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From:	Presidency
To:	Delegations
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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)

At its meetings on 9 and 21 November 2016, 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 of the proposal in Annex contains modifications suggested by the Presidency in relation to all Articles except for:

- Article 2(3), 2(4), 2(5), 2(12), 22(6): placed in square brackets, to be discussed at a later stage;
- Articles 5, 6, 7, 8, 17a and 19 which are being discussed in the framework of the thematic approach. These Articles have been deleted and replaced with the symbol [TA];
- the recitals: placed in square brackets, to be discussed at a later stage.

New text to be discussed at the meeting on 16 March is indicated with ➡**addition in bold**⬅ and the deleted text 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.

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)¹

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 Committee²,

Having regard to the opinion of the Committee of the Regions³,

¹ **AT, BG, CZ, EL, ES, FI, FR, HU, IE, LT, PL, SI, SE:** scrutiny reservation on the entire proposal. **HU, SI:** parliamentary scrutiny reservation. **NL:** in the proposal a more logical and effective system of freedom restricted measures is envisaged. NL 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 MSs. It seems that this document should be unified in this respect, and then uploaded for analysis, bringing any comments as well as estimate the effects on reception system of the MS concerned.

² OJ C , , p. .

³ OJ C , , p. .

Acting in accordance with the ordinary legislative procedure,

Whereas:

↓ 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~~⁴ Directive 2013/33/EU of the European Parliament and of the Council⁵ . In the interests of clarity, that Directive should be recast.

↓ 2013/33/EU recital 2 (adapted)

(2) A common policy on asylum, including a Common European Asylum System_{III} (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.

⁴ ~~OJ L 31, 6.2.2003, p. 18.~~

⁵ 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).

↓ new

- (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.

↓ 2013/33/EU recital 3 (adapted)

- ~~(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.~~

↓ 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',⁶ 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 2016⁷ and on 17-18 March 2016⁸ 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 both in terms of how the reception system is organised and in terms of 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.

⁶ COM(2016) 197 final.

⁷ EUCO 19.02.2016, SN 1/16.

⁸ 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.

↓ 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').~~

↓ 2013/33/EU recital 8

⇒ new

- (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 [Procedures Regulation].↵

↓ 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.

↓ 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.

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

- (10) ☒ Standard conditions ☒ Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down. 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.

↓ new

- ~~(11)~~ In order to ensure that applicants are aware of the consequences of absconding, Member States should inform applicants in a uniform manner, as soon as possible and at the latest when they lodge their application, of all the obligations with which applicants must comply relating to reception conditions, including the circumstances under which the granting of material reception conditions may be restricted and of any benefits.

↓ 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⁽⁹⁾, it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

⁹ ~~OJ L 180, 29.6.2013, p. 60.~~

- (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.¹⁰ Other imperative reasons could include situations where applicants who have been granted 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.
- (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.

¹⁰ **BE:** the idea was to limit secondary movements. If travel documents must be issued for humanitarian reasons, it can very easily lead to abuses and an important burden to national administrations to check if the so-called “close relatives” are indeed close relatives. Due to lack of documentation, proof will be in most cases be non-existent. If proof is not required, secondary movements will be boosted. Practically all applicants will have relatives in DE, which would mean that they would have a great possibility for authorized travel to DE, and probably no real incentive to return to the country where their application should be treated.

- (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 sent back to the Member State where he or she is required to be present, his or her whereabouts should therefore be closely monitored.
- (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 order to effectively prevent the applicant from absconding, Member States should, where necessary, assign the applicant residence in a specific place, such as an accommodation centre, a private house, flat, hotel or other premises adapted for housing applicants. Such a decision 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 remain in the Member State where he or she is required to be present; or in cases where the applicant has been sent 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.¹¹

¹¹ **BE:** In BE, material reception conditions are always provide subject to the applicant residing in the designated reception centre, otherwise there is only emergency medical care. This recital seems to imply that this is only the case in certain circumstances.

- (17) Where there are reasons for considering that there is a risk that an applicant may abscond, Member States should 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.
- (18) All decisions restricting an applicant's freedom of movement need to be based on the individual behaviour and particular situation of the person concerned, taking into account 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 to avoid the applicable asylum procedures and the factual circumstance of not remaining available to the relevant authorities, including by leaving the territory where the applicant is required to be present.

↓ 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~~ ~~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.

↓ new

- (21) Where an applicant has been assigned a specific place of residence but has not complied with this obligation, there 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.

↓ 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.

↓ 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.

↓ 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.

↓ 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.

↓ 2013/33/EU recital 20

- (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. Any alternative measure to detention must respect the fundamental human rights of applicants.

↓ 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.

↓ 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.

↓ 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.

↓ 2013/33/EU recital 9

⇒ new

- (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. ⇐

↓ 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 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 standard of living for applicants in line with the 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 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 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.

↓ 2013/33/EU recital 23

⇒ new

(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. 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 ⇐.

↓ new

(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-founded¹². Member States should however not grant access to the labour market to applicants whose application for international protection is likely to be unfounded¹³ and¹⁴ for which an accelerated examination procedure is applied.

¹² **BE:** "likely to be well-founded": based on which criteria?

¹³ **BE:** "likely to be unfounded": based on which criteria?

¹⁴ **BE:** changing "and" to "or" would at least give an objective criteria.

- (36) Once applicants are granted access to the labour market, they should be entitled to a common set of rights based on equal treatment with nationals. Working conditions should cover at least pay and dismissal, health and safety requirements at the workplace, working time and leave, 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 social security.
- (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.¹⁵ 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.
- (38) The definition of branches of social security used in Regulation (EC) No 883/2004 of the European Parliament and of the Council¹⁶ should apply.
- (39) Due to the possibly temporary nature of the stay of applicants and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council, Member States should be able to exclude family benefits and unemployment benefits from equal treatment between applicants and their own nationals and should be able to limit the application of equal treatment in relation to education and vocational training. 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.

¹⁵ 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).

¹⁶ 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.).

(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.¹⁷

↓ 2013/33/EU recital 24 (adapted)

⇒ new

(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. 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 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.

¹⁷ **PL:** to make clear the autonomy of Member States on establishing conditions of providing social insurance, suggests the following wording of the second sentence: "In connection with the lack of harmonization on the EU level, each Member State specifies the conditions of providing social protection, the personal and material scope of social protection as well as the conditions for granting benefits from social protection, amount of such benefits and the period for which they are granted."

↓ 2013/33/EU recital 25 (adapted)

⇒ new

(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. 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. ⇐ The possibility of abuse of the reception system should ⊗ also ⊗ be restricted by specifying the circumstances in which ~~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 while at the same time ensuring a dignified standard of living for all applicants.

↓ 2013/33/EU recital 26

⇒ new

(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, operational standards on reception conditions and specific indicators developed by [the European Asylum Support Office / the European Union Agency for Asylum]. ⇐ 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] ⇐.

↓ 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.

↓ new

- (45) Experience shows that contingency planning is needed to ensure 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.

↓ 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.

↓ 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].

↓ 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 2011¹⁸, 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.

¹⁸ OJ C 369, 17.12.2011, p. 14.

↓ 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.~~

↓ new

(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.]

↓ 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.

↓ 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.

↓ 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.

↓ 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.~~]

↓ 2013/33/EU (adapted)

→ Council

HAVE ADOPTED THIS DIRECTIVE: ¹⁹

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.

¹⁹ **EL:** comments on this proposal are without prejudice to its 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

Definitions²⁰

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

~~(1)(a)~~ ‘application for international protection’: means an application for international protection as defined in Article ~~2(b)~~ [4(2)(a)] of ~~Directive 2011/95/EU~~ Regulation (EU) No XXX/XXX²¹ [~~Asylum~~ Procedures Regulation];

²⁰ **AT, BE, CZ, ES, FI, NL, SE:** definitions should be aligned through the different asylum proposals. **EL:** throughout the text there are references to the obligation of the MS to ensure different levels of standard of living for the applicants, depending on their situation: adequate standard of living (Art.16(2)), guarantee his subsistence (Art.16(5)), ensure dignified standard of living(Art.17a(2)). In order to ensure clarity and uniform application of the proposed directive it is important to define these notions. **PL:** there are no definitions of some important concepts in the proposal, like: daily allowance, dependent adult, close relatives, their dependent relatives. For the maximum clarification and understanding of the provisions of the Directive, the above mentioned definitions should be explained in Art. 2. **SE:** The meaning of each term set out in Art. 2 should be defined (instead of solely referring to the other legislative acts).

²¹ OJ C , , p. .

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

~~(2)(b)~~ 'applicant': means ⇒ an applicant as defined in Article [4(2)(b)] of Regulation (EU) No XXX/XXX [↻ **Asylum** ↻ Procedures Regulation] ²² ↻ ~~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;~~

²² **DE:** scrutiny reservation.

(3)(e) [‘family members’: means ⇒ family members as defined in Article [2(9)] of Regulation (EU) XXX/XXX²³ [Qualification Regulation],²⁴] ⇐ ~~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;~~

²³ OJ C [...], [...], p. [...].

²⁴ **BG, DE, FI, HU:** scrutiny reservations. **BE:** the extension of the definition of family members should be discussed in a transversal way in order to achieve a greater consistency between the proposals. **BG:** the expansion of the definition would be a precondition for abuse with the right of international protection and would complicate the implementation of checks. Such a situation should be regulated by the procedure for family reunification. **CZ:** reservation on this definition as referred to in QR. **EE:** reservation: does not support the widening of the scope of the definition of the family and wishes to maintain the current scope of the definition, according to which, the family member means in so far as the family already existed in the country of origin. In addition, when widening the family member definition, the administrative burden will increase, as the determination of family member statuses which arouse en route might pose additional challenges. **IE:** reservation on the extension of the scope. **LV:** reservation on the extension of the scope of the definition of the family. **HU:** the justification of family relations which were formed during the transit is more problematic than in case of family relations existing already in the country of origin. It is not obvious, whether the proposed article which generates more administrative burdens, will have the desired result. **AT:** also in Dublin Reg: no reason for extension. **PL:** this proposed definition constitutes a serious inconvenience for the verification of family members and requires further clarification. **SI:** it is a key issue to deal with in each act; cross-reference to other acts is not appropriate. **COM:** for RCD, the extension of the family member definition is enlarged for all important reasons only in so far a it is provided by the national law; so, more limited relevance of this definition in RCD.

~~(4)(d)~~ [‘minor’: means a ⇒ 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~~];²⁵

~~(5)(e)~~ [‘unaccompanied minor’: means ~~a~~ an ☒ unaccompanied ☒ minor ⇒ 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;~~

↓ 2013/33/EU

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

²⁵ SE: scrutiny reservation.

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

~~(7)(e)~~ 'material reception conditions': 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**, ↻ sanitary items,²⁶ ↻ **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,²⁷

²⁶ **AT, SI:** specify "other essential non-food items"; this definition is too wide.

²⁷ **BG:** this provision of a daily expenses allowance should be laid down as an optional possibility for MSs, taking into account the differences between them in relation to their social, economic and geographical situation, including the specific situation of the front-line MSs. Art. 16 implies that, together with the rest of the material reception conditions, MSs are also bound to provide the applicants with a daily expenses allowance in order to ensure an adequate standard of living for them. At the same time, the EASO Guidance on reception conditions defines common operational standards and indicators in relation to the daily expenses allowance, which shall be taken into account by MSs in order to guarantee an adequate standard of living for applicants. Obliging all MSs to provide the applicants with such a daily expenses allowance, would turn out to be unfair to the front-line States, because they are forced to concentrate a significant amount of additional financial, material and human resources to defend the external borders of the EU. Besides, even in the context of the envisaged corrective mechanism for distribution of asylum seekers, the front-line States shall ensure the provision of the material reception conditions until the applicant is relocated. This circumstance will impose an additional financial and administrative burden on them. In addition, the common obligation for MSs to provide a daily expenses allowance together with the rest of the material reception conditions, would result in a situation where the nationals of the poorest MSs are treated in a less favourable way than asylum seekers. Within the national context, the elaboration of common operational standards and indicators (including in relation to the daily expenses allowance for applicants), without considering the standard of living, the specific social, economic and geographical situation of MSs, would make it necessary to provide a significant amount of financial resources in order to put the BG reception system in compliance with those standards. The financial resources allocated to BG under the AMIF, including for emergency assistance, would contribute to a significant improvement of the BG reception system. Nevertheless, it is difficult to estimate at this stage whether those financial resources will be sufficient to ensure its sustainability in the context of a sudden disproportionate influx of asylum seekers or the provision of additional national financial resources will be necessary. Therefore, the following sentence should be added to para 7: "*As part of the material reception conditions Member States shall, as far as possible, also provide a daily expenses allowance for applicants.*". **CZ:** Art. 19 uses "daily allowances"; need to harmonise the terminology throughout the proposal. **COM:** "daily expense allowance" means "daily allowance"; open to alignment.

↓ 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;²⁸

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

↓ new

→ Council

(10) 'absconding': means the action by which an applicant, in order to avoid asylum procedures, either leaves the territory where he or she is → **required** ← **obliged** to be present in accordance with → **Article 4(3) of** ← Regulation (EU) No XXX/XXX²⁹ [Dublin Regulation] or → **, without authorisation** ← does not remain available to the competent authorities or to the court or tribunal;³⁰

²⁸ **HU**: scrutiny reservation: this definition needs to be clarified; confinement in a transit zone should not mean detention automatically.

²⁹ OJ C [...], [...], p. [...].

³⁰ **CZ**: reservation on the reference to the Dublin Regulation; delete this definition. **DE, IE**: scrutiny reservations. **IE**: scrutiny reservation. **EL**: the Dublin Reg also deals with this matter. The last part ("or does not ... tribunal") is not acceptable. **COM**: "available to the competent authorities" is broadly formulated because there are different situations, different types of authorities. **ES**: scrutiny reservation: "in order to avoid asylum procedure" is difficult to prove. **NL**: see comment in relation to (11); after "means", insert "*in addition and without prejudice to the situations where a risk of absconding is established in accordance with the objective criteria mentioned in paragraph 10*". **FI**: important to look at it from the Dublin Reg point of view; consistency is needed.

(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;³¹

³¹ **BE:** the Dublin proposal mentions "significant risk of absconding" (art.29(2)). Terminology should be adapted in the Dublin proposal. **CZ:** reservation; delete this definition which should be part of the national legislation. **DE:** scrutiny reservation. **IE, PL, PT, FI:** clarify "objective criteria". **NL:** the order of 'risk of absconding' and 'absconding' should be switched: risk of absconding comes before absconding. Risk of absconding can be taken into account for all measures. It depends on the individual circumstances of an applicant, especially the reception needs, which measure is taken by a Member State. **AT:** further clarification is needed. **PL:** clarify in terms if MS will have a choice of defining the criteria of risk of absconding. **FI:** important to look at it from the Dublin Reg point of view. **COM:** it is difficult to have a unified definition, to have an agreement on a common list of criteria because different situations are covered. For objective criteria, look at the Return Handbook where there is a list of criteria; some of them might be relevant for RCD; Member States have probably their own lists.

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

(12)(f) [~~☒~~ guardian ~~☒~~ representative]: means a person ⇒ as defined in Article [4(2)(f)] of Regulation (EU) No XXX/XXX [Procedures Regulation] ³²↵] ~~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;~~

³² **COM:** the definition of 'guardian' might need to be reviewed as the guardian in RCD has different tasks from those in APR. **AT, BE, HU:** scrutiny reservation. **BG:** reservation due to the short term for the appointment of a guardian, prescribed in Art. 23. The different legislative frameworks and practices of the different MSs shall be taken into account, as well as the meaning that the terms have in the various national legal systems. A suitable option would be to provide for both terms alternatively: a representative or a guardian, so that MSs, in accordance with their systems, can decide how to ensure a timely appointment and an effective procedure. For the purposes of the procedure for granting protection, the unaccompanied child shall be appointed a representative who should carry out his/her representative functions during the procedure until the appointment of a guardian. It also could be envisaged that the representative may, during the ongoing procedure, take measures for the appointment of a guardian before the international protection is granted. During the different stages there should be clearly defined powers to the relevant officials. In relation to this, it is appropriate to timely appoint a representative (who could be a social worker) at the beginning of or during the procedure. The representative should be responsible for taking further measures for the appointment of a guardian. **DE, FI, PT, SE:** prefers to keep the current wording "representative". **EL:** comments will be presented in the framework of the examination of the APR. **SI,** supported by **DE:** reservation on the reference to APR; need for a text for RCD itself.

(13)(4) '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 ~~disabled people,~~ elderly persons ~~people,~~ pregnant women, single parents with minor children, victims of ~~human~~-trafficking in human beings , 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 .

33

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.

³³ **DE, ES:** scrutiny reservation. **PL:** "persons with serious illnesses" is unprecise. Add people bedridden. **FI:** better to look at it on the basis of need rather than of the degree of vulnerability.

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~~³⁴ 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].³⁵

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** ³⁶ 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.

³⁴ 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).

³⁵ **CZ:** this can apply to applicants for national statuses; it is not consistent with QR.

³⁶ **COM:** correction to be made: replace "depending" by "dependent".

↓ 2013/33/EU

⇒ new

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. [TA]
2. [TA]

↓ 2013/33/EU (adapted)

⇒ new

Article 6

⊗ **Travel documents** ⊗ ~~**Documentation**~~

1. [TA]
2. [TA]

↓ 2013/33/EU

Article 7

Residence and freedom of movement

1. [TA]

↓ 2013/33/EU (adapted)
⇒ new

2. [TA]

3. [TA]

↓ 2013/33/EU (adapted)

4. [TA]

↓ 2013/33/EU
⇒ new

5. [TA]

↓ 2013/33/EU (adapted)

36. [TA]

↓ new

7. [TA]

8. [TA]

↓ 2013/33/EU (adapted)

Article 8

Detention³⁷

1. [TA]

↓ 2013/33/EU

2. [TA]

3. [TA]

↓ 2013/33/EU
↻ Council

4. [TA]

³⁷ **SI:** reservation on Art. 8.

Article 9

Guarantees for detained applicants

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

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

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

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

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

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.
6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

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

7. Member States may also provide that free legal assistance and representation are granted:
 - (a) only to those who lack sufficient resources; and/or
 - (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.
8. Member States may also:
 - (a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;
 - (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

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

Article 10

Conditions of detention

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

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

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

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

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.
 5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article ~~43~~ 41 of ~~Directive 2013/32/EU~~ Regulation (EU) No XXX/XXX [ Asylum  Procedures Regulation].
-

↓ 2013/33/EU (adapted)
⇒ new

Article 11

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

1. The health, including mental health, of applicants in detention who ~~are vulnerable persons~~ ⇒ have special reception needs ⇐ shall be of primary concern to national authorities.³⁸

³⁸ ES: scrutiny reservation.

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.³⁹

↓ 2013/33/EU

2. Minors⁴⁰ 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.
-

↓ 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.

³⁹ ES: scrutiny reservation.

⁴⁰ 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 does not except such solutions.

Where minors are detained, ⇒ **they shall have the right to education in accordance with Article 14 and without prejudice to Article 17a⁴¹, unless the provision of education is of limited value to the minors due to the very short period of their detention. 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.** ⁴² ~~they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.~~**

↓ 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 accommodation⁴³.

↓ 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** ⇐ .

⁴¹ **BE:** clarify "must be secured". **BG:** it is necessary to explore at the national level the practical possibilities for securing the right to education of detained minors. **FR:** scrutiny reservation: how will work the right to education for minors in practice given the short period?

⁴² **BE, DE, EL, FR, LU, SE:** scrutiny reservation on education aspects

⁴³ **DE:** scrutiny reservation

↓ 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.
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.⁴⁴

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.

⁴⁴ **PL:** what is the reason for introducing the provision? Is that a case when a person began his or her education at high school before reaching the age of majority and continues it? In Poland, such a person may attend a school for youth as well as for adults.

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 1.⁴⁵

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.⁴⁶

⁴⁵ **PL:** because education is the competence of Member States, the abovementioned provision constitutes excessive interference in the MS competence in the field of organisation of education. Solutions adopted in this matter would be diversified whereas in the proposal the specific methods of organising the education are imposed a priori. Therefore this provision should be deleted. Alternatively, PL could strive to mitigate the provision by remaining for exclusive decision of a Member State what form of such actions should be introduced. The provision could achieve the following wording: "If necessary, a Member State may undertake actions for minors aimed at facilitating their access to the education system and to participate in the system in accordance with paragraph 1." In Poland, such forms as "preparatory actions, including language courses" are not a manner of realisation of school obligation, or compulsory education in the meaning of the Act on the System of Education.

⁴⁶ **PL:** clarify "specific situation of the minor". Moreover, doubts on the obligation for a MS to provide access to other form of education than school in case when such persons were not allowed to leave the guarded centre. Are there possible alternative forms of education in such situation, especially when a foreigner does not know the language of the host country?

↓ 2013/33/EU

⇒ new

⇒ Council

Article 15

Employment⁴⁷

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.⁴⁸

⁴⁷ **BG, DE, EL, FI, IT, LU:** scrutiny reservation on the whole article. **IT:** reservation as it goes too much into detail in regulating the issue; might raise a high level of expectations of asylum seekers. **HU:** does not support the proposal. It is not clarified, how the proposed measures and changes contribute to the reduction of secondary movements. Furthermore, need to investigate the accordance of the proposed integration needs, the rejection rates, the goals concerning the enhancement of effectivity of returns, and the concept of the most acute needs for international protection. **HU** does not support the access of applicants to the labour market without any labour market tests. **AT:** maintain the existing Article 15. Reservation on the new text. **SE:** the CLS opinion is required on the compatibility of the social security provision with the provisions of the Treaty.

⁴⁸ **ES,IE:** scrutiny reservation. **BE:** supports a shorter period (in BE, the deadline is already 4 months). **IE:** 9 months is realistic; we should not encourage people who want to circumvent migration legislation. **FR:** scrutiny reservation; concerned by the shorter timeframe which is pull factor; 9 months is a fair balance. **NL:** while in favour of 6 months, cannot support the encouragement in the Preamble for an access after 3 months because not in line with the objective to prevent secondary movements. **AT:** should remain 9 months. **PL:** the reduction of the maximum period, after which the applicant must have access to the labour market might have a negative effect by raising the number of applications for access to the labour market (pull factor). **SI:** reservation on the shorter timeframe to access the labour market; the duration of the administrative procedure itself is not necessarily linked to the decision itself. **SE:** clarify why "an administrative" decision. **COM:** "administrative" corresponds to the terminology in APR.

↓ 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. ⌚

↻ 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 withdrawn⁴⁹ ⌚

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

2. Member States shall ~~decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring~~ ☒ ensure ☒ that applicants ⇒, who have been granted access to the labour market in accordance with paragraph 1, ⇐ have effective access to the labour market.⁵⁰

⁴⁹ **ES:** scrutiny reservation on practical consequences as the distinction between the different types of application might create significant administrative burden. **AT:** this sub-paragraph is very problematic. **COM:** it is linked to a specific administrative procedure, not to admissibility.

⁵⁰ **EL:** this provision provides for the right of the applicants for effective access to the labour market. Art. 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.

For reasons of labour market policies, Member States may ~~give priority to~~ ⇒ **verify** **whether a specific vacancy that an employer considers 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 such a case the Member State may refuse that the employer employs the applicant for the specific vacancy.** Ⓒ

↓ new

⇒ Council

3. Member States shall provide applicants **who have been granted access to the labour market in accordance with paragraph 1** Ⓒ with equal treatment with nationals as regards:

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⁵¹ **CZ:** reservation: equal treatment within the scope of RCD should be only for persons who are not employed anymore. **DE, NL, SE:** clarify that equal treatment should only apply when people are working. **EL, IE, PT, RO, SI:** scrutiny reservation on para 3. **PL:** too detailed arrangements for applicants to access the labour market. The Directive does not seem to be a place for such detailed arrangements. These issues shall be governed by different national rules and the institutions of the MSs responsible for the system of reception are not competent to control access to the labour market in a range so widely understood. **SI:** not clear whether this provision relates to all applicants or only to those who received access to the labour market. **COM:** asylum seekers are the only third-country nationals who currently do not have the labour market access right; we want these rights for nationals to be equally applicable to asylum seekers. In national legislation, there is already equal treatment rules but not at the EU level; therefore we propose this new text. It is not appropriate to limit the equal treatment to those who are working; however it is possible to limit the equal treatment when the applicant is working (see points (i), (ii) and (iii)). Rights which are not employment related should be applied even if the person is not working.

- (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;⁵²
- (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;⁵³
- (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** Ⓒ;⁵⁴

⁵² **ES:** include at the beginning of the point (a): "Terms of employment, including working age, ...".

⁵³ **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 point (b) should be deleted or should be a "may" provision.

⁵⁴ **CZ:** goes too far. **LT:** scrutiny reservation. **SE:** Member States should be able to restrict equal treatment of applicants when it comes to tuition fees. Therefore, insert "*tuition fees*," after "except".

(d) ~~⇒ (i) ⇨~~ recognition of diplomas, certificates and other evidence of formal qualifications in the context of existing procedures for recognition of foreign qualifications, ~~while ⇒ ; ⇨~~

~~⇒ (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 ⇨~~

~~⇒ (iii) access ⇨~~ to appropriate schemes for the assessment, validation and ~~⇒ recognition ⇨ accreditation ⇒ of applicants' prior learning outcomes and experience ⇨ of their prior learning.~~ ⁵⁵

⁵⁵ **CZ:** reservation. **FR:** scrutiny reservation. **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 point (d) should be deleted or should be a "may" provision. **PL:** replace "evidence" by "*documents*" because "evidence" in the meaning of the first half of the sentence should be understood as documents (on the course of education) other than diplomas or certificates. Whereas the second half of the sentence concerns a situation of lack of documents mentioned in the first half of the sentence. In addition, replace the wording "accreditation of their prior learning" by "*recognition of prior learning outcomes*". The current formulation is incomprehensible in Polish language. Therefore, PL proposes new wording: "*recognition of diplomas, certificates and other documents confirming formal qualifications in accordance with existing procedures of recognition of foreign qualifications, while facilitating, to the extent possible, full access for those applying for international protection, who cannot provide documentation confirming their qualifications to appropriate schemes for the assessment, validation and recognition of prior learning outcomes*". In the English version, the term "accreditation" should be replaced by the term "*recognition*" (in accordance with the Convention on the Recognition of Qualifications concerning Higher Education in the European Region of 11 April 1997 – Lisbon Convention). The used word "accreditation" is incorrect because it deals with whether an institution acts legally. The proper term is "recognition", concerning qualifications of a person. **COM:** regarding the professional qualifications, access to the procedure and equal treatment within the procedure is provided here, not recognition of the qualification.

(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 ☞**.⁵⁶

Member States may restrict equal treatment of applicants **☞ who have been granted access to the labour market in accordance with paragraph 1 ☞**:⁵⁷

- (i) pursuant to point (b) of this paragraph, by excluding them from taking part in the management of bodies governed by public law and from holding an office governed by public law;⁵⁸
- (ii) pursuant to point (c) of this paragraph, to education and vocational training which is directly linked to a specific employment activity;⁵⁹
- (iii) pursuant to point (e) of this paragraph by excluding family benefits **and unemployment benefits**, without prejudice to Regulation (EU) No 1231/2010.

⁵⁶ **DE:** clarify what kind of assistance. **IE:** reservation on (e). **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 point (e) should be deleted or should be a "may" provision. **NL:** reservation because point (e) 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 systems differ widely between MSs. MSs 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.

⁵⁷ **HU:** need to investigate the possibility of providing equal treatment with nationals.

⁵⁸ **HU:** clarify which bodies governed by public law in paragraph 3, point i. refers to, and why the restriction is allowed.

⁵⁹ **SE:** Member States should be able to restrict equal treatment of applicants when it comes to tuition fees. Therefore, insert "*tuition fees and*" after "pursuant to point (c) of this paragraph, to".

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 [Procedures Regulation] has terminated the applicant's right to remain.

↓ 2013/33/EU

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

↓ 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.~~⁶⁰

⁶⁰ **BE:** scrutiny reservation. **CZ:** delete because superfluous (already regulated in APR). **AT:** reservation. **PL:** provides that at the time of granting access to the labour market, such information should be found on the applicants identity document, which would require the need to change the parameters of the data written to document. PL is opposed to such a solution, which will require time-consuming changes (new document format, replacing the old documents), and will generate additional costs for MSs. The MSs themselves should determine the model in which the applicant has access to the labour market, for example through the issuance of the relevant certificate (this works on the territory of the Republic of Poland). **COM:** in APR, the information should be on the card; in RCD, the right to have the information updated when access is given .

↓ 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.~~

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article ~~17~~ 16

General rules on material reception conditions ~~and health care~~⁶¹

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] ⇐.⁶²

⁶¹ **FR:** scrutiny reservation on the whole article. **SI:** reservation on this article.

⁶² **BG:** reservation in relation to its proposal for amending Article 2, paragraph 7 – the provision of a daily expenses allowance to be laid down as an optional possibility for MSs. 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. **PL:** in PL reception conditions are available for applicants from the moment of submission of the application-submission is a prerequisite. The Polish system of reception conditions however, determines the granting of this aid, by reporting to the reception centre by the applicant. Applicants are obliged to do that within 2 days from submitting their application. It does not seem that this solution is in conflict with the provisions of the directive. PL would like the Commission to comment on this. In addition, it seems necessary to clarify what does it mean that MSs shall "ensure" the access to reception conditions. Is this term understood also as the possibility of receiving reception conditions from the moment of submitting the application, but at the same time strictly connected and determined by the activity of the applicant to fulfil the obligation to report to the authority which is responsible for ensuring the access to material reception conditions (obligation to appear in the reception centre). Member States shall ensure that material reception conditions are available from the moment an application for international protection has been submitted, but the applicant decides whether or not to use them-if they require assistance they report to the reception centre, if not, they do not appear at the centre.

↓ 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.
-

↓ 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 24,~~ 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~~⁶³ 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** ☉ .

⁶³ **DE:** scrutiny reservation on the deletion of "health care". **EE:** scrutiny reservation. EE does not support exclusion health care from the list of material reception conditions; prefers the formulation of the Directive. Health care is one part of reception conditions. By giving applicants free access to health care applicants are more privileged than persons legally living in state. **AT, IT, NL, SI:** reservation; keep "and health care". **COM:** health care systems are different in terms of financing. Emergency care / essential treatment of illness often provided free of charge to nationals.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions ~~and of the health care 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 resources, for example if they have been working for a reasonable period of time.⁶⁴

If it transpires that an applicant had sufficient means to cover material reception conditions ~~and health care in accordance with paragraph 2~~ ~~and health care~~ at the time when ~~the applicant was provided with an adequate standard of living~~ ~~those basic needs were being covered~~, Member States may ask the applicant for a refund.

↓ new

5. When assessing the resources of an applicant, when requiring an applicant to cover or contribute to the cost of the material reception conditions⁶⁵ or when asking an applicant for a refund in accordance with paragraph 4, 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.~~⁶⁶

⁶⁴ **DE:** scrutiny reservation on the deletion of "health care". **EE:** see comment in para 3. **AT, IT, NL, SI:** reservation; keep "and health care".

⁶⁵ **AT:** insert "and health care" after "conditions".

⁶⁶ **CZ:** reservation because this provision goes beyond practical feasibility, creates administrative burden. **DE:** to have a look on a case by case basis is a significant change. **EL:** the scope of this sentence is unclear. Is it complementary to the obligation referred to in par. 2? **NL:** para 3 and 4 should be sufficient, para 5 looks superfluous. **SI:** difficult to apply in practice; it is redundant, the provisions of the current Directive are sufficient. **COM:** it is supposed to be an individual assessment; it is necessary in addition to para 3 and 4.

↓ 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. ↻ **These Member States shall inform the Commission and the [European Union Agency for Asylum] of the levels of reference 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 provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive. ⇒ **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.**⁶⁷ ↻

⁶⁷ **CZ, SI:** difficult to transpose in national law. **FR:** scrutiny reservation; what are the consequences of this new obligation for MS? How does this provision articulate with Art. 17a and 19? **IT:** reservation; the obligation to inform on the levels of reference should be limited to those cases where financial assistance is the only form in which reception conditions are provided. Therefore, the paragraph should be amended as follows: "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. *These Member States shall inform the Commission and the European Union Agency for Asylum of the levels of reference 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 provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.*" **HU:** reservation; does not support the monitoring and controlling role of EUAA. **AT:** scrutiny reservation. **SI:** no added-value. **COM:** this information is needed to have a better view for the future of the level of harmonisation at the EU level. There is no specific consequence, only a matter of information for the Commission on these aspects. The same request for information is currently covered in Annex I RCD.

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article ~~18~~ 17

Modalities for material reception conditions⁶⁸

1. Where housing is provided in kind, ~~it~~ ↻ **Member States** ↻ ~~should~~ ↻ shall ↻ ↻ ↻ **ensure** **that such housing provides for ↻ supply** an adequate standard of living ↻ **which guarantees applicants' subsistence and protects their physical and mental health.** ⁶⁹ **To this effect, 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.⁷⁰

⁶⁸ ES: reservation on this article.

⁶⁹ DE, EE, LU, NL, AT, PL: clarify "adequate standard of living". COM: "adequate" is the normal standards of reception conditions (see Art. 16(2) and 17(1)). Operational standards and guidance developed by EASO are supposed to ensure "adequate" standards.

⁷⁰ 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;"

↓ 2013/33/EU

2. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that:
- (a) applicants are guaranteed protection of their family life;
 - (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;
 - (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

↓ 2013/33/EU

⇒ new

⇒ Council

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).~~ ⇒ with special reception needs when providing material reception conditions ← within the premises and accommodation centres referred to in paragraph 1(a) and (b).

4. Member States shall take appropriate measures to prevent **as far as possible** assault and gender-based violence, including sexual assault and harassment \Rightarrow when providing **housing in accordance with paragraph 1 accommodation** \Leftarrow ~~within the premises and accommodation centres referred to in paragraph 1(a) and (b).~~⁷¹
-

\Downarrow 2013/33/EU

5. Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.
6. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.
-

\Downarrow 2013/33/EU

\Rightarrow new

7. Persons \Rightarrow providing material reception conditions, including those \Leftarrow 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.⁷²

⁷¹ **BG:** specify “accommodation”. In particular, shall MSs undertake measures to prevent assault and gender-based violence, including sexual assault and harassment, in the cases when the applicants are accommodated outside the accommodation centres – in private houses, flats, hotels or other premises adapted for housing applicants? **CZ:** how the relevant authorities will take these measures in relation to private houses? **HU:** clarify “accommodation”. **COM:** appropriate measures will depend on the type of accommodation.

⁷² **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.

8. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.
9. In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:
 - (a) an assessment of the specific needs of the applicant is required, in accordance with Article ~~20~~ 21;
 - (b) housing capacities normally available are temporarily exhausted.⁷³

⁷³ **EL:** add a new point as follows: "(c) material reception conditions, as provided for in this Article, are not available in a certain geographical area,". This provision is foreseen in the first Directive for the reception conditions (2003/9). It is imperative to take into account the fact that MS at the external sea borders are not in a position to provide in full the reception conditions provided for in the Directive. Furthermore, add a new point as follows: "(d) the Member State is confronted by an emergency situation characterised by a sudden inflow of nationals of third countries." This provision intends to deal with the situation whereby a MS is confronted with a sudden inflow of third country nationals. In this type of emergencies, different reception conditions may be exceptionally provided for a reasonable period of time. **ES:** as an alternative option to the suggestion made by ES in para 1, a new point after (b) could be read as follows: "(c) *the applicant reaches/arrives to a transit center aimed at providing temporary accommodation.*". **IT:** add a new point after (b): "*emergency situations apply.*"

↓ 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 living⁷⁴ for all applicants ⇒ **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** ☒ ↵ .

↓ new

⇒ Council

When resorting to ~~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.⁷⁵

⁷⁴ **AT, DE, EE, LU, NL, PL:** clarify "dignified standard of living". **COM:** "dignified" standards are lower standards which are required by fundamental rights and international law, in case of Art. 17a (the so-called Dublin exception), Art. 17(9) and Art. 19. Recital (32) summarises these requirements (and relevant case-law). If you go from "adequate" to "dignified" for a certain period of time, MS need to notify. When MS stop doing that, they need to notify too.

⁷⁵ **ES, NL:** why no reference to Art. 28 EUAAR? **IT:** the exceptional measures could be put in place for a limited period of time (e.g. for few days) and repeatedly. Therefore, 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 subparagraph should be deleted. **HU:** scrutiny reservation on the monitoring task of EASO. **COM:** no link with the EUAAR.

Article 17a

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

1. [TA]
2. [TA]
3. [TA]

↓ 2013/33/EU (adapted)
⇒ new

Article ~~19~~ 18

Health care⁷⁶

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.

⁷⁶ **DE:** clarify the link between this article and Art. 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 para 1 and 2. **FI:** scrutiny reservation. **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. Article 18 does not have the international legal basis, neither the Dublin IV proposal, Art. 5(3), if it means that member states have to provide health care free of charge to the applicants. The Dublin IV proposal refers to "emergency health care", while the proposal for a recast of the RCD refers to a more wider category: "necessary health care". In case of a huge number of applicants, health care system would face lack of capacity. **NL:** why not the same terminology as in Dublin ("emergency care")? **COM:** Art. 18 is not excluded under Art. 17a(1). Para 1 and 2 apply both. Terminology should be aligned across all proposals indeed.

↓ 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.
-

↓ 2013/33/EU (adapted)

⇒ new

CHAPTER III

⊗ REPLACEMENT, ⊗ REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article ~~20~~ 19

⊗ Replacement, ⊗ ~~R~~eduction or withdrawal of material reception conditions

1. [TA]

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

2. [TA]

3.5. [TA]

4.6. [TA]

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.

Assessment of ~~the~~ special reception needs ~~of vulnerable persons~~⁷⁸

1. In order to effectively implement Article ~~21~~ 20, Member States shall \Rightarrow **systematically**⁷⁹ \Rightarrow **as early as possible after an application for international protection is made** \Leftarrow \Leftarrow assess whether the applicant \Rightarrow **has** \Leftarrow ~~is an applicant with~~ special reception needs. Member States shall also indicate the nature of such needs.

\Rightarrow **The authority with which the application for international protection is made shall initiate** \Leftarrow that assessment ~~shall be initiated~~ \Rightarrow **as early as possible** \Leftarrow ~~within a reasonable period of time after an application for~~ \Rightarrow **by identifying first signs of special reception needs based on physical signs or the applicants' statements or behaviour. That assessment** \Leftarrow ~~and~~ may be integrated into existing national procedures \Rightarrow or into the assessment referred to in Article [19] of Regulation (EU) No XXX/XXX [\Rightarrow **Asylum** \Leftarrow Procedures Regulation] \Leftarrow . Member States shall \Rightarrow **continue that assessment throughout the asylum procedure.** \Leftarrow ~~ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they~~

\Rightarrow **Member States shall address special reception needs as set out in this Article even where those needs** \Leftarrow become apparent at a later stage in the asylum procedure.

↓ 2013/33/EU

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

⁷⁷ BE: reservation on paragraphs 1 and 2

⁷⁸ DE, ES: scrutiny reservation.

⁷⁹ CZ: suggests to add "throughout the procedure". DE, LV, HU, PT: clarify "systematically assess". LU: assessment should be done once a month, throughout the procedure. FI: assessment should be a non-stop process.

↓ new

↻ Council

2. For the purposes of paragraph 1, Member States shall ensure that the personnel of the authorities⁸⁰ referred to in Article 26 **↻ that are involved in the assessment of 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;⁸¹
- (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 their 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 **↻ . ↻ and that this could affect the reception needs of the applicant; and**⁸²

⁸⁰ **AT, ES, LU:** scrutiny reservation on the training of personnel which should be focussed on the persons in direct contact with the applicant. **IT:** reservation because in Italy, the personnel who works in this field is not all employed by the competent authority; therefore the wording must be broaden in order to cover personnel from different organisations. **PT:** clarify "personnel" and who will have this obligation. **COM:** the intention is to focus on the personnel involved in para 1.

⁸¹ **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. Clarify what kind of training is envisaged.

⁸² **FI:** introduce flexibility in the text to take account of MSs systems.

(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.⁸³

↓ 2013/33/EU

⇒ new

~~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 this Directive.

↓ 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].

⁸³ **CZ:** to add that the result of the examination must be communicated to the applicant. **HU:** scrutiny reservation on para 2: the harmony between the relevant Hungarian legislation and the proposed modification needs further investigation.

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.
2. In assessing the best interests of the child Member States shall in particular take due account of the following factors:
 - (a) family reunification possibilities;
 - (b) the minor's well-being and social development, taking into particular consideration the minor's background;
 - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
 - (d) the views of the minor in accordance with his or her age and maturity.
3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article ~~18~~ 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.

↓ 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. [TA]

↓ 2013/33/EU (adapted)

⇒ new

[Article ~~24~~ 23]

[Unaccompanied minors]⁸⁴

1. [TA]
2. [TA]
3. [TA]
4. [TA]

⁸⁴ AT, BG, ES, PL, SE: scrutiny reservation on Art. 23.

↓ 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.⁸⁵

↓ 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.

⁸⁵ **DE:** include victims of trafficking. **ES:** reservation on para 1.

↓ 2013/33/EU

⇒ new

CHAPTER V

APPEALS

Article ~~26~~ 25⁸⁶

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.⁸⁷

⁸⁶ **IT**: reservation; clarify the link with Art. 7(8) which refers to Art. 25.

⁸⁷ **BG**: questions the need for legal protection in the cases where the form of the material reception conditions is to be replaced. Such a possibility is unfounded, and would necessarily cause additional administrative burden to the determining authority. Therefore, delete the word "replacement". **DE**: see position in Art. 19. **AT**, supported by **CZ**: see above on Article 19. Delete "replacement". **FI**: scrutiny reservation on "replacement".

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.

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.

↓ 2013/33/EU

⇒ new

↻ Council

Article ~~28~~ 27⁸⁸

Guidance, monitoring and control system

⁸⁸ **EL:** in the context of the discussions on the EUAAR proposal, EL has raised serious concerns with regard to the monitoring mechanism introduced therein. Therefore maintains a scrutiny reservation in this provision. **FR:** reservation on the whole article. **LV, SI:** scrutiny reservation on the whole article.

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established. ⇒ Member States shall take into account **available** [operational standards on reception conditions and indicators developed by the European Asylum Support Office / the European Union Agency for Asylum]⁸⁹ and any other reception conditions operational standards, indicators or guidelines 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**. ⇐⁹⁰

⁸⁹ **EL:** reservation. If a MS should take into account the operational standards and guidelines it means that these standards and guidelines are obligatory. In this case it should be adopted through the relevant legal procedure. **ES:** replace "shall" with "may" and insert ", where appropriate," after "take into account". **IT:** reservation on the obligatory provision. A legal look to this issue would be useful. **CY:** clarify to what extent these operational standards are mandatory for MSs, especially with regards to existing infrastructure that cannot be replaced within a short time limit and/or is very costly to be replaced. **LV, PT:** reservation on the binding nature of the clause. **HU:** delete "shall" because it is not necessary. **SI:** agrees with the development of standards but these must be adopted in accordance with a different procedure. **FI:** reservation on the binding nature of this provision. **COM:** it is a procedural requirement for MS to include EASO indicators.

⁹⁰ **BG:** welcomes the COM's clarification that the operational standards on reception conditions and the indicators developed by EASO are not of a mandatory character. Upon developing/subsequent revision of these standards and indicators, the existing differences between the socio-economic conditions and the standard of living in the MSs must be taken into account. The MSs' citizens should not be placed in a less favourable position than the applicants for international protection. The financial resources allocated to BG under the AMIF, including for emergency assistance, will contribute to the improvement of the BG reception system. It is however difficult to assess at this stage whether this amount will be sufficient to guarantee the stability of the system in case of a sudden increase in the influx of asylum seekers, or additional national funding would be required. Therefore BG has a scrutiny reservation. **EE:** scrutiny reservation. While supporting creation and use of EASO provided operational standards on reception conditions, EE does not consider the obligatory usage and enforcement of those operational standards and guidance's justified. EE does not support the approach, based on which, the MS has the obligation to notify the Agency, when the analyses and guidance was not followed. Such extensive reporting clearly raises the administrative burden, which can lead to the situation, when resource difficulties arise when processing the claims on practical level. **FR:** reservation on the obligatory nature of guidelines. **PL:** the non binding nature of the standards should be explicit..

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 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]. ⇐⁹¹

⁹¹ **BG:** reservation with relation to the newly proposed functions of the EASO/EU Agency for Asylum to monitor and assess MSs' reception systems. BG insists that such monitoring be carried out in a close cooperation with the MS in question, and that it has a most clear, limited and specific scope, which would be applied equally to all MSs. **CZ:** scrutiny reservation; para 2 is difficult to transpose because of the used wording is not appropriate for a Directive. **DE, IE, NL, AT, PT:** scrutiny reservation. **FR:** reservation on control mechanism in EUAA. **LV:** reservation on the new monitoring functions of EASO. **HU:** scrutiny reserve: does not support the monitoring and controlling role of EUAA. **PL:** scrutiny reservation on the new competences of EASO. Clarify in the text that guidance should be developed by Member States and EASO.

↓ new

→ Council

Article 28

Contingency planning⁹²

1. Each Member State shall draw up a contingency plan⁹³ setting out the planned measures to be taken to ensure an adequate reception of applicants in accordance with this Directive in cases where the Member State is confronted with a disproportionate number of applicants⁹⁴ 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.

⁹² **BG, CZ:** scrutiny reservation on the whole article. **EL:** the obligation of a MS to prepare a contingency plan is already provided in the proposed Regulation for the Agency. The issue raises serious concerns. This notion is nowhere defined and therefore it renders unclear the scope of MS obligations about it. **ES:** reservation because discussion ongoing on EUAAR. **FR:** reservation on the whole article. **IT, SI:** reservation on this article. There are important cross-links with Dublin Reg and EUAAR. **AT, DE, IE, CY, FI:** scrutiny reservation. **SI:** very difficult to transpose in national law because provision too vague.

⁹³ **ES:** after "contingency plan", insert "*in cases where the Member State is confronted with a disproportionate number of applicants for international protection,*".

⁹⁴ **CY, EL, FR, IT, SI:** clarify under which circumstances a MS can be considered that is confronted with disproportionate pressure. **CY:** for purposes of clarity, this Art. could refer to Art. 34 of the Dublin Regulation proposal. **COM:** contingency plan to be triggered when situation meets criteria of the plan.

2. The first contingency plan shall be completed, using a template to be developed by the European Union Agency for Asylum **⇒ in accordance with Article 12(1) 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**⁹⁵ after entry into force of this Directive]. An updated contingency plan shall be notified to the European Union Agency for Asylum every two years thereafter. The Member States shall inform the Commission and the European Union Agency for Asylum whenever its contingency plan is activated.⁹⁶

⁹⁵ **FR, LV:** reservation on 6 months.

⁹⁶ **BG:** not in favour of the application of a template developed by the EU Agency for Asylum, which would bind all MSs in drawing up the first contingency plan, since the level of the risk of disproportionate migration pressure and the relating possible scenarios and the consequential measures vary considerably between Member States with relation to their geographic location. **EE:** does not support preparing the contingency plan using a template to be developed by EASO. Understands the importance of the contingency plan but considers it is not reasonable and necessary to implement one common template for contingency plan. Every state has its own practices and legislation for preventing and preparing for an emergency, resolving an emergency and mitigating the consequences of an emergency. Implementing new template clearly raises the administrative burden, which can lead to the situation, when resource difficulties arise when processing the claims on practical levels. Scrutiny reservation. **ES:** read as follows: "The first contingency plan shall be completed, using a template to be *adopted* ~~developed~~ by the *Management Board of the European Union Agency for Asylum, (...)*". Consequently, this function related to the template of contingency plans must be included as well into Art. 40(1) EUAAR. **LV:** update every 2 years would create administrative burden. **HU:** scrutiny reservation: does not support the corrective allocation mechanism set out in the Dublin IV proposal. It is not clarified what the contingency plan will be used for by EUAA. Will it be a sign of fulfilment or non-fulfilment of an EU obligation towards the European Commission? How the EASO contingency plan and the operational plan set out in Article 22 of the proposal for the reform of EASO, relate to each other? **NL:** helpful to have a template not excluding the differences between MS. **PL,** supported by **CZ:** reservation on the template; need to take account of the MS specificities. **SI:** more flexibility is needed when updating the contingency plan. **COM:** the template has to be flexible to take account of the specificities of the various MS; it would reduce the administrative burden for MS who don't have a contingency plan now.

3. The contingency plans, and in particular the adequacy of the measures taken according to the plans, shall be 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].

97

↓ 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 shall⁹⁸ integrate 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]. ⇐⁹⁹
2. Member States shall allocate the necessary resources in connection with the national law implementing this Directive.

⁹⁷ **BG**: reservation because the provision goes too far and interferes with the national jurisdiction of Member States. **FR**: reservation on "adequacy of the measures" because it is difficult to predict the number of persons. **HU**, supported by **CZ**: scrutiny reservation; does not support the monitoring and controlling role of EUAA. **LV**, **PL**: reservation on the new powers of the Agency.

⁹⁸ **PL**: no obligation, MS are encouraged.

⁹⁹ **FR**: make clear that we talk about those having direct contact with the asylum seekers.

CHAPTER VII

FINAL PROVISIONS¹⁰⁰

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.~~

¹⁰⁰ **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** ~~months~~ 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

For the Council

The President

The Preside
