soon as possible. ⇐**

**⇒ For the purpose of this Article Member States are not required to adopt administrative decisions. ⇐**

Article 7<sup>68</sup>

**Residence and freedom of movement**

1. Applicants may move freely within the territory of the host Member State.

**1a. By way of exception to paragraph 1, Member States may decide to designate applicants to an area within their territory or within an area assigned to them by that Member State.** The ~~assigned~~ **designated** area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive<sup>69</sup>.

~~1a. Member States may allocate applicants within their territory in order to ensure a geographical distribution of applicants or to manage available capacities in their reception systems. Member States shall take into account the individual situation of the person concerned, including with regard to applicants with special reception needs. The allocation need not result in an administrative decision.~~<sup>70</sup>

<sup>68</sup> **BE, DE, EL, FI, LU, NL, PT, SE** and **SI**: scrutiny reservation on whole Article. Differentiation between Articles 7 and 8 must be made clearer. **FR** and **SE**: scrutiny reservation on all the changes.

<sup>69</sup> **CZ**: more precise wording on the restriction of movement would be needed. **IT**: delete paragraph 1, unless its relation with paragraph 2 is clarified.

<sup>70</sup> **ES** and **FR**: new text goes in right direction, but articulation between this paragraph and paragraphs 7 and 8 must be examined. **EL**: wants clarification that the application of this provision does not result in issuing individual decisions. In relation to the proposal of moving 1a to Article 17, **AT** supported it. **IT**, supported by **CZ, ES, FR** and **NL**, while not opposing the fact of moving it to Article 17, preferred including its content in a separate Article.

↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

2. ~~Without prejudice to paragraph 1a, national measures exclusively aiming at efficiently managing reception capacities and at ensuring a geographical distribution of applicants across a Member State's territory, which need not take the form of an administrative procedure~~  
Where necessary, Member States ~~may~~ ⇒ shall <sup>71</sup> ~~where necessary~~ decide ~~where necessary~~ ⇒ **that an applicant is only allowed to reside on the residence of the ~~an~~ applicant** ⇒ in a specific place **, such as an accommodation centre in order to effectively prevent the applicant from absconding, in particular when it concerns** ~~for ~~any of the following~~ justified reasons of~~

~~(a) public interest, or public order~~;

~~(b) when necessary, for the swift processing and effective monitoring of his or her application for international protection;~~

~~(c) for the swift processing and effective monitoring of his or her procedure for determining the Member State responsible in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation];~~

~~(b d) to effectively prevent the applicant from absconding, in particular when it concerns~~;

~~for applicants who have not complied with the obligation to make an application in the first Member State of entry as set out in Article [4(1)] of Regulation (EU) No XXX/XXX [Dublin Regulation] and have travelled to another Member State without adequate justification and made an application there; or~~

<sup>71</sup> **FI:** "may" instead of "shall".

<sup>72</sup> **EL:** clarify "specific place". **ES:** clearer distinction is needed between "area assigned", geographical distribution" and "specific place" in paragraphs 1,1a and 2. Replace "specific place" with "particular place".

- ~~where applicants~~ <sup>☞</sup> who <sup>☹</sup> are required to be present in another Member State in accordance with <sup>☞</sup> Article 4(2a) of <sup>☹</sup> Regulation (EU) No XXX/XXX [Dublin Regulation]; or
- ~~for applicants who have been sent back to the Member State where they are required to be present in accordance with~~ <sup>☞</sup> Article 4(2a) of <sup>☹</sup> Regulation (EU) No XXX/XXX [Dublin Regulation] after having absconded to another Member State.

~~In~~ <sup>☞</sup> any of these <sup>☹</sup> ~~those cases~~ <sup>☞</sup> Where an applicant has been assigned residence in a specific place in accordance with this paragraph <sup>☹</sup> , the provision of material reception conditions shall be subject to the actual residence by the applicant in that specific place.<sup>73</sup>

3. <sup>74</sup>~~Where there are reasons for considering that there is a risk that an applicant may abscond,~~ Member States ~~shall, where necessary,~~ <sup>☞</sup> may <sup>☹</sup> require the applicant to report to the competent authorities, or to appear before them in person, either without delay or at a specified time as frequently as necessary <sup>☞</sup> to ensure that the decisions referred to in paragraphs 1a or 2 are respected or <sup>☹</sup> to effectively prevent the applicant from absconding.<sup>75</sup> <sup>☞</sup> Member States may also require the applicant to report to the competent authorities in accordance with this paragraph in all cases where the applicant has been assigned residence in a specific place in accordance with paragraph 2. <sup>☹</sup><sup>76</sup>

<sup>73</sup> **BE:** scrutiny reservation on whole point 2. **DE:** clarify that this does not prevent Member States from providing a travel allowance to the assigned residence.

<sup>74</sup> **DE:** scrutiny reservation on paragraph 3. **IT:** clarification needed for the two different kinds of reporting.

<sup>75</sup> **FI** and **LU:** new text should not make it more difficult to detain applicants. Therefore, propose to insert "without prejudice to Article 8 in cases where the measures in this paragraph cannot be applied effectively" after "shall...."

<sup>76</sup> **NL** suggested moving the last sentence of paragraph 3 to paragraph 2.

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↓ 2013/33/EU (adapted)

↻ Council

4. ↻ Upon the request of the applicant, ↻ Member States ~~shall provide~~<sup>77</sup> ↻ may grant ↻ ~~for the possibility of granting applicants~~ ↻ him or her ↻ temporary permission to leave ~~the~~ ↻ ~~their~~ ↻ ~~the~~ ↻ ~~assigned area~~ ~~assigned designated~~ in accordance with paragraph 1a or to reside outside the ~~of their allocated~~ ↻ place of residence ↻ specific place determined in accordance with paragraph 2<sup>78</sup> ↻ ~~mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1.~~ ↻ Such d ↻ Decisions shall be taken ~~individually,~~ objectively and impartially ↻ on the merits of the individual case ↻ and reasons shall be given if they are negative<sup>79</sup>.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary<sup>80</sup>.

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↓ 2013/33/EU

⇒ new

↻ Council

5. ~~Member States shall require applicants to inform the competent authorities of their current~~  
⇒ ~~place of residence~~ ↻ ~~and~~ ↻ ~~or~~ ↻ ~~address~~ ↻, ↻ ~~⇒~~ ↻ ~~and~~ ↻ ~~or~~ ↻ ~~a telephone number~~  
~~where they may be reached~~ ↻. ~~Member states shall require applicants to~~ ↻ ~~and notify any~~  
~~change of~~ ⇒ ↻ ~~residence, address and~~ ↻ ~~telephone number or~~ ↻ ~~address~~ ↻ to such authorities  
~~as soon as possible.~~

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<sup>77</sup> CZ: replace "shall" with "may".

<sup>78</sup> DE: clarify "place of residence"

<sup>79</sup> CZ wanted to delete the words "...and reasons shall be given if they are negative". It also wanted to include the following additional sentence: "The granting of temporary permission to leave need not result in an administrative decision".

<sup>80</sup> DE: scrutiny reservation on paragraph 4.

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↓ 2013/33/EU (adapted)

↻ Council

~~36. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place ↻ also in cases where that specific place has not been determined as the applicant's residence in accordance with paragraph 2. ↻, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.~~

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↓ new

↻ Council

↻ 5 ↻ 7. Decisions referred to in this Article ↻ paragraphs 1a, and 2 and 3,<sup>81</sup> which affect applicants individually,<sup>82</sup> ↻ shall be based on the individual behaviour and particular situation of the person concerned, including with regard to applicants with special reception needs, and with due regard to the principle of proportionality.<sup>83</sup>

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<sup>81</sup> **EL:** Need to clarify that it does not refer to paragraph 1a. **ES, FI and NL:** the reference to paragraph 1 of this provision should be removed both in paragraphs 7 and 8. **AT:** reference should only made to paragraphs 2 (a) and 2 (b).

<sup>82</sup> **ES:** wishes the words “which affect applicants individually“ to be reintroduced.

<sup>83</sup> **EL, IT, NL and PT:** too strict, extremely difficult to apply in practice in national systems where applicants have to register regularly and stay in a designated area. **NL,** supported by **FI:** suggests replacing the text of this paragraph with the following text: "*Decisions referred to in this Article shall be taken individually and based on national law, with due regard to applicants with special reception needs, and the principle of proportionality*". **BE and EL:** decisions should not be based on the individual situation of the applicant; there are other reasons. For example, the desire to spread out applicants on the territory is due to external circumstances. **BE:** replace "individual situation..." by "individual cases".

↪ 6 ◉ 8. Member States shall state reasons in fact and, where relevant, in law in any decision taken in accordance with this Article<sup>84</sup> ↪ paragraphs 1a, and 2 and 3. which affect applicants individually ◉ . Applicants shall be immediately informed in writing, in a language which they understand or are reasonably supposed to understand, of the adoption of such a decision, of the procedures for challenging ↪ this ◉ the decision in accordance with Article 25 and of the consequences of non-compliance with the obligations imposed by ↪ this ◉ the decision. ↪ The applicants shall be informed of such a decision and its content in a language which they understand or are reasonably supposed to understand. ◉ <sup>85</sup>

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<sup>84</sup> **AT**: replace "this Article" by "paragraph 2 (a) and (d)". Decisions on the residence which are based on reasons in accordance with paragraph 2 (b) and (c) need not to be justified individually. The reason of the swift process and effective monitoring of his or her procedure is important enough on its own and does not need an additional individual justification. The need of stating individual reasons in each single case would lead to massive administrative burden and would be unmanageable. **ES, FI, NL** and **SE**: there should be no reference to paragraph 1.

<sup>85</sup> **EL**, supported by **IT, LU** and **NL**: scrutiny reservation: this requirement may prove to be extremely difficult in practice, especially in cases of particular pressure. Furthermore, these are guarantees that apply when a detention order is issued. Need to clarify between the two notions (Articles 7 and 8). **IT**: this paragraph is in line with the right to the freedom of movement. Nonetheless, its effects are not clearly predicted. The decision therein should not have suspensive effect otherwise the provision does not achieve its goal. Moreover, is the possibility of challenging this decision foreseen? Does reference to Art. 25 entail that free legal assistance is extended to this?) **NL**, which expressed similar concerns, agrees that it is important that the applicant should be well informed about the content of a decision. However, it is equally important that restricted measures can be imposed as quickly as possible. Suggests the following wording: " Member States [...] will ensure that the applicant understands the content of the measure taken and the limits of the area or place in which he or she is allowed to stay." **PT**: reservation.



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↓ 2013/33/EU (adapted)

*Article 8*

**Detention**<sup>86</sup>

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant ~~in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection~~<sup>87</sup>.

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↓ 2013/33/EU

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
3. An applicant may be detained only:<sup>88</sup>
  - (a) in order to determine or verify his or her identity or nationality;
  - (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

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<sup>86</sup> **DE, FI, NL, PT and SE:** reservation on changes in Art. 8.

<sup>87</sup> ~~See page 60 of this Official Journal.~~

<sup>88</sup> **AT:** "may" to replace with "shall" for a clear signal for the applicant.

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↓ new

☞ Council

(c) in order to ensure compliance with legal obligations imposed on the applicant through an individual decision in accordance with Article 7(2) in cases where the applicant has not complied with such obligations and there is ☞ still ☹ a risk of absconding of the applicant.<sup>89</sup>

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↓ 2013/33/EU

⇒ new

☞ Council

~~(d)(e)~~ in order to decide, in the context of a ⇒ border ⇐ procedure ⇒ in accordance with Article [41] of Regulation (EU) No XXX/XXX [ ☞ Asylum ☹ Procedures Regulation] ⇐, on the applicant's right to enter the territory;

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<sup>89</sup> **FI, IE, LU and PL:** this is a step in the right direction but no support to the cumulative condition of non-compliance to Article 7(2) added to the risk of absconding. In practice if the applicant has not complied with the obligations laid down in Article 7, he has probably absconded already and we will not be able to detain him. The assessment of the risk of absconding should be sufficient as a ground for detention. **BE:** insert reference to Article 7 (3). **CZ:** this provision evokes an alternative to detention; delete the reference to Art.7(2). Overlap between (b) and (c). **DE, EL, ES, FR and SE:** scrutiny reservation. **IT,** supported by **EL:** reservation; delete point (c). Detention in reaction to a non-compliance with the obligation to stay in a specific place is disproportionate and may raise serious problems in those systems where detention centres have reception standards different from the reception centres. **HU:** does not support the principle of a single Member State responsible, as set out in the relevant provisions of the Dublin-proposal, Chapter III; therefore **HU** enters a reservation on paragraph 3(c).

~~(e)(d)~~ when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council ~~of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals~~<sup>90</sup>; in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure ☉ for international protection ☉, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;<sup>91</sup>

~~(f)(e)~~ when protection of national security or public order so requires;<sup>92</sup>

<sup>90</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 343, 23.12.2011, p.1).

<sup>91</sup> **CZ**: delete "merely", because superfluous. **NL**, supported by **FI** and **SK**: amend point (e) to include situations where a return procedure has been started, but has not yet led to detention: "(e) when he or she is [...] *subject* to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council [...], *or is subject to preparations for such a procedure* in order to prepare the return and/or carry out the removal process, (...)". Some third country nationals will try to hamper removal and apply for asylum directly after being detained to avoid or complicate detention. The Netherlands suggest a more effective solution for these situations. The wording is derived from the wording in the article 24(2) of the SIS II Regulation (EC) No 1987/2006 (SIS II). **NL** believes that the current wording is too restrictive in light of the ruling of the CJEU in C-601/15.

<sup>92</sup> **NL**, supported by **SK**: though aware that no changes are proposed for (f), suggests changing the text accordingly to Case law JN C 601/15PPU: "(f) [...] *when the applicant has been convicted in a Member State of an offence carrying a penalty involving deprivation of liberty of at least one year or when protection of national security so requires*".

(g)(f) in accordance with Article ~~2829~~ of Regulation (EU) No ~~604/2013~~ of the ~~European Parliament and of the Council of 26 June 2013~~ establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person<sup>92</sup> ~~XXX/XXX~~ [Dublin Regulation].

↓ 2013/33/EU (adapted)

↻ Council

⊗ All ~~⊗~~ ~~the~~ ~~above~~ grounds for detention shall be laid down in national law.<sup>94</sup>

↓ 2013/33/EU

↻ Council

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

### Article 9

#### Guarantees for detained applicants

1. <sup>95</sup>An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

<sup>93</sup> See page 31 of this Official Journal.

<sup>94</sup> DE: scrutiny reservation.

<sup>95</sup> DE: scrutiny reservation on Article 9.

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

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

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

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

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

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

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

- (a) only to those who lack sufficient resources; and/or
- (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also:

- (a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;
- (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

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

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

## Article 10

### Conditions of detention<sup>96</sup>

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

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

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

2. Detained applicants shall have access to open-air spaces.
3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.
4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

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<sup>96</sup> **DE:** scrutiny reservation.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article ~~43~~ 41 of ~~Directive 2013/32/EU~~ Regulation (EU) No XXX/XXX [  Asylum  Procedures Regulation].

↓ 2013/33/EU (adapted)  
⇒ new

*Article 11<sup>97</sup>*

**Detention ~~of vulnerable persons and~~ of applicants with special reception needs**

1. The health, including mental health, of applicants in detention who ~~are vulnerable persons~~  
⇒ have special reception needs ⇐ shall be of primary concern to national authorities.

Where ~~vulnerable persons~~ ⇒ applicants with special reception needs ⇐ are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

<sup>97</sup> DE: scrutiny reservation.



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↓ 2013/33/EU

2. Minors<sup>98</sup> shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.
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↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

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

Where minors are detained, ⇒ ☒ they shall have the right to education in accordance with Article 14 and without prejudice to Article 17a<sup>99</sup>, unless the provision of education is of limited value to the minors due to the very short period of their detention is very short<sup>100</sup>.

They shall also have ☒ their right to education must be secured ☒ ☐ the possibility to engage in leisure activities, including play and recreational activities appropriate to their age. ☒ ~~they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.~~

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<sup>98</sup> **PL:** special attention should be paid to precisely formulate the principle of detention of minors, understood as any persons under the age of 18, so as not to lead to situations where detaining families with children will not be permitted. This provision creates a real risk of having to separate the minor from parents or guardians. **PL** include a reference on the grounds for detention.

<sup>99</sup> **DE, EL, FR and SE:** scrutiny reservation on education aspects. Reference to Article 17a must be clarified.

<sup>100</sup> **NL,** supported by **DE:** How will the right to education for minors work in practice given the short period? Replace "limited value" with "is too difficult to provide". What is the definition of "very short"? **DE and SE:** scrutiny reservation on the words 'very short'. **MT:** 'very short' is rather vague.

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↓ 2013/33/EU

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

Unaccompanied minors shall never be detained in prison accommodation<sup>101</sup>.

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↓ 2013/33/EU (adapted)

⇒ new

As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel ~~and facilities which~~ ☒ who ☒ take into account the ⇒ rights and ☐ needs of persons of their age ☒ and facilities ☒ ⇒ adapted to unaccompanied minors ☐ .

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↓ 2013/33/EU

⇒ Council

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

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

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<sup>101</sup> **DE:** scrutiny reservation. **IT:** the reference to 'exceptional circumstances' should also be included in paragraph 2 in relation to minors.

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

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

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article ~~43~~ 41 of ~~Directive 2013/32/EU~~ Regulation (EU) No XXX/XXX [ ☞ Asylum ☝ Procedures Regulation].

#### *Article 12*

#### **Families**

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

#### *Article 13*

#### **Medical screening**

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

*Article 14*

**Schooling and education of minors**

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

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

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

2. Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor.

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

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

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↓ 2013/33/EU

⇒ new

⇒ Council

*Article 15*

**Employment<sup>102</sup>**

1. Member States shall ensure that applicants have access to the labour market no later than 9  
⇒ 9 6 ⇐ months from the date when the application for international protection was  
lodged if a first instance ⇐ an administrative ⇐ decision by the competent authority has not  
been taken and the delay cannot be attributed to the applicant.<sup>103</sup>

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<sup>102</sup> **AT, CY, DE, EL, FI** and **SE**: scrutiny reservation on the whole Article, including new proposals. **ES** and **PT** entered scrutiny reservations on the new proposals. **SE**: the CLS opinion is required on the compatibility of the social security provision with the provisions of the Treaty.

<sup>103</sup> **DE**: scrutiny reservation on the 9 month deadline. **BE**: supports a shorter period (in Belgium the deadline is already 4 months). **AT**, supported by **HU**: mention that access to labour market is in accordance with national law.

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↓ new

↻ Council

Where the Member State has accelerated the examination on the merits of an application for international protection in accordance with points [(a) to (f)] of Article [40(1)] of Regulation (EU) No XXX/XXX [ ↻ Asylum ↻ Procedures Regulation], access to the labour market shall not be granted, ↻ or, if already granted, shall be withdrawn.<sup>104</sup> ↻

~~↻ Where the application for international protection has been declared inadmissible in accordance with Article [36 (2)] of Regulation (EU) No XXX/XXX [Asylum Procedures Regulation], access to the labour market, if already granted, shall be withdrawn.~~<sup>105</sup> ↻

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<sup>104</sup> **IT:** scrutiny reservation. Awaits outcome of the discussion on accelerated procedure in APR. **NL:** the second paragraph is not necessary and redundant.

<sup>105</sup> **FI** and **SK:** scrutiny reservation. Both delegations and **CY** wanted to reinsert the Commission proposal.

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

2. <sup>106</sup> Member States shall ~~decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring~~<sup>107</sup> ~~↻~~ ensure ~~↻~~, **in accordance with national law** ~~↻~~,<sup>108</sup> ~~↻~~ that applicants ~~⇒~~, who have ~~been granted access to~~ the labour market in accordance with paragraph 1, ~~↻~~ have effective access to the labour market.<sup>109</sup>

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<sup>106</sup> **DE**: scrutiny reservation on paragraph 2.

<sup>107</sup> **SE**: does not support this deletion. Wants to maintain a possibility to require from applicants to collaborate when it comes to determining their identity in order to grant access to the labour market. Without an identity requirement we see a risk that employers will not be willing to employ applicants and the article would then have the opposite effect.

<sup>108</sup> **AT**, supported by **DE** and **HU**, wanted to add, after ensure, the words 'in accordance with national law'.

<sup>109</sup> **EL**: this provision provides for the right of the applicants for effective access to the labour market. Article 7(2), on the other hand, provides for the possibility of the MS to decide on the residence of the applicant in a specific place for the reasons referred to there. It is necessary to clarify in the text that the scope of these two provisions will not be, in practice, in conflict with each other. **AT**: delete entire sub-paragraph. **IT** and **SK**: clarify meaning of "effective access to labour market".

For reasons of labour market policies, Member States may ~~give priority to~~  , verify whether a specific vacancy that an employer is considering filling by an applicant who has been granted access to the labour market in accordance with paragraph 1, could be filled by nationals  ~~verify whether a vacancy could be filled by nationals of the Member State concerned, or by other~~  Union citizens, ~~and nationals of States parties to the Agreement on the European Economic Area, and to legally resident~~  or by  third-country nationals  lawfully residing in that Member State  , in in such a which case the Member State may refuse that the employer employs the applicant for the specific vacancy.  <sup>110</sup>

new

Council

3. Member States shall ~~provide~~  ensure that  applicants  who have been granted access to the labour market in accordance with paragraph 1  ~~with~~  enjoy  equal treatment with nationals as regards: <sup>111</sup>

<sup>110</sup> **DE, IT and SE:** scrutiny reservation on whole paragraph. Opposes this sort of limitation. In addition, **IT** and **NL** also felt that self-employed should also be covered in this provision. **ES** and **NL:** reservation: two-step system is cumbersome, labour market tests must be done before granting applicants access. **CZ:** mention that process should be conducted in accordance with national law. **AT** and **ES:** mention possibility for MS to determine which branches of the labour market are accessible for asylum seekers. **AT:** reinsert reference to EEA citizens. **CZ** and **IT:** delete last sentence as it creates extra burden for MS and is superfluous.

<sup>111</sup> **AT, EL, PT, SE** and **SI:** scrutiny reservation on whole paragraph 3. **CY:** reservation in relation to paragraph 3 (b) to (d). **CZ, NL, SE:** clarify that equal treatment should only apply when people are working. **DE:** scrutiny reservation. Need to provide for exceptions from the principle of equal treatment of asylum applicants and a country's national. Germany provides for labour market policies in the fields of vocational training, training preparation and training assistance for asylum applicants. However, these policies have different priorities depending on the different needs. Germany would like to maintain these distinctions. Germany assumes that Article 15 (3a) (b) does not contain an independent claim to equal treatment, but is governed by paragraph (3) and its restrictions (so no opening compared with paragraph (3)). Scrutiny reservation. **SI:** not clear whether this provision relates to all applicants or only to those who received access to the labour market.



- (a) ~~☞~~ terms of employment, including the minimum working age, and, ~~☞~~ working conditions, including pay and dismissal, ~~☞~~ working hours, ~~☞~~ leave and holidays, as well as health and safety requirements at the workplace;
- (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;<sup>112</sup>
- (c) education and vocational training, except study and maintenance grants and loans or other grants and loans related to education and vocational training ~~☞~~ and the payment of fees in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the specific employment activity ~~☞~~;<sup>113</sup>
- (d) ~~☞~~ (i) ~~☞~~ recognition of diplomas, certificates and other evidence of formal qualifications in the context of existing procedures for recognition of foreign qualifications, while ~~☞~~; and ~~☞~~
- ~~☞~~ (ii) ~~☞~~ facilitating, to the extent possible, full access ~~☞~~ to the procedures in point (i) ~~☞~~ for those applicants who cannot provide documentary evidence of their qualifications ~~☞~~, without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC; and ~~☞~~

<sup>112</sup> **EL:** it cannot be a compulsory provision as it introduces for asylum seekers a treatment equal to the one to which beneficiaries of international protection are entitled. The repercussions on national legal systems risk to be serious. Therefore point (b) should be deleted or should be a "may" provision. **IE** expressed some concerns on point (b).

<sup>113</sup> **DE:** add reference to "any employment promotion". **IE** and **LT:** scrutiny reservation. According to **IE**, this point, and in particular the terms "social security benefits", requires further clarification. **AT** wanted to include a reference to the fact that this provision applies without prejudice to paragraph 2, which will allow to carry out a labour market test (the same would also apply to paragraph 3a. and b).

➔ (ii) access to appropriate schemes for the assessment, validation and recognition accreditation of applicants' prior learning outcomes and experience of their prior learning.<sup>114</sup>

(e) branches of social security, as defined in Article 3 (1) and (2) of Regulation (EC) No 883/2004 for those applicants who are engaged in gainful economic activity.

➔ 3a. Member States may restrict equal treatment of applicants who have been granted access to the labour market in accordance with paragraph 1<sup>115</sup>;

(i) ➔ (a) pursuant to point (b) of this paragraph ➔ 3, by excluding them from taking part in the management of bodies governed by public law and from holding an office governed by public law;

➔ (b) ➔ (ii) pursuant to point (c) of this paragraph ➔ 3, to ➔ by excluding them from taking part in education and vocational training which is ➔ not directly linked to a ➔ the applicant's specific employment activity<sup>116</sup> ➔ . ;

➔ (c) pursuant to point (d) (i) or (ii) of this paragraph 3, by not granting equal treatment until at least six months from the date when the application for international protection was lodged.

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<sup>114</sup> **AT:** delete entire paragraph (d). **EL:** scrutiny reservation. **EL:** this point cannot be a compulsory provision as it introduces for asylum seekers a treatment equal to the one to which beneficiaries of international protection are entitled. The repercussions on national legal systems risk to be serious. Therefore point (d) should be deleted or should be a "may" provision.

<sup>115</sup> While supporting the change, **SE** entered a scrutiny reservation on paragraph 3a. **IT** and **NL:** no need for text after "applicants", definition of applicants entitled to equal treatment is already at the start of paragraph 3.

<sup>116</sup> **DE:** clarify that this point is governed by paragraph 3 and its restrictions. This clarification can be made by adding at the end "provided that no exception to paragraph 3 applies".

~~(iii) pursuant to point (e) of this paragraph by excluding family benefits and unemployment benefits, without prejudice to Regulation (EU) No 1231/2010.<sup>117</sup>~~

~~➔ 3b (e) ➔ Member States shall ensure that an applicants who are employed<sup>118</sup> is engaged in an economic activity which is considered gainful<sup>119</sup> under fulfils the conditions of their national law for being subject to a social security scheme through -are engaged in gainful economic activity have been granted access to the labour market and who are engaged in gainful economic activity-enjoys equal treatment with nationals as regards (c) branches of social security, as defined in ➔ Article 3 (1) and (2) of (c) Regulation (EC) No 883/2004 ➔ for those applicants who are engaged in gainful economic activity (c) .<sup>120</sup>~~

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<sup>117</sup> **DE:** reservation on the deletion of sub-point (iii). **AT:** reservation.

<sup>118</sup> **IT** opposed the change aimed at reducing the scope of this provision only to the employed persons, while **BE** supported it. **AT:** scrutiny reservation on the change.

<sup>119</sup> **DE, NL** and **SE:** the terms "economic activity which can be considered gainful" in paragraph 3 b) and "gainful economic activity" in paragraph 3 c) are too vague and should be clarified. **NL** wanted a reference to economic activities subject to the income tax. **IT:** it should be clarified that the notion of gainful activities covers both remunerated jobs and independent economic activities. **SK:** replace "activities" by "employment". **BE:** this provision is not consistent with its current legislation. **NL** and **SE:** the term "gainful economic activity" is too vague. **SK:** replace "activities" by "employment". **IE** suggested adding, after the reference to Regulation (EC) No 883/2004, 'subject to national law and eligibility requirements'.

<sup>120</sup> **IE** and **SE:** reservation. **FR:** scrutiny reservation. **DE:** why a separate paragraph and not part of paragraph 3? **IT:** this point cannot be a compulsory provision as it introduces for asylum seekers a treatment equal to the one to which beneficiaries of international protection are entitled. The repercussions on national legal systems risk to be serious. Therefore, delete or turn into a "may" provision. **NL:** reservation because it refers to equal treatment of applicants with regard to branches of social security. This is an expansion of the rights of asylum seekers which does not correspond to the main goal of preventing secondary movements, as social security system differ widely between MS. MS with an extensive social security system will become more attractive. This provision is at odds with many national social security schemes that grant access to third country nationals only if they are legally staying/residing in their territory. The condition of legal stay (residence permit)/residence is also found throughout the EU acquis. In all the EU instruments that provide equal treatment obligations for third-country nationals this equal treatment is linked to some form of legal stay (residence permit) or residence. **SI:** scrutiny reservation and reservation because this provision is disproportionate when considering applicants.

➔ 3c. (iii) ➔ Without prejudice to Regulation (EU) No 1231/2010, Member States may restrict equal treatment under paragraph 3b of applicants who have been granted access to the labour market and who are engaged in gainful economic activity pursuant to point (e) of this paragraph by excluding family benefits and unemployment benefits provided that the applicant did not contribute towards them, ➔ social security benefits which are not dependent on periods of employment gainful economic activity or contributions without prejudice to Regulation (EU) No 1231/2010.<sup>121</sup>

➔ 3d. The right to equal treatment shall not give rise to a right to reside in cases where a decision taken in accordance with Regulation (EU) No XXX/XXX [Asylum Procedures Regulation] has terminated the applicant's right to remain.

➔ 3e. For the purposes of point (d) (i) of paragraph 3 of this Article, and without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC, Member State shall facilitate, to the extent possible, full access to existing procedures for recognition of foreign qualifications for those applicants who cannot provide documentary evidence of their qualifications.<sup>122</sup>

↓ 2013/33/EU

➔ Council

4.3. Access to the labour market shall not be withdrawn during appeals procedures, where ➔ the applicant has a right to remain on the territory of the Member State during these procedures ➔ an appeal against a negative decision in a regular procedure has suspensive effect, ➔ and ➔ until such time as a negative decision on the appeal is notified.<sup>123</sup> ➔ **Member States may decide not to apply this paragraph in cases where the application for international protection has been declared inadmissible in accordance with Article 36 (2) of Regulation (EU) No XXX/XXX [Asylum Procedures Regulation].** ➔

<sup>121</sup> AT and SE: scrutiny reservation. FI: new wording problematic, wishes to limit employment benefits. PL felt that MS should be able to exclude employment benefits. IT: alignment of recital 39 with this paragraph.

<sup>122</sup> AT and EL: scrutiny reservation.

<sup>123</sup> EL: are appeals against decisions of inadmissibility covered by this paragraph?

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↓ new

5. ~~Where applicants have been granted access to the labour market in accordance with paragraph 1, Member States shall ensure that the applicant's document as referred to in Article [29] of Regulation (EU) No XXX/XXX [Procedures Regulation] state that the applicant has permission to take up gainful employment.~~
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↓ 2013/33/EU (adapted)

~~Article 16~~

~~Vocational training~~

- ~~1. Member States may allow applicants access to vocational training irrespective of whether they have access to the labour market.~~
- ~~2. 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.~~

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article ~~17~~ 16

**General rules on material reception conditions ↻ and health care ↻ ~~and health care~~**<sup>124</sup>

1. Member States shall ensure that material reception conditions are available to applicants ~~when~~  
⇒ from the moment ⇐ they make their application for international protection ⇒ in  
accordance with Article [25] of Regulation (EU) No XXX/XXX [ ↻ Asylum ↻ Procedures  
Regulation] ⇐.<sup>125</sup>

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↓ 2013/33/EU

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

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<sup>124</sup> **EL, FR and SI:** scrutiny reservation on the whole article.

<sup>125</sup> **BG,** supported by **EL:** reservation in relation to its proposal for amending Article 2, paragraph 7, the provision of a daily expenses allowance should be an optional possibility for MS. Ensuring the material reception conditions from the moment of making an application would lead to practical difficulties and is not appropriate. After the wish for international protection is expressed, the applicant can refuse to submit an application for protection. In relation to this, we think that it would be more appropriate for the lodging/registration of an application for international protection to be a reference moment. **NL:** suggests adding a second paragraph: "*In case of a subsequent application Member States shall ensure that material reception conditions are available from the moment the application is lodged (in accordance with Article [28] of Regulation (EU) No XXX/XXX Asylum Procedures Regulation*".

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↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

Member States shall ensure that that standard of living is met in the specific situation of ~~vulnerable persons~~ ⇒ applicants with special reception needs ~~in accordance with Article 21,~~ as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions ~~as well as health care in accordance with Article 18,~~ ~~and health care~~ subject to the condition that applicants do not have sufficient means to have ~~a~~ ⇒ an adequate ~~standard of living adequate for their health and to enable their subsistence~~ ⇒ in accordance with paragraph 2, and, with regard to health care, subject to such health care not being provided free of charge to nationals<sup>126</sup> ~~.~~
4. Member States may require applicants to cover or contribute to the cost of the material reception conditions ~~and of the health care provided in accordance with~~ ~~and of the health care~~ provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient ⇒ means to have an adequate standard of living in accordance with paragraph 2 resources ~~,~~ for example if they have been working for a reasonable period of time, ⇒ ~~and, with regard to health care, if the health care provided to applicants is not provided free of charge to nationals~~ ~~.~~

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<sup>126</sup> **DE:** scrutiny reservation on new amendments. It wishes in particular to maintain the reference to "health care" in the second line of this provision.

↻ If applicants have sufficient means to have an adequate standard of living in accordance with paragraph 2, Member States may also require them to cover or contribute to the cost of the healthcare provided, except in those cases where the healthcare is provided free of charge to nationals.<sup>127</sup> Ⓞ

4a. If it transpires that an applicant had sufficient means to cover material reception conditions ↻ and or health care in accordance with the first and second paragraph 4 2 Ⓞ and health care at the time when ↻ the applicant was provided with an adequate standard of living Ⓞ these basic needs were being covered, Member States may ask the applicant for a refund<sup>128</sup>.

↕ new

↻ Council

5. When assessing the resources of an applicant, when requiring an applicant to cover or contribute to the cost of the material reception conditions ↻ and of the health care Ⓞ or when asking an applicant for a refund in accordance with paragraph 4a, Member States shall observe the principle of proportionality. Member States shall also take into account the individual circumstances of the applicant and the need to respect his or her dignity or personal integrity, including the applicant's special reception needs. Member States shall in all circumstances ensure that the applicant is provided with a standard of living which guarantees his or her subsistence and protects his or her physical and mental health.<sup>129</sup>

<sup>127</sup> **AT, CY, DE** and **SI**: reservation. Text must state clearly that applicants do not get beneficial treatment vis-à-vis nationals.

<sup>128</sup> **DE**: restated its point that a reference to Article 18 should be added.

<sup>129</sup> **CZ**: reservation because this provision goes beyond practical feasibility, creates administrative burden. **DE**: scrutiny reservation. **SI**: difficult to apply in practice; it is redundant, the provisions of the current Directive are sufficient.



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↓ 2013/33/EU

⇒ new

↻ Council

6.5. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals.<sup>130</sup> ↻ These Member States shall inform the Commission and the [European Union Agency for Asylum] of these level(s) of reference<sup>131</sup> applied by national law or practice. ↻ Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially<sup>132</sup> provided in kind<sup>133</sup> or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive. ⇒ ~~Member States shall inform the Commission and the European Union Agency for Asylum of the levels of reference applied by national law or practice with a view to determining the level of financial assistance provided to applicants in accordance with this paragraph.~~ ↻<sup>134</sup>

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<sup>130</sup> **ES:** substantial reservation. It is impossible to determine which levels of reference should be communicated to the EUAA because there is no single national level of reference, allowances depend on the situation of specific groups. The only applicable criteria is that of "adequate standard of living".

<sup>131</sup> **ES and IT:** need to consider different levels of reference within Member States (for instance in ORs).

<sup>132</sup> **DE:** add "fully or" before "partially provided".

<sup>133</sup> **DE:** include also situations when material support is fully provided in kind.

<sup>134</sup> **NL:** wishes to include some language on the need of avoiding abuse.

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article ~~18~~ 17

↻ Residence and modalities for material reception conditions<sup>135</sup>

↻ ~~1 Member States may allocate applicants within their territory<sup>136</sup> and put in place appropriate measures to assess and address the needs of their reception systems in order to ensure a geographical distribution of applicants or to manage available capacities in their reception systems. Member States shall take into account the individual situation of the person concerned, including with regard to applicants with special reception needs. The allocation need not result in an administrative decision.~~ ↻

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↓ 2013/33/EU

⇒ new

↻ Council

↻ ~~2~~ 5. — Member States shall require applicants to inform the competent authorities of their current ⇒ place of residence ↻ and ↻ or ↻ address ↻ , ↻ ⇒ ↻ and ↻ or ↻ a telephone number where they may be reached ↻ . Member States shall require applicants to ↻ and notify any change of ⇒ ↻ residence, address and ↻ telephone number or ↻ address to such authorities as soon as possible.

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<sup>135</sup> DE, ES and SE: scrutiny reservation on this Article.

<sup>136</sup> DE suggested to include, after "their territory" and before "and to put in place", the words "or adopt a legal requirement to live in a specific place of residence".

↓ 2013/33/EU (adapted)

↻ Council

~~3~~ ~~36~~. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place ~~also in cases where that specific place has not been determined as the applicant's residence in accordance with Article 7(2)~~. ~~to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.~~

~~1.4~~ ~~1~~. Where housing is provided in kind, it ~~Member States~~ ~~should~~  shall   
 ensure that such housing provides for the applicant with ~~supply~~ an adequate standard of living in accordance with Article 16(2) ~~which guarantees applicants' subsistence and protects their physical and mental health.~~<sup>137</sup> ~~To this effect that end, the housing provided shall~~ ~~and~~  take one or a combination of the following forms:

- (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;
- (b) accommodation centres ~~which guarantee an adequate standard of living~~;
- (c) private houses, flats, hotels or other premises adapted for housing applicants.<sup>138</sup>

<sup>137</sup> **AT** and **DE**: clarify "adequate standard of living".

<sup>138</sup> **ES**: paragraph 1 should read as follows (or see another option for Article 17 in paragraph 9):  
1. Where housing is provided in kind, it shall [...] take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border, in transit zones or in first accommodation centres; (b) accommodation centres which guarantee an adequate standard of living; (c) private houses, flats, hotels or other premises adapted for housing applicants which guarantee an adequate standard of living;"

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↓ 2013/33/EU

→ Council

- 52 → 2. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph → 14 → 4(a), (b) and (c) of this Article Member States shall ensure that:
- (a) applicants are guaranteed protection of their family life;
  - (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;
  - (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

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↓ 2013/33/EU

⇒ new

↻ Council

↻ 63 ↻ 3. Member States shall take into consideration gender and age-specific concerns and the situation of ~~vulnerable persons in relation to~~ applicants ⇒ with special reception needs when providing material reception conditions ⇐ ~~within the premises and accommodation centres referred to in paragraph 1(a) and (b).~~

↻ 74 ↻ 4. Member States shall take appropriate measures to prevent ↻ as far as possible ↻ assault and gender-based violence, including sexual assault and harassment ⇒ when providing ↻ housing in accordance with paragraph 12 ↻ accommodation ⇐ ~~within the premises and accommodation centres referred to in paragraph 1(a) and (b).~~<sup>139</sup>

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↓ 2013/33/EU

↻ Council

↻ 85 ↻ 5. Member States shall ensure, as far as possible, that dependent adult applicants<sup>140</sup> with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.

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

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<sup>139</sup> **DE:** scrutiny reservation, especially on the use of "as far as possible". **CZ:** reference to paragraph 4, instead of paragraph 1. **IT:** this provision should be moved to the Preamble as a recital.

<sup>140</sup> **PL:** clarify definition of "dependent adult applicants".

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↓ 2013/33/EU

⇒ new

↻ Council

↻ 107 7. Persons ⇒ providing material reception conditions, including those ⇐ working in accommodation centres, shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.<sup>141</sup>

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↓ 2013/33/EU

↻ Council

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

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

- (a) an assessment of the specific needs of the applicant is required, in accordance with Article ~~22~~ 21;

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<sup>141</sup> **PL:** this provision extends the list of employees, which should be provided with training courses, to all providing material reception conditions. It seems appropriate that the scope of this provision is limited only to individuals directly working with applicants.

- (b) housing capacities normally available are temporarily exhausted ~~or, due to a disproportionate number of applicants and geographical constraints, are temporarily unavailable~~.<sup>142</sup>

↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

Such different conditions shall in any ~~event~~ ~~circumstances~~ ~~cover basic needs~~ ⇒ ensure access to health care in accordance with Article 18 and a ~~dignified~~ standard of living<sup>143</sup> for all applicants ~~which is~~ in accordance with Union law and international obligations, ~~in particular by the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child~~.<sup>144</sup>

<sup>142</sup> **ES:** as an alternative option to its suggestion in relation to paragraph 1, a new point after (b) could be read as follows: "(c) the applicant reaches/arrives to a transit centre aimed at providing temporary accommodation."

<sup>143</sup> **FR:** reservation on "standard of living". **DE:** reservation on the deletion of "dignified".

<sup>144</sup> **BE** and **DE:** scrutiny reservation, reference to international obligations is too vague.

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↓ new

→ Council

When resorting to → applying ← those → these ← exceptional measures, the Member State concerned shall inform the Commission and the European Union Agency for Asylum. It shall also inform the Commission and the European Union Agency for Asylum as soon as the reasons for applying these exceptional measures have ceased to exist.<sup>145</sup>

*Article 17a*

**Reception conditions in a Member State other than the one in which the applicant is required to be present<sup>146</sup>**

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<sup>145</sup> **IT:** This provision would entail a continuous and heavy flow of information which may result in an additional burden or even disrupt the work of the authorities concerned. Therefore, this sub-paragraph should be deleted or, alternatively, a minimum time should be set for triggering this provision (more than six months). **BG, HU and PL:** scrutiny reservation on the monitoring task of EASO.

<sup>146</sup> **CZ, DE, ES, FI and SE:** scrutiny reservation. **EL:** substantive reservation on new provision. **DE** suggested replacing Article 17 a with the following text: From the moment a Member state becomes aware, based on clear indications in particular from the Eurodac system, that it is not the Member State where an applicant is required to be present in accordance with Article 4 (2a) of Regulation (EU) No XXX/XXX (Dublin Regulation) the applicant, who was duly informed about his obligation to be present in the Member State and the consequence of non-compliance, shall not be entitled to the reception conditions set out in Articles 14 to 17, without prejudice to paragraph 2 and to Union law and international obligations. After twelve months, the member State shall refrain from applying the first sub-paragraph if the reasons for remaining in a Member state other than the one in which the applicant is required to be present are beyond the applicant's control - Member States shall ensure a dignified standard of living for all applicants".



1. ~~From the moment an applicant has been notified of a decision to transfer him or her to the Member State responsible a Member State receives a positive decision to a take charge request or sends a take back notification becomes aware, based on evidence obtained in particular from the Eurodac system, that it is not the Member State where an applicant is required to be present in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation], the~~ ~~an~~ applicant shall not be entitled to the reception conditions set out in Articles 14 to 17 ~~in that Member State~~ in any Member State other than the one in which he or she is required to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], without prejudice to the need to ensure a standard of living in accordance with Union law and international obligations.<sup>147</sup> **Unless a separate decision is issued, Where applicable,** the transfer decision shall state that the relevant reception conditions have been withdrawn in accordance with this paragraph. **The applicant shall be informed and contain information about his or her on the applicant's** rights and obligations in this regard.<sup>148</sup>

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<sup>147</sup> **BE, DE, IT and SI:** scrutiny reservation on paragraph 1, still unclear what the point in time is. **BE:** scrutiny reservation on the use of "without prejudice to Union law and international obligations". Instead of "applicant shall not be entitled..." use "applicant ceases to have the right to...". **NL:** instead of "standards of living", reference should be made to "minimum standards". **EL and FI,** supported by **ES:** what material conditions is the MS bound to provide when the transfer has not yet been completed for any reason whatsoever (eg appeal)? Is there a need of a formal administrative decision on the withdrawal of the material reception conditions which may be appealable? A vague reference to the Union and International Law is not clear enough. **SE:** what happens when there is a tacit acceptance of a take charge request? **DE, HU and PT** queried about the rights to which will be entitled a person who has lost his/her rights to stay in a reception centre.

<sup>148</sup> **IT:** scrutiny reservation on paragraph 1. The transfer of the person concerned and the withdrawal of the relevant reception conditions should be the subject of two separate decisions. **HR** supported **IT.** **CZ** expressed some concerns on the last sentence of paragraph 1. In particular, if felt that the duty to provide information on obligations and rights is contained in various proposals and this sentence is therefore redundant.

2. ~~Member States shall ensure a dignified standard of living for all applicants.~~<sup>149</sup>
3. ~~1a. Notwithstanding paragraph 1<sup>150</sup>, pending the transfer under Regulation (EU) No XXX/XXX [Dublin Regulation] of a minor to the Member State responsible, Member States shall provide him or her with access to suitable education, which may include access to national education systems and educational activities.~~

↓ 2013/33/EU (adapted)

⇒ new

Article ~~19~~ 18

**Health care**<sup>151</sup>

1. Member States shall ensure that applicants ~~irrespective of where they are required to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation],~~ receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses ~~and~~ , including of serious mental disorders.

<sup>149</sup> **BE, DE, IT and SE:** reinstate paragraph 2. **NL,** supported by **AT,** maintained its position, due to the link of the provision with its recital: supports deletion, it will be impossible to agree on a definition of "dignified standard of living". **SE:** scrutiny reservation on the deletion.

<sup>150</sup> **FR:** add the words "and without prejudice to paragraph 2 of Article 11". **DE:** scrutiny reservation on this paragraph.

<sup>151</sup> **DE:** clarify the link between this provision and Article 17a (if in the wrong MS, does that lead to a reduction of material reception conditions but not of healthcare?) and also the link between paragraphs 1 and 2. **HU:** scrutiny reservation; does not support the principle of a single Member State responsible, as set out in the relevant provisions of the Dublin-proposal, Chapter III. Asylum applicants should only have the right to "emergency health care", and not to "the necessary health care".

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↓ 2013/33/EU

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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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

### CHAPTER III

#### ⊗ ~~REPLACEMENT~~, ⊗ ~~REDUCTION OR WITHDRAWAL OF MATERIAL~~ RECEPTION CONDITIONS

Article ~~20~~ 19<sup>152</sup>

⊗ ~~Replacement~~, ⊗ ~~R~~reduction ↻ Reduction ↻ or withdrawal of material reception conditions

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<sup>152</sup> **EL:** reservation on whole article. **DE:** scrutiny reservation, linked also with its reservation on Article 17 (a). **ES** and **SE:** scrutiny reservation on this provision. **NL** felt that this provision is not balanced and requires further consideration.

1. ⇒ With regard to ~~an~~ applicants who ~~are~~ is required to be present on their territory in accordance with Article 4(2a) of ~~the~~ Regulation (EU) No XXX/XXX [Dublin Regulation], ~~the~~ Member States may ⇒ ~~they~~ reduce or withdraw the daily expenses allowances. Without prejudice to the need to ensure a standard of living<sup>153</sup> in accordance with Union law and international obligations, in case of serious ~~or repeated~~ situations<sup>154</sup>, Member States may also reduce or, ~~in exceptional and duly justified cases,~~ withdraw other material reception conditions<sup>155</sup>. This paragraph applies where an applicant: ~~the~~, ~~in the situations described in paragraph 2~~↵

↓ new

~~(a) replace accommodation, food, clothing and other essential non food items provided in the form of financial allowances and vouchers, with material reception conditions provided in kind; or~~

↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

~~(b) reduce or, in exceptional and duly justified cases, withdraw material reception conditions~~ ⇒ ~~the daily expenses allowances,~~ ↵<sup>156</sup>

<sup>153</sup> **DE:** wanted to add "dignified" before "standards of living". **NL:** wanted "minimum standards" instead of "standard of living".

<sup>154</sup> **BE** and **IE:** skeptical about the inclusion of the words "in case of serious and repeated situations". According to **CZ**, **FR** and **IT** they should be deleted.

<sup>155</sup> **CZ** suggested to replace the second sentence of paragraph 1 as follows: "Without prejudice to the need to ensure a standard of living in accordance with Union law and international obligations, Member States may also reduce or, in exceptional and justified cases, ...".

<sup>156</sup> **FR**, supported by **ES:** preferable to keep provisions of the current Directive. **BG:** reservation in relation to BG's proposal and comment in Art. 2(7). **CZ:** should be "financial" allowances instead of "daily" allowances. **SI:** scrutiny reservation on paragraph 1.

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

2. ~~☒~~ Paragraph 1 applies ~~☒~~ where an applicant ~~↻~~ he or she ~~☒~~:<sup>157</sup>

- (a) abandons the place of residence ~~↻~~ in a specific place ~~☒~~ determined by the competent authority without informing it or, if requested, without permission ~~⇒~~, or absconds<sup>158</sup> ~~☒~~;  
or
- (b) does not ~~↻~~ cooperate with the competent responsible authorities, or does not comply with the procedural requirements set by them, including by not **complying providing information, not appearing at set appointment or not complying with reporting duties.** ~~☒~~ ~~with reporting duties or with requests to provide information~~ ~~☒~~, ~~including the information required under Article 17(2),~~ ~~☒~~ ~~or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or~~
- (c) has lodged a subsequent application as defined in Article [4(2)(i)] of Directive 2013/32/EU Regulation (EU) No XXX/XXX [Asylum Procedures Regulation];<sup>159</sup> or
- ~~☒~~ (d) has concealed financial resources, and has therefore unduly benefited from material reception conditions; or ~~☒~~

<sup>157</sup> **FR:** scrutiny reservation; add other grounds, for example, lack of cooperation during the registration process or risk to public order. **LU:** add also public health (this refers in particular to the obligation to comply with medical examinations).

<sup>158</sup> **FR** suggested revising point a) as follows: "reports back after having abandoned the residence (...), or after having abandoned".

<sup>159</sup> **EL:** in case of an applicant who lodges a subsequent application in another MS as provided for in Art. 4(2)(i) APR [and notwithstanding its reservation on this Article], which is the MS that would reduce the reception conditions?

↓ new

→ Council

~~(e) has seriously  or repeatedly  breached<sup>160</sup> the rules of the accommodation centre or  has  behaved in a seriously violent way<sup>161</sup>; or~~

(e) has seriously or repeatedly<sup>162</sup> breached the rules of the accommodation centre; or has behaved in a seriously, violent or, threatening or inappropriate manner towards staff, visitors or other residents in the accommodation centre<sup>163</sup>; or

~~(f)  (f)  fails to  participate in attend  compulsory integration measures , where provided or facilitated by the Member State ; or<sup>164</sup>~~

~~(g) has not complied with the obligation set out in Article [4(1)] of Regulation (EU) No XXX/XXX [Dublin Regulation] and has travelled to another Member State without adequate justification and made an application there; or~~

~~(h)  (g)  has been sent to the Member State where the applicant is required to be present back after having absconded to another Member State.<sup>165</sup>~~

<sup>160</sup> **EL**: clarify the notion "serious breach". more precise wording is needed.

<sup>161</sup> **BE**: sanctions in 1(a) and (b) seem rather soft for seriously violent behaviour. In **BE** more severe sanctions are possible.

<sup>162</sup> **BE** wanted to keep "seriously or repeatedly", while **SE** wished to maintain "repeatedly".

<sup>163</sup> **DE**: wants the deletion of point (e). **PL** wanted a reference to the danger to public order or health to be included in point (e). It also suggested to extend the scope of this provision by adding "or outside the centre". **HR** felt that this provision should include a clear link to the provision on detention.

<sup>164</sup> **CZ**: reservation on mandatory integration measures, wants deletion. **FI**: concerned about the use of the word "compulsory" in relation to "integration measures".

<sup>165</sup> **DE**: scrutiny reservation.

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

↻ ~~1a. Without prejudice to paragraph 1 and to Union law<sup>166</sup> and international obligations<sup>167</sup>,~~

~~Member States may reduce or, in exceptional and duly justified cases, withdraw<sup>168</sup> material reception conditions where an applicant<sup>169</sup>:~~

~~(a) seriously or repeatedly breaches the rules of the accommodation centre<sup>170</sup>; or~~

~~(b) behaves in a seriously violent, threatening or inappropriate manner towards staff or other residents of the reception centre.~~

~~Where an applicant seriously or repeatedly breaches the rules of the accommodation centre or behaves in a seriously violent, threatening or inappropriate manner towards staff or other residents of the reception centre, or due to reasons of national security or public order, Member States, may also reduce other material reception conditions other than the daily expenses allowance in accordance with Union law and international obligations. Member States may apply other sanctions than those referred to in paragraph 1 or in this paragraph.~~

<sup>166</sup> **IT:** reference to Union law is confusing.

<sup>167</sup> **DE:** scrutiny reservation. Could someone be deprived on any kind of accommodation, for instance? **SE:** scrutiny reservation. Do sanctions also apply to minors? If so, is this compatible with international conventions on children's rights??

<sup>168</sup> **EL:** not clear which material conditions can be further withdrawn.

<sup>169</sup> **CZ, ES and FR :** the withdrawal of reception conditions should be related not only only to the behaviour of applicants in reception centres. Sanctions should depend on the seriousness of the situation, not on the type of situation. Therefore paragraph 1a should be integrated in paragraph 1.

<sup>170</sup> **CZ:** streamline references to accommodation centres throughout the proposal. Prefers the use of "accommodation centre" rather than "reception centre".

~~3. 1ba. In case a decision has been taken in accordance with paragraph 1 based on relation to cases points (a), and (b), (e) or (f) thereof, or on the basis of paragraph 1<sup>171</sup>, and the circumstances on which that decision was based cease to exist, when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, Member States shall be taken on the reinstatement of the daily expenses allowance. Member States consider whether some or all of the material reception conditions grant of some or all of the material reception conditions replaced, withdrawn or reduced may be reinstated.~~

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

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

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

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<sup>171</sup> DE and IT: delete "on the basis of paragraph 1".



➔ 2. ~~➔ 3.5.~~ Decisions ⇒ ~~replacement,~~ ⇐ ➔ in accordance with paragraphs 1, and 1a and 1b ~~➔ material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article~~ shall be taken ~~individually,~~ objectively and impartially ⇔ on the merits of the individual case ⇔ and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to ~~persons covered by Article 21~~ ⇒ applicants with special reception needs ⇐, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article ~~1918~~ and shall ensure a standard of living<sup>172</sup> ➔ in accordance with Union law and international obligations ~~➔~~ for all applicants.

➔ 3. ~~➔ 4.6.~~ Member States shall ensure that ➔ the daily expenses allowance in accordance with paragraph 1, or material reception conditions in accordance with paragraph 1, ~~➔ material reception conditions~~ are not ⇒ ~~replaced,~~ ⇐ withdrawn or reduced before a decision is taken in accordance with paragraph ➔ 2 ~~➔ 3.5.~~

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<sup>172</sup> **DE:** wants the inclusion of the word "dignified" in relation to standard of living. **ES:** the definition of a "dignified standard of living" and the difference in level and extent to an "adequate standard of living" needs to be clarified. Furthermore the minimum level of material reception conditions in case of withdrawal needs to be clarified as well.

## CHAPTER IV

### PROVISIONS FOR ~~VULNERABLE PERSONS~~ ⊗ APPLICANTS WITH SPECIAL RECEPTION NEEDS ⊗

Article ~~21~~ 20

#### ⊗ Applicants with special reception needs ⊗ ~~General principle~~

Member States shall take into account the specific situation of ⇒ applicants with special reception needs ⇐ ~~vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation~~ in the national law implementing this Directive.

Article ~~22~~ 21<sup>173</sup>

#### Assessment of ~~the~~ special reception needs ~~of vulnerable person~~

1. In order to effectively implement Article ~~21~~ 20, Member States shall ⇒ systematically ⇨ as early as possible after an application for international protection is made ⇐ ⇨ assess whether the applicant ⇨ has ⇐ is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

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<sup>173</sup> BE, DE, EL, IT and LU: reservation on new proposals.

~~☞ The assessment shall be initiated authority with which the application for international protection is made shall initiate~~ ☞ that assessment shall be initiated ☞ ~~as early as possible~~ ☞  
<sup>174</sup> ~~within a reasonable period of time after an application for~~ ☞ by identifying first signs of special reception needs based on visible physical signs or on the applicants' statements or behaviour; ☞ or, where applicable, statements of the parents or, the temporary representative or representative of the applicant<sup>175</sup>. On this basis, Member States shall complete the assessment and ☞ ☞ continue that assessment throughout the asylum procedure for international protection and address the special reception needs when identified, including where those needs become apparent at a later stage in the procedure for international protection<sup>176</sup>. That assessment ☞ and may be integrated into existing national procedures ☞ or into the assessment referred to in Article [19] of Regulation (EU) No XXX/XXX [~~☞ Asylum ☞ Procedures Regulation~~] ☞ ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they

~~☞ Member States shall address special reception needs as set out in this Article even where those needs ☞ become apparent at a later stage in the asylum procedure ☞ for international protection ☞.~~

↓ 2013/33/EU ☞ Council
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Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure ☞ for international protection ☞ and shall provide for appropriate monitoring of their situation.

<sup>174</sup> **BE:** reinsert "as early as possible".

<sup>175</sup> **DE:** scrutiny reservation on the sentence "or, where applicable, statements of the parents, the temporary representative or representative of the applicant".

<sup>176</sup> **SK:** does not support the changes proposed by the Presidency for this provision.

↓ new

↻ Council

2. For the purposes of paragraph 1, Member States shall ensure that the personnel of the authorities referred to in Article 26 ~~that are involved in the assessment of assessing special reception needs in accordance with this Article~~ :
- (a) are trained and continues to be trained to detect ~~first~~ signs that an applicant requires special receptions conditions and to address those needs when identified;<sup>177</sup>
  - (b) include information concerning the applicant's special reception needs in the applicant's file ~~held by the competent authorities~~ , together with the indication of the signs referred to in point (a) as well as recommendations as to the type of support that may be needed by the applicant; ~~and~~
  - (c) ~~following~~ subject to their prior consent, ~~refer applicants to~~ ~~the appropriate medical practitioner~~ ~~a doctor~~ or a psychologist for further assessment of their psychological and physical state where there are indications that ~~their psychological or physical state could affect their reception needs, including where there are indications that~~ applicants may have been victims of torture, rape or of another serious form of psychological, physical or sexual violence<sup>178</sup> ~~.~~ ~~and that this could affect the reception needs of the applicant; and~~

<sup>177</sup> **EL:** scrutiny reservation on the requirement to train constantly the personnel of all authorities involved, in order to be able to detect first signs that an applicant needs special reception conditions. **SK:** Clarify what kind of training is envisaged.

<sup>178</sup> **NL:** does not wish to list only some specific situations and prefers deleting the sentence "including where there are indications that applicants may have been victims of torture, rape or other serious forms of psychological, physical or sexual violence".

(d) ➔ The competent authorities shall ☐ take into account the result of ➔ the ☐ that examination ➔ referred to in point (c) ☐ when deciding on the type of special reception support which may be provided to the applicant.<sup>179</sup>

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↓ 2013/33/EU

⇒ new

➔ Council

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

4.3. Only ~~vulnerable persons in accordance with Article 21~~ ⇒ applicants with special reception needs ⇐ may ~~be considered to have special reception needs and thus~~ benefit from the specific support provided in accordance with ➔ **relevant provisions in** ☐ this Directive.

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↓ 2013/33/EU

5.4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to ~~Directive 2011/95/EU~~ Regulation (EU) No XXX/XXX [Qualification Regulation].

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<sup>179</sup> CZ: to add that the result of the examination must be communicated by the applicant to the competent authority. Without approval of the applicant there is no possibility to obtain the result of the examination.

Article ~~23~~ 22

**Minors**<sup>180</sup>

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.
2. In assessing the best interests of the child Member States shall in particular take due account of the following factors:
  - (a) family reunification possibilities;
  - (b) the minor's well-being and social development, taking into particular consideration the minor's background;
  - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
  - (d) the views of the minor in accordance with his or her age and maturity.
3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article ~~18~~ 17(1)(a) and (b) and to open-air activities.
4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

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<sup>180</sup> **SE:** scrutiny reservation on the whole article.

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↓ 2013/33/EU (adapted)

⇒ Council

5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, ~~their unmarried minor siblings~~ or with the adult responsible for them ☒ and their unmarried minor siblings ☒ whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.
46. Those working ⇒ with minors, including ⇒ the temporary representative and the representative as provided for in Article 23 ☹ ⇐ ~~with unaccompanied minors,~~ ⇒ shall not have a verified ⇒ ~~criminal~~ ☹ record of child-related crimes and offences, or crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regards to children of child-related crimes or offences and ⇐ shall ~~have had and shall continue~~ to receive ☒ continuous<sup>181</sup> and ☒ appropriate training concerning ⇒ the rights and ⇐ ~~their~~ needs ⇒ of unaccompanied minors, including ⇒ those relating to ☹ concerning any applicable child safeguarding standards ⇐ , and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

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<sup>181</sup> SE: scrutiny reservation on the need for "continuous" training.

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↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

Article ~~24~~ 23

**Unaccompanied minors**<sup>182</sup>

- ⇒ -1. Member States shall ensure that an unaccompanied minor is assisted in such a way to ensure that his or her general well-being is safeguarded and which enables the unaccompanied minor to benefit from the rights and comply with the obligations under this Directive.
- ⇒ 1. For the purposes of paragraph -1, where an application is made by a person who claims to be a minor<sup>183</sup>, or in relation to whom there are objective grounds to believe that he or she is a minor<sup>184</sup>, Member States shall designate: ☹

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<sup>182</sup> **AT, BE, BG, DE, ES, FI, IT, HU, SE** and **SK**: scrutiny reservation. **SI**: scrutiny and substantial reservation. **DE**: reservation on new text. **AT**: suggests the inclusion of an explicit reference to Brussels IIA within Article 23 RCD: “without prejudice to Regulation (EC) No 2201/2003 (Brussels IIa)”. In this respect, the Presidency drew attention to the fact that guardianship for the purposes of unaccompanied minors in the asylum acquis does not fall within the scope of the Brussels II A Regulation, which deals with jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility and international child abduction..

<sup>183</sup> **SK**: minors do not make applications themselves, this should be done by their representative. **FR**: a representative should not be designated while there are doubts regarding the applicant's age.

<sup>184</sup> **EL**: clarify "objective grounds". The wording of the provision seems to imply that a representative will be appointed only when the competent authorities are convinced that the applicant is indeed a minor.



- ⇒ (a) a temporary representative<sup>185</sup> as soon as possible ~~within forty eight hours five working days~~<sup>186</sup> from when the application is made; and<sup>187</sup> ☹
- ⇒ (b) a representative no later than within fifteen working days from when the application is made.<sup>188</sup> ☹
- ⇒ Where an application is made by a person who claims to be a minor but who is clearly above the age of eighteen years, Member States need not designate a temporary representative or representative in accordance with the first paragraph<sup>189</sup>. ☹
- ⇒ When a temporary representative is designated, his or her duties shall cease upon the designation of a representative. ☹
- ⇒ ~~Where a representative is designated within five working days forty eight hours from when an unaccompanied minor makes an application, Member States need not apply point (a) of the first paragraph, in which case . In such cases, the representative shall carry out the tasks listed in paragraph 1d in addition to those listed in paragraph 1e of a temporary representative and be appointed as soon as possible from when an unaccompanied minor makes an application.~~ ☹ ⇒ Where a representative is designated within five working days from when an unaccompanied minor makes an application, the competent authorities need not apply point (a) of the first paragraph. ☹

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<sup>185</sup> SE, supported by PT: no need for a temporary representative. SE suggested replacing paragraph 1 a as follows: "Until a representative is appointed, Member States must ensure that the minor has sufficient support to benefit from the rights and obligations under this Directive". FI wanted MS to have flexibility on the appointment of the representative.

<sup>186</sup> IT: concerns with the deadline for the designation of the representative.

<sup>188</sup> EL: scrutiny reservation. Clarification is needed on the legal nature of the representative. DE, FR and SE: replace deadlines with "as soon as possible". MT suggested adding at the end of paragraph 1 the following sentence: "In case a Member State is confronted with a disproportionate number of applicants for international protection claiming to be an unaccompanied minor, the appointment of a representative can be delayed by a further ten working days".

<sup>189</sup> FR suggests revising this paragraph as follows: "...to be a minor but whose minority is doubted, Member States need not designate a representative in accordance with the first paragraph, pending the positive outcome of the assessment mentioned in Article 24".

- ➔ The duties of the temporary representative or representative shall cease where ~~the~~ the competent authorities consider that the applicant is not a minor following the assessment referred to in Article 24 (1) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], or is no longer an unaccompanied minor. ☹
- ➔ 1a. Where ~~an~~ an organisation is designated as a temporary representative or as a representative, it shall assign a natural person for carrying out the necessary tasks ~~set out in paragraphs 1d and 1e respectively.~~ ☹
- ➔ 1b. The temporary representative or representative provided for in paragraph 1 of this Article may be the same as those provided for in Article 22(4) of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation]. ☹
- ➔ 1c. The competent authorities<sup>190</sup> shall immediately: ☹
  - ➔ a) inform the unaccompanied minor, in a child-friendly manner and in a language he or she can reasonably be expected to understand, of the designation of his or her temporary representative or representative and about how to lodge a complaint against ~~them-him~~ or her in confidence and safety; ☹
  - ➔ b) inform the authority responsible for providing reception conditions that a temporary representative or a representative has been designated for the unaccompanied minor; and ☹
  - ➔ c) inform the temporary representative and the representative of relevant facts pertaining to the unaccompanied minor.<sup>191</sup> ☹

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<sup>190</sup> **SI:** clarify the "competent authorities". Prefers reference only to Member States.

<sup>191</sup> **SK:** what relevant facts (what kind of information) should be provided to the temporary representative and the representative by the competent authority?

- ~~1d. The temporary representative shall meet the unaccompanied minor and carry out the following tasks: ①~~
- ~~① a) further explain where necessary the information to be provided in accordance with Article 5; ①~~
  - ~~① b) liaise with the authorities responsible for reception conditions to ensure immediate access for the unaccompanied minor to material reception conditions and health care where needed; ①~~
  - ~~① c) assist in case of restrictions referred to in Articles 7 or 19; and ①~~
  - ~~① d) assist in case of detention. ①<sup>192</sup>~~
- ~~1e. The representative shall meet the unaccompanied minor and provide assistance to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. ①~~
- ~~1df. The temporary representative and the representative shall meet with the unaccompanied minor<sup>193</sup> and perform his or her tasks in accordance with the principle of the best interests of the child. They shall have the necessary expertise and knowledge of the rights and special needs of minors. and shall not have a verified criminal record.<sup>194</sup> ①~~
- ~~1eg. **A** The temporary representative or a representative shall be changed where necessary, in particular when the competent authorities consider that he or she has not adequately performed his or her tasks ①~~
- ~~① Organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be designated as a temporary representative or as a representative. ①~~

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<sup>192</sup> **DE:** reinstante tasks of representative.

<sup>193</sup> **IT:** meeting the minor is not indispensable if paragraph 1a is applied.

<sup>194</sup> **EL:** wants justification of this deletion. The Presidency noted that this provision was moved to Article 22 (6).

- ⇒ 1fh. Member States shall place a temporary representative or a representative in charge of ~~an~~ **adequate-proportionate** and limited number of unaccompanied minors at the same time to ensure that he or she is able to perform his or her tasks effectively.<sup>195</sup> ◐
- ⇒ 1gi. Member States shall appoint entities or persons responsible to supervise and monitor that the temporary representative and the representative performs ~~their-his or her~~ tasks in a satisfactory manner<sup>196</sup>. Those entities or persons shall review complaints lodged by an unaccompanied minors against his or her temporary representative or representative. ◐
1. Member States shall as soon as possible ⇒ and no later than five working days from the moment when an unaccompanied minor makes an application for international protection ⇐ take measures to ensure that a ~~guardian~~ ~~representative~~ represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. ⇒ The guardian appointed in accordance with Article [22] of Regulation (EU) No XXX/XXX [Procedures Regulation] may perform those tasks. ⇐ The unaccompanied minor shall be informed immediately of the appointment of the ~~guardian~~ ~~representative~~. ~~Where an organisation is appointed as guardian, it shall designate a person responsible for carrying out the duties of guardian in respect of the unaccompanied minor, in accordance with this Directive. ⇐ The ~~guardian~~ ~~representative~~ shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article ~~22 23~~ (2), and shall have the necessary expertise to that end ⇒ and shall not have a verified record of child related crimes or offences ⇐. In order to ensure the minor's well-being and social development referred to in Article ~~22 23~~ (2)(b), the person acting as ~~guardian~~ ~~representative~~ shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become ⇒ appointed as guardians ⇐ representatives.~~

<sup>195</sup> **AT:** delete this sentence, it should be the competence of the MS. **IE,** supported by **NL:** “adequate” should be replaced by “proportionate”. **IT,** supported by **SE,** felt that MS should be granted some flexibility. **SE** suggested replacing the entire paragraph with “*When assigning a person, the competent authority shall ensure that this person is in charge of an adequate and limited number of unaccompanied minors at the same time so that he or she is able to perform his or her duty effectively*”.

<sup>196</sup> **DE:** add also “courts”.

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

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↓ new

~~Member States shall ensure that a guardian is not placed in charge of a disproportionate number of unaccompanied minors at the same time that would render him or her unable to perform his or her tasks effectively. Member States shall appoint entities or persons responsible for monitoring at regular intervals that guardians perform their tasks in a satisfactory manner. Those entities or persons shall also have the competence to review complaints lodged by unaccompanied minors against their guardian.~~

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↓ 2013/33/EU

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

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article ~~22~~ 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.<sup>197</sup>

3. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.<sup>198</sup>

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<sup>197</sup> **ES**, supported by **SK**: paragraph 2 deals with "separated children" (maybe accompanied by a relative, who is not the guardian or representative). Therefore, the authorities, before taking the decision to allocate him/her with an adult relative, should check the real family ties and must take into account the minor's opinion, all that to preserve interest of the minor and to prevent human trafficking.

<sup>198</sup> **EL**: how is this obligation implemented in view of the non-exclusion of the unaccompanied minors from the pre-Dublin check? Under Article 3 of the Dublin Proposal and Art.36 of the APR the MS are obliged to reject an application as inadmissible if a third country can be considered as a safe third country for the unaccompanied minor. **IT**: no change in this paragraph but, in QR, "provided in the best interest of the minor".

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↓ 2013/33/EU

⇒ new

↻ Council

Article ~~25~~ 24

### Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to ⇒ gender-based harm, ↻ trafficking in human beings, ↻ ⇐ torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.<sup>199</sup>

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↓ 2013/33/EU

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

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<sup>199</sup> **NL:** focus should be on the need for treatment, not on the fact that applicants were victims of some form of abuse.

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↓ 2013/33/EU

⇒ new

## CHAPTER V

### APPEALS

Article ~~26~~ 25

#### Appeals

1. Member States shall ensure that decisions relating to the granting, ⇒ replacement ⇐ withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, before a judicial authority shall be granted.<sup>200</sup>

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↓ 2013/33/EU

2. In cases of an appeal or a review before a judicial authority referred to in paragraph 1, Member States shall ensure that free legal assistance and representation is made available on request in so far as such aid is necessary to ensure effective access to justice. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

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<sup>200</sup> CZ and DE: see positions on Art. 19.



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

3. Member States may also provide that free legal assistance and representation are granted:
  - (a) only to those who lack sufficient resources; and/or
  - (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that free legal assistance and representation not be made available if the appeal or review is considered by a competent authority to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Member States may also:
  - (a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;
  - (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.
6. Procedures for access to legal assistance and representation shall be laid down in national law.

## **CHAPTER VI**

### **ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM**

#### *Article ~~27~~ 26*

#### **Competent authorities**

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

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↓ 2013/33/EU

⇒ new

⇒ Council

Article ~~28~~ 27<sup>201</sup>

### Guidance, monitoring and control system

- ¶1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established. ⇒ ~~For this purpose Member States may put in place appropriate measures to regularly assess the needs of their reception system.~~ ⇒ Member States shall take into account ⇒ **available, non binding** ⇒ [operational standards on reception conditions and indicators developed by the European Asylum Support Office / the European Union Agency for Asylum]<sup>202</sup> and any other reception conditions operational standards, indicators ⇒, ⇒ or guidelines ⇒ or best practices ⇒ established in accordance with Article [12] of Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum] ⇒, without prejudice to Member States' competence for organising their reception systems in line with this Directive ⇒. ⇐

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<sup>201</sup> **EL:** in the context of the discussions on the EUAAR proposal, EL has raised serious concerns about its implementation with regard to the monitoring mechanism introduced therein. Therefore maintains a scrutiny reservation in this provision. **SI:** scrutiny reservation on the whole article. It called for including more detailed information in recital 45.

<sup>202</sup> **BG, CY, EL, IT, PL, PT** and **SK:** reservation regarding the mandatory nature of these standards and guidelines. If not the case, then the non-binding nature of the standards should be explicit. **SI:** agrees with the development of standards but these must be adopted in accordance with a different procedure.

2. ~~Member States shall submit relevant information to the Commission in the form set out in Annex I, by 20 July 2016 at the latest.~~ ⇒ Member States' reception systems shall be **subject to the monitoring mechanisms** ~~monitored and assessed in accordance with the procedure~~ set out in [Chapter 5] of Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum]. ⇐<sup>203</sup>‡

↓ new

⇒ Council

### Article 28

### Contingency planning<sup>204</sup>

1. Each Member State shall draw up a contingency plan setting out the planned measures to be taken to ensure **to the extent possible,** ~~an adequate reception of applicants in accordance with this Directive in cases where the Member State is confronted with a disproportionate number of applicants~~<sup>205</sup> for international protection. The applicants for international protection are to be understood as those required to be present on its territory, **including those for whom the Member State is responsible in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], taking into account the corrective allocation mechanism outlined in Chapter VII of that Regulation.**

<sup>203</sup> **CZ:** scrutiny reservation; paragraph 2 is difficult to transpose because wording used is not appropriate for a Directive. **HU:** scrutiny reservation on paragraph 2. **BG, DE, FR** and **NL:** scrutiny reservation on the role of EUAA. **PL:** scrutiny reservation on the competences of EUAA. Clarify in the text that guidance should be developed by Member States and EUAA.

<sup>204</sup> **BG, CY, CZ, DE, EL, ES, FI, IE, IT, FR, SI** and **SK:** scrutiny reservation on the whole article. The criteria for drawing up such a plan is nowhere defined and therefore it renders unclear the scope of MS obligations about it. **IT:** this Article should reflect the fact that contingency planning is an integral part of ordinary planning and that Member States must ensure reception preparedness in general (beyond contingency). Planning of “normal” capacity is necessary also in order to define the concept of “disproportionate” (which in any case should be benchmarked).

<sup>205</sup> **BE, CY, EL, IT, NL, SI** and **SK:** clarify under which circumstances a MS can be considered as being confronted with disproportionate pressure. **CY:** for purposes of clarity, this Art. could refer to Art. 34 of the Dublin Regulation proposal.

2. The ~~first~~ contingency plan shall be completed, ~~☞~~ taking into account the specific national circumstances, ~~☞~~ using a template to be developed by the European Union Agency for Asylum<sup>206</sup> ~~☞~~ in accordance with Article 12(4) of [Regulation on the European Union Agency for Asylum] ~~☞~~, and shall be notified to the European Union Agency for Asylum at the latest by [~~6~~ ~~☞~~ 12 ~~☞~~ months after entry into force of this Directive]. ~~An updated~~ ~~☞~~ The contingency plan shall be reviewed every five years thereafter and any updates shall be notified to the European Union Agency for Asylum every two ~~☞~~ five ~~☞~~ years thereafter. ~~☞~~ The Member States shall inform the Commission and the European Union Agency for Asylum whenever its contingency plan is activated.<sup>207</sup>
3. The ~~☞~~ European Union Agency for Asylum shall assist Member States to prepare and review their ~~☞~~ contingency plans ~~☞~~, ~~upon their request~~, with the agreement of the Member States concerned ~~☞~~ and in particular the adequacy of the measures taken according to the plans, shall be monitored and assessed in accordance with the ~~☞~~ [second sub-paragraph 5 of Article 135] ~~☞~~ procedure set out in [Chapter 5] of Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum].<sup>208</sup> ]

<sup>206</sup> **FR** and **SK**: not in favour of the application of a template developed by the EUAA.

<sup>207</sup> **HU**: scrutiny reservation. **HU** does not oppose the preparation of the contingency planning, but feels that it is closely related to the monitoring role of the EUAA, which it consistently rejected. **HU** proposes that Member State shall have a significant and exclusive role in the preparation of the contingency planning. The EUAA shall assist Member States only with their agreement. **NL**: helpful to have a template not excluding the differences between MS. **FR** and **SI**: more flexibility is needed when updating the contingency plan. Updates may be needed before the 5 years, but they may also not be needed. **IT**: in light of comments on the previous paragraph, there is no need to establish a periodicity for revision. The text should read: "where the circumstances have changed and new measures are needed". It also wished the words "upon their request" to be reinstated.

<sup>208</sup> **PL**: reservation on the new powers of the Agency. **FR** wanted "shall" to be replaced with "may".

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

*Article 29*

**Staff and resources**

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary ~~basic~~ training with respect to the needs of both male and female applicants. ⇒ To that end, Member States shall ~~integrate~~ ↻ include core parts<sup>209</sup> of ↻ the European asylum curriculum developed by the European Union Agency for Asylum into the training of their personnel in accordance with Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum]. ↻<sup>210</sup>
2. Member States shall allocate the necessary resources in connection with the national law implementing this Directive.

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<sup>209</sup> **MT**: suggested to replace "parts" with "modules".

<sup>210</sup> **BE**: wishes to include in this provision the sentence "taking into account the specific national circumstances", as proposed by the Presidency in relation to Article 28. **FR**, supported by **BE**: make clear that we talk about those having direct contact with the asylum seekers. Replace "integrate the European asylum curriculum" with "develop appropriate training on the basis of relevant tools of the European asylum curriculum". Delete "into the training of their personnel".

## CHAPTER VII

### FINAL PROVISIONS<sup>211</sup>

#### Article 30

##### ~~Reports~~ ☒ **Monitoring and evaluation** ☒

By ~~20 July 2017~~ ⇒ [three years after the entry into force of this Directive] ⇐ at the latest, ☒ and at least every five years thereafter, ☒ the Commission shall ☒ present a ☒ report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall ⇒ at the request of the Commission ⇐ send ~~the Commission all the~~ ☒ necessary ☒ information ~~that is appropriate~~ for drawing up the report by ~~20 July 2016~~ ⇒ [two years after the entry into force of this Directive] and every five years thereafter ⇐.

~~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.~~

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<sup>211</sup> **FR:** scrutiny reservation on the whole chapter.

## Article 31

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles ~~1 to 12, 14 to 28 and 30 and Annex I~~ 1 to 8, 11, 15 to 25 and 27 to 30 ~~by 20 July 2015~~ [6 ~~to 18~~ 24 months after the entry into force of this Directive] ~~at the latest~~. They shall ~~forthwith~~ immediately ~~communicate to the Commission~~ the text of those measures ~~to the Commission~~

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



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

## Article 32

### Repeal

Directive ~~2003/9/EC~~ 2013/33/EU ~~is repealed~~, for the Member States bound by this Directive, with effect from ~~21 July 2015~~ [the day after the date in the first subparagraph of Article 31(1)] ~~without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex I~~ 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  set out  in Annex III.

### *Article 33*

#### **Entry into force**

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

~~Articles 13 and 29 shall apply from 21 July 2015.~~

### *Article 34*

#### **Addressees**

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

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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