



Council of the  
European Union

Brussels, 28 April 2017  
(OR. en)

8258/17

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**Interinstitutional File:  
2016/0222 (COD)**

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**LIMITE**

**ASILE 26  
CODEC 606**

**NOTE**

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

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At its meetings on 9 and 21 November 2016 and 16 March 2017, the Asylum Working Party examined the proposal for a Directive laying down standards for the reception of applicants for international protection. The Asylum Working Party has further examined some of the articles in the framework of the thematic approach.

The text of the proposal in Annex contains modifications suggested by the Presidency in relation to all articles except for the recitals: placed in square brackets, to be discussed at a later stage.

Articles 2 (3), 22 (6) and 23 (1) contain the modifications suggested by the Presidency but are also placed in square brackets and will only be discussed at a later stage.

New text to be discussed at the meeting on 10-11 May 2017 is indicated with ➡**addition in bold and underlined**⬅ and the newly deleted text is indicated in ~~**strike**~~**through (bold)**. Text already introduced in the previous Presidency proposals (docs 7004/17 and 6942/17) is indicated with ➡**addition underlined**⬅, while text deleted in the previous Presidency proposals (docs 7004/17 and 6942/17) is indicated in ~~strike~~**through**.

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

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2016/0222 (COD)

Proposal for a

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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

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<sup>1</sup> **AT, BG, CZ, EL, ES, FI, FR, HU, IE, LT, PL, SI, SE, SK:** 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 MS.

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ 2013/33/EU recital 1 (adapted)

[(1) A number of ~~substantive changes~~  amendments  are to be made to ~~Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers~~<sup>4</sup>  Directive 2013/33/EU of the European Parliament and of the Council<sup>5</sup> . In the interests of clarity, that Directive should be recast.

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↓ 2013/33/EU recital 2 (adapted)

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

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

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

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↓ 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.
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↓ 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.~~

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↓ 2013/33/EU recital 4 (adapted)

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

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↓ 2013/33/EU recital 5 (adapted)

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

- (4) In its Communication of 6 April 2016 entitled 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe',<sup>6</sup> the Commission underlined the need for strengthening and harmonising further the CEAS. It also set out options for improving the CEAS, namely to establish a sustainable and fair system for determining the Member State responsible for applicants for international protection, to reinforce the Eurodac system, to achieve greater convergence in the Union asylum system, to prevent secondary movements within the Union and a new mandate for the European Union Agency for Asylum. This answers to calls by the European Council on 18-19 February 2016<sup>7</sup> and on 17-18 March 2016<sup>8</sup> to make progress towards reforming the Union's existing framework so as to ensure a humane and efficient asylum policy. It also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its own initiative report of 12 April 2016.
- (5) Reception conditions continue to vary considerably between Member States 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.

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

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

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

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↓ 2013/33/EU recital 6 (adapted)

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

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↓ 2013/33/EU recital 7 (adapted)

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



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↓ 2013/33/EU recital 8

⇒ new

- (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].↵

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↓ new

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

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↓ 2013/33/EU recital 10

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

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

- (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.

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↓ 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.

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↓ 2013/33/EU recital 13 (adapted)

- ~~(13)~~ With a view to ensuring equal treatment amongst all applicants for international protection and guaranteeing consistency with current EU asylum acquis, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted<sup>(9)</sup>, it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

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<sup>9</sup> ~~OJ L 180, 29.6.2013, p. 60.~~

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↓ new

↻ Council

- (12) Harmonised EU rules on the documents to be issued to applicants make it more difficult for applicants to move in an unauthorised manner within the Union. It needs to be clarified that Member States should only provide applicants with a travel document when serious humanitarian or other imperative reasons arise. The validity of travel documents should also be limited to the purpose and duration needed for the reason for which they are issued. Serious humanitarian reasons could for instance be considered when an applicant needs to travel to another State for medical treatment or to visit relatives in particular cases, such as for visits to close relatives who are seriously ill, or to attend marriages or funerals of close relatives.<sup>10</sup> 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. ↻ | ↻

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<sup>10</sup> **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.

- (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.<sup>11</sup>

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<sup>11</sup> **BE:** In BE, material reception conditions are always provided 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.
- ➔ **(19a) An applicant should be considered as not being anymore available where he or she repeatedly fails to respond to reasonable requests relating to the procedures under Regulation (EU) No XXX/XXX [Asylum Procedures Regulation] or the procedure under Regulation (EU) No XXX/XXX [Dublin Regulation]** ©

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↓ 2013/33/EU recital 15 (adapted)

⇒ new

- (20) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under ~~the~~ ~~the~~ very 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.

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↓ 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.

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↓ 2013/33/EU recital 16

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

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↓ 2013/33/EU recital 17

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

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↓ 2013/33/EU recital 18

⇒ new

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

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↓ 2013/33/EU recital 19

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

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↓ 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.



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↓ 2013/33/EU recital 21

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

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↓ 2013/33/EU recital 22

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

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↓ 2013/33/EU recital 14

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

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↓ 2013/33/EU recital 9

⇒ new

- (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. ⇐

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↓ 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 ~~which is~~ **in line** ~~in accordance~~ 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~~ 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.

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↓ 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 ⇐.

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↓ new

↻ Council

- (35) The maximum time frame for access to the labour market should be aligned with the duration of the examination procedure on the merits. In order to increase integration prospects and self-sufficiency of applicants, earlier access to the labour market is encouraged where the application is likely to be well-founded, including when its examination has been prioritised in accordance with Regulation (EU) No XXX/XXX [Procedures Regulation]. Member States should therefore consider reducing that time period as much as possible with a view to ensuring that applicants have access to the labour market no later than 3 months from the date when the application was lodged in cases where the application is likely to be well-founded<sup>12</sup>. Member States should however not grant access to the labour market to applicants whose application for international protection is likely to be unfounded<sup>13</sup> and<sup>14</sup> for which an accelerated examination procedure is applied.

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

<sup>13</sup> **BE:** "likely to be unfounded": based on which criteria?

<sup>14</sup> **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.<sup>15</sup> Special measures also need to be considered with a view to effectively addressing the practical difficulties encountered by applicants concerning the authentication of their foreign diploma, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.
- (38) The definition of branches of social security used in Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>16</sup> 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.

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<sup>15</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

<sup>16</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1.).

(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.<sup>17</sup>

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

↓ 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~~ ⇒ 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.

<sup>17</sup> **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."

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↓ 2013/33/EU recital 25 (adapted)

⇒ new

⇒ Council

(42) ⇒ In order to restrict the possibility of abuse of the reception system, Member States should be able to provide material reception conditions only to the extent applicants do not have sufficient means to provide for themselves. 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.

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

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↓ 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] ⇐.

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↓ 2013/33/EU recital 27

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

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↓ new

(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.



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↓ 2013/33/EU recital 28

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

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↓ 2013/33/EU recital 29 (adapted)

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

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↓ 2013/33/EU recital 30

⇒ new

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

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↓ 2013/33/EU recital 31 (adapted)

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

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↓ 2013/33/EU recital 32

- (50) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011<sup>18</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

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<sup>18</sup> OJ C 369, 17.12.2011, p. 14.

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↓ 2013/33/EU recital 33 (adapted)

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

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↓ 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.]

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↓ 2013/33/EU recital 34

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

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↓ 2013/33/EU recital 35

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

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↓ 2013/33/EU recital 36 (adapted)

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

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↓ 2013/33/EU recital 37 (adapted)

⇒ new

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

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↓ 2013/33/EU (adapted)

→ Council

HAVE ADOPTED THIS DIRECTIVE: <sup>19</sup>

## CHAPTER I

### SUBJECT-MATTER PURPOSE, DEFINITIONS AND SCOPE

#### *Article 1*

#### **Purpose**

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

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<sup>19</sup> **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

**Definitions**<sup>20</sup>

For the purposes of this Directive ~~☒~~ , the following definitions apply ~~☒~~:

~~(1)(a)~~ ‘application for international protection’ ~~☞~~ **or 'application'** ~~☹~~ : means **an application for international protection as defined in Article 2(h) [4(2)(a)] of Directive 2011/95/EU Regulation (EU) No XXX/XXX [☞ Asylum ☹ Procedures Regulation]; ☞ a request made<sup>21</sup> by a third-country national or a stateless person for protection from a Member State, who can be understood as seeking refugee status or subsidiary protection status.** ~~☹~~

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<sup>20</sup> **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.

<sup>21</sup> **IT:** shall the status apply when the application is made or lodged? Clarification needed.

↓ 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]** ] ⇐ ~~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;~~ ↻ **a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.** ☺<sup>22</sup>

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

- ~~— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;~~
- ~~— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;~~
- ~~— the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried;~~

<sup>22</sup> DE: scrutiny reservation.



- ⇒ in so far as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant's family who are present on the territory of the same Member State as the applicant<sup>23</sup>: ☹
- ⇒ (a) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals; ☹
- ⇒ (b) the minor children of the couples referred to in point (a) or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law; ☹
- ⇒ (c) the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried; ☹]

(4)~~(d)~~ 'minor': means a ⇒ third-country national or stateless person below the age of 18 years ☹ minor as defined in Article [2(10)] of Regulation (EU) No XXX/XXX [Qualification Regulation] ⇐ ~~third-country national or stateless person below the age of 18 years~~;<sup>24</sup>

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

<sup>23</sup> AT, BG, DE, FI, HU, IE, LU, LV: reservation on the extension of the scope

<sup>24</sup> SE: scrutiny reservation.

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↓ 2013/33/EU

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

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↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

(7)(a) ‘material reception conditions’: means the reception conditions that include housing, food, ~~and~~ clothing ⇒ and other essential non-food items<sup>25</sup> matching the needs of the applicants in their specific reception conditions, such as ⇒ personal hygiene products, ⇒ sanitary items, ⇒ bedding, and cleaning products ⇒ ⇐ provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;<sup>26</sup>

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↓ 2013/33/EU

(8)(a) ‘detention’: means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;<sup>27</sup>

(9)(a) ‘accommodation centre’: means any place used for the collective housing of applicants;

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<sup>25</sup> **FR, SI**: provide exhaustive list; the current examples are still not enough.

<sup>26</sup> **AT, BG, DE, SK**: this provision of a daily expenses allowance should be laid down as an optional possibility for MS. **BG**: 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.*". **ES**: replace "daily" by "periodical". **CZ**: Art. 19 uses "daily allowances"; need to harmonise the terminology throughout the proposal.

<sup>27</sup> **HU**: scrutiny reservation: this definition needs to be clarified; confinement in a transit zone should not mean detention automatically.

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↓ new

↻ Council

- (10) ‘absconding’: means the action by which an applicant, ~~↻ without adequate justification, ↻ 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(2a) of ↻ Regulation (EU) No XXX/XXX [Dublin Regulation] or ↻, without authorisation ↻~~ does not remain available to the competent ~~↻ administrative or judicial ↻ authorities or to the court or tribunal ↻ of the Member State where he or she is present ↻;~~<sup>28</sup>
- (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;<sup>29</sup>

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<sup>28</sup> **FR, DE, EL, IE:** scrutiny reservations, must be streamlined with Dublin Regulation. **NL:** see comment in relation to sub-paragraph (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 Regulation point of view; consistency is needed.

<sup>29</sup> **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 if MS will have a choice of defining the criteria of risk of absconding. **FI:** important to look at it from the Dublin Regulation 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)(j) ‘~~the~~ guardian ~~and~~ representative’~~: means a person ~~⇒~~ as defined in Article [4(2)(f)] of Regulation (EU) No XXX/XXX [Procedures Regulation] ~~↔~~ or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. ~~Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;~~

~~(13)(k)~~ ‘applicant with special reception needs’: means ~~the~~ an applicant ~~and~~ 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, ~~and~~ persons with ~~disability~~ disabilities<sup>30</sup> ~~and~~ disabled people, elderly ~~and~~ persons ~~and~~ people, pregnant women, single parents with minor children, victims of human trafficking ~~and~~ in human beings ~~and~~, persons with serious illnesses<sup>31</sup>, persons with mental disorders, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation ~~↔~~.<sup>32</sup>

<sup>30</sup> PL: Replace "persons with disability" with "persons with special needs resulting from disabilities".

<sup>31</sup> BG, PL: "persons with serious illnesses" is unprecise. Add an annex with list of illnesses.

<sup>32</sup> DE, ES: scrutiny reservation. FI: better to look at it on the basis of need rather than of the degree of vulnerability. NL: Stop the sentence at "...mental disorders".

## Article 3

### Scope

1. This Directive ~~shall apply~~  applies  to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the  external  border, in the territorial ~~waters~~   sea  or in the transit zones of  the  ~~Member State~~  States  , as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.
2. This Directive ~~shall~~  does  not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. This Directive ~~shall~~  does  not apply when ~~the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof~~<sup>33</sup> are applied  applies  .
4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from Directive 2011/95/EU Regulation (EU) No XXX/XXX [Qualification Regulation].

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<sup>33</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p. 1).

#### Article 4

##### **More favourable provisions**

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

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↓ 2013/33/EU

⇒ new

↻ Council

## CHAPTER II

### GENERAL PROVISIONS ON RECEPTION CONDITIONS

#### Article 5

#### Information

1. Member States shall inform applicants ↻ of any rights and obligations relating to reception conditions set out in this Directive. ↻, ~~within a reasonable time not exceeding 15 days after they have lodged~~ ⇒ as soon as possible and at the latest when they are lodging ↻ their application for international protection, of ~~at least~~ any established benefits and of the obligations with which they must comply relating to reception conditions ⇒. ↻ This information shall be given as soon as possible and in good time to enable applicants to benefit from these rights or comply with these obligations. ↻<sup>34</sup>

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<sup>34</sup> **IT:** scrutiny reservation: clarify who will be responsible to provide this information because many bodies are involved in Italy. **AT:** scrutiny reservation; replace "as soon as possible and at the latest when they are lodging" by "*within a reasonable time not exceeding 15 days after they have made*". **PL:** the proposed provision is not clear in terms of its practical implication. The Commission proposes that the information process for applicants should take place at the time of submission of the application for international protection, which imposes the obligation to grant this information by border guard in the Polish context. It is not clear though if the developed model to provide information (using the standard template) will also apply in the context of information procedures used by the Head of the Office for Foreigners, which is the responsible authority to examine the application and grant reception conditions. **COM:** information can come as soon as the application is made but full information once application is lodged. The person should be aware of sanctions for non-compliance, therefore information needs to be given quickly. Some information should be given by some authorities, some by others.

~~⤵ In order to avoid absconding, Member States~~ ~~⊖ They shall~~ ~~⤵ in particular ensure~~  
~~that~~ ~~⊖ point out in the information provided that the~~ applicants ~~⤵ understand that they~~  
~~are~~ ~~⊖ is not~~ entitled to the reception conditions set out in Articles 14 to 17 of this Directive  
~~⤵ only~~ ~~⊖ as stated in Article 17a of the same Directive~~ in ~~⤵ the~~ ~~⊖ any~~ Member State  
~~other than~~ where ~~⤵ they are~~ ~~⊖ he or she is~~ required to be present in accordance with  
~~⤵ Article 4 (2a) of~~ ~~⊖ Regulation (EU) No XXX/XXX [Dublin Regulation]~~ ~~↔ in order for~~  
~~them to comply with the obligations set out in that Article.~~

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.<sup>35</sup>

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<sup>35</sup> DE: point on health care needs further clarification.



2. Member States shall ensure that the information referred to in paragraph 1 is in writing ⇒ using a standard template which shall be developed by the European Union Agency for Asylum ⇨ in accordance with Article 12 of Regulation (EU) XXX/XXX [EUAA Regulation], and adapted to the Member States' national systems. This information shall be provided ⇨ and ⇨ in a language that the applicant understands or is reasonably supposed to understand. Where ⇒ necessary ⇨ appropriate, **this information ⇨ it ⇨ may** ⇒ shall ⇨ also be supplied orally ⇒ and adapted ⇨, **where relevant ⇨**, to the needs of ⇨ **unaccompanied ⇨** minors, ~~including unaccompanied minors~~ ⇨.<sup>36</sup>

**⇨ Where, due to the particular language that an applicant understands or is reasonably supposed to understand, Member States are not able to provide in good time the information referred to in paragraph 1 in writing, the information may exceptionally, and until such time as that information can be provided in writing, be provided orally, in a language that the applicant understands or is reasonably supposed to understand. ⇨**

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<sup>36</sup> **BG, FR, NL, PL:** reservation on the use of a common standard template. **ES:** insert "together with EU Member States" after "Asylum". **PT:** does the last sentence refer only to minors or to all applicants?

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article 6

⊗ Travel documents ⊗ ~~Documentation~~

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

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

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

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

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

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

~~5.~~ ~~2.~~ ~~C~~ Member States ~~may~~ ~~⇒~~ ~~⇒~~ ~~may~~ ~~C~~ ~~shall~~ ~~⇐~~ provide applicants with a travel document ~~⇐~~ ~~only~~ ~~⇐~~ when serious humanitarian ~~⇐~~ ~~or other imperative~~ ~~⇐~~ reasons arise that require their presence in another State. ~~⇐~~ The validity of the travel document shall be limited to the purpose and duration needed for the reason for which it is issued. ~~⇐~~<sup>37</sup>

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

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<sup>37</sup> **ES**, supported by **IT, NL, PT**: all references to travel documents should be included in the APR. **IT**: this provision would lead to the increase of the administrative workload. **PL**: objection on issuing travel documents. The indicated conditions to provide applicants with a travel document are very discretionary. This provision provides a large field to abuse and authorities will not be able to clearly verify the purposes of issuing travel documents. **RO**: clarify: what type of document is envisaged to be released to this category? Will it establish a unified form for all MSs or will it be at the discretion of each state? Will travel documents of passport or travel document type be issued? Who will bear the expenses for issuing the travel document (the issuing authorities or the applicant)?

*Article 7*

**Residence and freedom of movement**

1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.<sup>38</sup>

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<sup>38</sup> **AT:** necessary to clarify that the need of an individual decision (which could be appealed against) has to be limited to process-related restrictions like the determination of residence and not to a regular allocation of accommodation in the context of the provision of material reception conditions. Therefore, add, as a second sub-paragraph: "*Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place to be determined by the Member States. The determination of the residence in a specific place need not take the form of an administrative procedure.*" In case that a regular allocation of accommodation would have to be based on such an individual decision, our reception system would get paralyzed, as the formal decision would have to be taken even before the allocation process has started. The AT reception system includes a differentiated system of accommodation to ensure that the allocation process is based on the special needs of every single applicant. That is the reason why the regular allocation process should not get incapable of acting as a result of formalities. The consideration of special and individual needs of every single applicant can only be guaranteed in case of an efficient and flexible allocation system. Assuming that the migration flow increases again significantly, the situation would present itself as follows: until an individual decision in case of every single allocation of accommodation is taken, an efficient management of available capacities would be impossible and the allocation process would be slowed down or – in a worst case scenario – even be paralyzed. The AT reception system included around 90.000 applicants for International protection in 2015. In consequence around 90.000 individual decisions on the allocation of every single applicant would have been necessary. This challenge would have been unmanageable.

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↓ 2013/33/EU (adapted)

⇒ new

⇒ Council

2. **⇒ Without prejudice to national measures exclusively aiming at ensuring a geographical distribution of applicants across a Member State's territory, which need not take the form of an administrative procedure** ~~☐~~ ~~Where necessary, Member States may~~ ⇒ shall ~~where necessary~~<sup>39</sup> ⇐ decide **⇒ where necessary** ~~☐~~ on the residence of ~~the~~ ~~☐~~ an ~~☐~~ applicant ⇒ in a specific place ⇐<sup>40</sup> for ~~☐~~ any of the following **⇒ justified** ~~☐~~ reasons<sup>41</sup> ~~of~~
- (a) public interest ~~☐~~ or ~~☐~~ public order ~~of~~;
- (b) when necessary, for the swift processing and effective monitoring of his or her application for international protection;

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<sup>39</sup> **BG:** while in para 6, there is a "may" clause, here we have a "shall" clause: which is correct?  
**ES:** "may" instead of "shall". **RO:** maintain the previous wording "may establish" so that the alternative measure of that decision not to be an obligation. The wording "where necessary" is extremely vague and leaves room for interpretation in the hands of asylum worker.

<sup>40</sup> **BE:** the distinction between the residence of an applicant in a specific place due to the individual behaviour of the applicant and the residence in a specific place due to national distribution plans which are necessary for the operational management of accommodation should be mentioned.

<sup>41</sup> **PL:** add a category: "public health".

(c) for the swift processing and effective monitoring of his or her procedure for determining the Member State responsible in accordance with **☉ Article 4(2a) of ☾ Regulation (EU) No XXX/XXX [Dublin Regulation];**<sup>42</sup>

(d) to effectively prevent the applicant from absconding<sup>43</sup>, in particular **☉ when it concerns ☾ :**

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

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<sup>42</sup> **ES:** scrutiny reservation. **HU:** does not support the principle of a single Member State responsible, as set out in the relevant provisions of the Dublin-proposal, Chapter III. Negative scrutiny reserve on para 2(c) and (d). **NL:** it is suggested to combine this indent (c) with (d) so that any applicant can be given directions where to stay all the time, and not only to prevent applicants from absconding. The idea behind this is that absconding should not be the starting point. The swift processing and effective monitoring of his or her procedure should be our primary concern. Furthermore, it is important to state explicitly in the text that it is left up to the Member States themselves to choose which material reception conditions are given to certain groups. Suggests the following drafting for (c) and (d):  
(c) 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]; *particularly when it concerns:*

[...]

- [...] applicants who have not complied with the obligation to make an application in the first Member State of entry as set out in Article [4(1)] of Regulation (EU) No XXX/XXX [Dublin Regulation] and have travelled to another Member State without adequate justification and made an application there; or
- [...] applicants *who* are required to be present in another Member State in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation]; or
- [...]for applicants who have been sent back to the Member State where they are required to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation] after having absconded to another Member State.

In those cases, the provision of material reception conditions *may be determined by the member states and* shall be subject to the actual residence by the applicant in that specific place."

**RO:** delete the proposed text, as the content is not relevant in relation to Art. 28 of the Dublin Reg, which specifies clearly that taking a restrictive measure aims at ensuring the transfer and is grounded on an individual analysis with a view to the high risk of absconding.

<sup>43</sup> **HU:** scrutiny reservation: the effectivity of measures taken in case of the risk of absconding of the applicant requires further investigation. **RO:** scrutiny reservation.

– ~~where~~ applicants ~~who~~ are required to be present in another Member State in accordance with ~~Article 4(2a) of~~ Regulation (EU) No XXX/XXX [Dublin Regulation]; or

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

In ~~any of these~~ ~~those~~ cases, the provision of material reception conditions shall be subject to the actual residence by the applicant in that specific place.<sup>44</sup>

3. Where there are reasons for considering that there is a risk that an applicant may abscond, Member States shall, ~~where necessary~~, require the applicant to report to the competent authorities, or to appear before them in person, either without delay or at a specified time as frequently as necessary to effectively prevent the applicant from absconding.<sup>45</sup>

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<sup>44</sup> **BE:** in BE, material reception conditions are always provided subject to the applicant residing in the designated reception centre, otherwise there is only emergency medical care. This conforms to the "may" in article 7.6. **ES:** scrutiny reservation on (d).

<sup>45</sup> **ES, HU:** scrutiny reservation. **NL:** delete this paragraph as any applicant already has to comply with the directions of the MS as mentioned under Art. 7(2) once he is on the territory of that MS. In order to be able to verify whether an applicant respect its obligation to reside in a specific place, an obligation to report to the competent authorities shall be part of this obligation. **PL:** in the case where the consequences referred to in para 3 can be used only when the applicant's restriction is applied to in para 2, clarify the provision to these restrictions, so that they can be applied independently of each other.

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↓ 2013/33/EU (adapted)

⇒ Council

4. Member States shall provide for the possibility of granting applicants temporary permission to leave ~~the~~  their   assigned area or to reside outside of their allocated  place of residence ~~mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1.~~ Decisions shall be taken ~~individually~~, objectively and impartially  on the merits of the individual case  and reasons shall be given if they are negative.<sup>46</sup>

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

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↓ 2013/33/EU

⇒ new

⇒ Council

5. Member States shall require applicants to inform the competent authorities of their current ⇒ place of residence ⇒ and ~~C or~~ ⇐ address ⇒ . ~~C~~ ⇒ ⇒ and ~~C or~~ a telephone number where they may be reached ⇒ . Member states shall require applicants to ~~C~~ ⇐ and notify any change of ⇒ ⇒ residence, address and ~~C~~ telephone number or ⇐ address to such authorities as soon as possible.<sup>47</sup>

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<sup>46</sup> **DE, PL:** clarify "place of residence" and "assigned area". **COM:** "place of residence" refers to para 2.; "assigned area" to para 1.

<sup>47</sup> **HU:** para 5 does not contain the requirement of notification of any changes of place of residence, while it contains the notification of any changes of the address and telephone number. Clarifying its reason is necessary. According to paragraph 5, it is sufficient to inform the authorities of their telephone number, however, according to para 8, applicants shall be informed in writing about decisions restricting their freedom of movement.



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↓ 2013/33/EU (adapted)

~~36.~~ Member States may<sup>48</sup> make provision of the material reception conditions subject to actual residence by the applicants in a specific place, ~~to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.~~

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↓ new  
↻ Council

7. Decisions referred to in this Article ↻,<sup>49</sup> which affect applicants individually, ↻ shall be based on the individual ~~behaviour and particular~~ situation of the person concerned, including with regard to applicants with special reception needs, and with due regard to the principle of proportionality.<sup>50</sup>

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<sup>48</sup> **BG**: see comment on para 2.

<sup>49</sup> **AT**: replace "this Article" by "*paragraph 2*".

<sup>50</sup> **CZ, EL, IT, NL, PT**: too strict, extremely difficult to apply in practice. **FR**, supported by **AT, BE, EL**: decisions should not be based on the individual behaviour of the applicant; there are other reasons. For example, the desire to spread out applicants on the territory is due to external circumstances. **COM**: geographical spreading is included in para 2(a) and (c).

8. Member States shall state reasons in fact and, where relevant, in law in any decision taken in accordance with this Article<sup>51</sup> ~~which affect applicants individually~~. Applicants shall be immediately informed in writing, ~~in a language which they understand or are reasonably supposed to understand~~, of the adoption of such a decision, of the procedures for challenging ~~this~~ the decision in accordance with Article 25 and of the consequences of non-compliance with the obligations imposed by ~~this~~ the decision. ~~The applicants shall be informed of such a decision and its content in a language which they understand or are reasonably supposed to understand.~~<sup>52</sup>

↓ 2013/33/EU (adapted)

## Article 8

### Detention<sup>53</sup>

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant ~~in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection~~<sup>54</sup>.

<sup>51</sup> **AT:** replace "this Article" by "*paragraph 2*".

<sup>52</sup> **EL,** supported by **IT:** scrutiny reservation: this requirement may prove to be extremely difficult in practice, especially in cases of particular pressure. **IT:** this paragraph is in line with the right to the freedom of movement. Nonetheless, its effects are not clearly predicted. The decision therein should not have suspensive effect otherwise the goal of the provision is nullified. Moreover, is the possibility of challenging this decision foreseen? Does reference to Art. 25 entail that free legal assistance is extended to this? **NL:** agrees that it is important that the applicant should be well informed about the content of a decision. However, it is equally important that restricted measures can be imposed as quickly as possible. Suggests the following wording: " Member States [...] *will ensure that the applicant understands the content of the measure taken and the limits of the area or place in which he or she is allowed to stay.*". **PT:** reservation.

<sup>53</sup> **SI:** reservation on Art. 8.

<sup>54</sup> ~~See page 60 of this Official Journal.~~

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
3. An applicant may be detained only:<sup>55</sup>
  - (a) in order to determine or verify his or her identity or nationality;
  - (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

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<sup>55</sup> **AT:** "may" to replace with "shall" for a clear signal for the applicant. **PL:** add public health and the possibility of detention resulting from non-compliance arising under article 13 (medical screening). MS may oblige applicant to submit to medical examination if justified on grounds of public health. The Directive although doesn't allow the MS to impose sanctions for not fulfilling that obligation. Such a provision is ineffective. Any imposition of obligations on the applicant (the obligation to undergo medical screening) should be enforced. Non-execution of the obligation should be subject to the consequences laid down in the Directive.

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↓ new

(c) in order to ensure compliance with legal obligations imposed on the applicant through an individual decision in accordance with Article 7(2) in cases where the applicant has not complied with such obligations and there is a risk of absconding of the applicant.<sup>56</sup>

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↓ 2013/33/EU

⇒ new

☉ Council

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

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<sup>56</sup> **BE**, supported by **IE**, **NL**: this is a step in the right direction but no support to the cumulative condition of non-compliance to Art. 7(2) added to the risk of absconding. In practice if the applicant has not complied with the obligations laid down in Art. 7, he has probably absconded already and we will not be able to detain him. The assessment of the risk of absconding should be sufficient as a ground for detention. **CZ**: this provision evokes an alternative to detention; delete the reference to Art.7(2). Overlap between (b) and (c). **DE**, **ES**, **FR**, **SE**: scrutiny reservation. **IT**: reservation; delete point (c). Detention in reaction to a non-compliance with the obligation to stay in a specific place is disproportionate and may raise serious problems in those systems where detention centres have reception standards different from the reception centres. **HU**: does not support the principle of a single Member State responsible, as set out in the relevant provisions of the Dublin-proposal, Chapter III; therefore HU enters a reserve on para 3(c). **NL**: suggests to simplify this third criterion by referring to Art. 7(2) which is more comprehensive than mentioning the risk of absconding. Only mentioning the risk of absconding can be confusing given all the grounds mentioned in Art. 7 to take restrictive measures. Suggests the following wording: "(c) [...] in cases where the applicant has not complied with [...] the obligations following a decision in accordance with article 7(2) [...]."

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↓ 2013/33/EU

⇒ Council

(e)~~(d)~~ when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>57</sup>, in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the **asylum** procedure ⇒ **for international protection** ☹ , that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision,<sup>58</sup>

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<sup>57</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 343, 23.12.2011, p.1).

<sup>58</sup> **CZ:** delete "merely" because superfluous. **NL:** amend point (e) to include situations where a return procedure has been started, but has not yet led to detention: "(e) when he or she is [...] subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council [...], or is subject to preparations for such a procedure in order to prepare the return and/or carry out the removal process, (...)". Some TCN will try to hamper removal and apply for asylum directly after being detained to avoid or complicate detention. The Netherlands suggest a more effective solution for these situations. The wording is derived from the wording in the article 24(2) of the SIS II Regulation (EC) No 1987/2006 (SIS II). NL believes that the current wording is too restrictive in light of the ruling of the CJEU in C-601/15.

~~(f)(e)~~ when protection of national security or public order so requires;<sup>59</sup>

~~(g)(f) in accordance with Article 2829 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person<sup>60</sup> XXX/XXX [Dublin Regulation].~~

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↓ 2013/33/EU (adapted)

⊗ All ~~⊗~~the ~~⊗~~ above ~~⊗~~ grounds for detention shall be laid down in national law.<sup>61</sup>

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↓ 2013/33/EU  
↻ Council

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

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<sup>59</sup> **NL:** though aware that no changes are proposed for (f), suggests changing the text accordingly to Case law JN C 601/15PPU: "(f) [...] when the applicant has been convicted in a Member State of an offence carrying a penalty involving deprivation of liberty of at least one year or when protection of national security so requires".

<sup>60</sup> ~~See page 31 of this Official Journal.~~

<sup>61</sup> **DE:** scrutiny reservation. **RO:** cannot support supplementing it, because mention should be made in domestic law only about the reasons chosen by each Member State. Thus, considers appropriate to maintain the current text of the Directive. **SE:** reservation.

### 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.

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<sup>62</sup> **RO:** Linguistic reservation.

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<sup>63</sup>*

**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.

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<sup>63</sup> **RO:** Linguistic reservation.

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].
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↓ 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.

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.

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↓ 2013/33/EU

2. Minors<sup>64</sup> shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.
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↓ 2013/33/EU (adapted)

⇨ new

↻ Council

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

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<sup>64</sup> **PL:** special attention should be paid to precisely formulating 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 17a<sup>65</sup>, unless the provision of education is of limited value to the minors due to the very short period of their detention<sup>66</sup>. They shall also have ~~☹~~ their right to education must be secured ~~☞~~ the possibility to engage in leisure activities, including play and recreational activities appropriate to their age. ~~☹~~ they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

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↓ 2013/33/EU

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

Unaccompanied minors shall never be detained in prison accommodation<sup>67</sup>.

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↓ 2013/33/EU (adapted)

⇒ new

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

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<sup>65</sup> **DE, EL, FR, LU, SE:** scrutiny reservation on education aspects. Reference to article 17a must be clarified.

<sup>66</sup> **FR:** How will the right to education for minors work in practice given the short period? Replace "limited value" with "is too difficult to provide". What is the definition of "very short"?

<sup>67</sup> **DE:** scrutiny reservation

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↓ 2013/33/EU

☞ Council

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

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.
5. Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.

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

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

### *Article 12*

#### **Families**

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

### *Article 13*

#### **Medical screening**

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

### *Article 14*

#### **Schooling and education of minors**

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

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

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

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

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

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

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↓ 2013/33/EU

⇒ new

⇒ Council

*Article 15*

**Employment<sup>68</sup>**

1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance administrative decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.<sup>69</sup>

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↓ new

⇒ Council

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

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<sup>68</sup> **AT, BG, DE, EL, ES, FI, LU:** scrutiny reservation on the whole article, including new proposals. **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. **SE:** the CLS opinion is required on the compatibility of the social security provision with the provisions of the Treaty.

<sup>69</sup> **BE:** supports a shorter period (in BE, the deadline is already 4 months). **AT:** mention that access to labour market is in accordance with national law.

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

↓ 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. <sup>70</sup>

For reasons of labour market policies, Member States may ~~give priority to~~ ☞ ☞, verify whether a specific vacancy that an employer is considering s filling by an applicant who has been granted access to the labour market in accordance with paragraph 1, could be filled by nationals ☞ ~~verify whether a vacancy could be filled by nationals of the Member State concerned, or by other~~ ☞ Union citizens, ~~and nationals of States parties to the Agreement on the European Economic Area, and to legally resident~~ ☒ or by ☒ third-country nationals ☒ lawfully residing in that Member State ☒. ☞, In in such a which case the Member State may refuse that the employer employs the applicant for the specific vacancy. ☞<sup>71</sup>

<sup>70</sup> **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. **AT:** delete entire sub-paragraph.

<sup>71</sup> **SE:** scrutiny reservation on whole paragraph. **ES, FR, NL:** reservation: Two-step system is cumbersome, labour market tests must be done before granting applicants access. **CZ:** mention that process should be conducted in accordance with national law **AT:** Refusal to employ the applicant should be done by the employer, not the MS. Mention possibility for MS to determine which branches of the labour market are accessible for asylum seekers. Reinsert reference to EEA citizens. **CZ, IT:** delete last sentence as it creates extra burden for MS and is superfluous.



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↓ new

↻ Council

3. Member States shall **provide** ↻ **ensure that** ☹ applicants ↻ **who have been granted access to the labour market in accordance with paragraph 1** ☹ **with** ↻ **enjoy** ☹ equal treatment with nationals as regards:<sup>72</sup>
- (a) ↻ **terms of employment, including the minimum working age, and,** ☹ **working conditions, including pay and dismissal,** ↻ **working hours,** ☹ **leave and holidays, as well as health and safety requirements at the workplace;**
- (b) **freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;**<sup>73</sup>
- (c) **education and vocational training, except study and maintenance grants and loans or other grants and loans related to education and vocational training** ↻ **and the payment of fees in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the specific employment activity** ☹;<sup>74</sup>

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<sup>72</sup> **EL, IE, PT, RO, SI:** scrutiny reservation on whole paragraph 3. **CZ, DE, NL, SE:** clarify that equal treatment should only apply when people are working. **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 this new text is proposed. 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.

<sup>73</sup> **IT:** it cannot be a compulsory provision as it introduces for asylum seekers a treatment equal to the one to which beneficiaries of international protection are entitled. The repercussions on national legal systems risk to be serious. Therefore point (b) should be deleted or should be a "may" provision.

<sup>74</sup> **CZ:** goes too far. **LT:** scrutiny reservation.

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

~~⊖ (ii) ⊖~~ ~~facilitating, to the extent possible, full access ⊖ to the procedures in point (i) ⊖ for those applicants who cannot provide documentary evidence of their qualifications ⊖, without prejudice to Articles 2(2) and 3(3) of Directive 2005/36/EC; and ⊖~~

~~⊖ (iii) ⊖~~ access ⊖ to appropriate schemes for the assessment, validation and ~~⊖ recognition ⊖ accreditation ⊖ of applicants' prior learning outcomes and experience ⊖ of their prior learning.~~<sup>75</sup>

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

~~⊖ 3a. ⊖~~ Member States may restrict equal treatment<sup>76</sup> of applicants ~~⊖ who have been granted access to the labour market in accordance with paragraph 1 ⊖~~<sup>77</sup>:

~~(i) ⊖ (a) ⊖~~ pursuant to point (b) of ~~this~~ paragraph ~~⊖ 3 ⊖~~, by excluding them from taking part in the management of bodies governed by public law and from holding an office governed by public law;<sup>78</sup>

~~⊖ (b) ⊖ (ii) ⊖~~ pursuant to point (c) of ~~this~~ paragraph ~~⊖ 3 ⊖~~, to education and vocational training which is directly linked to a specific employment activity ~~⊖ . ⊖ ;~~

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<sup>75</sup> **AT:** delete entire paragraph (d) **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.

<sup>76</sup> **HU:** need to investigate the possibility of providing equal treatment with nationals.

<sup>77</sup> **IT, NL:** No need for text after "applicants", definition of applicants entitled to equal treatment is already at the start of paragraph 3. **CZ:** separate restrictions from previous text by creating a new paragraph.

<sup>78</sup> **HU:** clarify which bodies governed by public law in paragraph 3, point i. refers to, and why the restriction is allowed.

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

⇒ **3b** ~~(e)~~ ⇒ **Member States shall ensure that applicants who have been granted access to the labour market and who are engaged in gainful economic activity enjoy equal treatment with nationals as regards** ~~branches of social security, as defined in Article 3 (1) and (2) of Regulation (EC) No 883/2004~~ ⇒ **for those applicants who are engaged in gainful economic activity** ~~.~~<sup>79</sup>

⇒ **3c.** ~~(iii)~~ ⇒ **Without prejudice to Regulation (EU) No 1231/2010, Member States may restrict equal treatment of applicants who have been granted access to the labour market and who are engaged in gainful economic activity** ~~pursuant to point (e) of this paragraph~~ by excluding family benefits and unemployment benefits, **without prejudice to Regulation (EU) No 1231/2010.**<sup>80</sup>

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

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<sup>79</sup> **IE:** 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, delete or turn into a "may" provision. **NL:** reservation because it refers to equal treatment of applicants with regard to branches of social security. This is an expansion of the rights of asylum seekers which does not correspond to the main goal of preventing secondary movements, as social security system differ widely between MS. MS with an extensive social security system will become more attractive. This provision is at odds with many national social security schemes that grant access to third country nationals only if they are legally staying/residing in their territory. The condition of legal stay (residence permit)/residence is also found throughout the EU acquis. In all the EU instruments that provide equal treatment obligations for third-country nationals this equal treatment is linked to some form of legal stay (residence permit) or residence. **SI:** scrutiny reservation and reservation because this provision is disproportionate when considering applicants.

<sup>80</sup> **SE:** delete.

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

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↓ 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.

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↓ new

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

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↓ 2013/33/EU (adapted)

#### ~~Article 16~~

##### ~~Vocational training~~

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

~~2. Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15.~~

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article ~~17~~ 16

**General rules on material reception conditions ↻ and health care ↻ ~~and health care~~<sup>81</sup>**

1. Member States shall ensure that material reception conditions are available to applicants ~~when~~  
⇒ from the moment ⇐ they make their application for international protection ⇒ in  
accordance with Article [25] of Regulation (EU) No XXX/XXX [ ↻ Asylum ↻ Procedures  
Regulation] ⇐.<sup>82</sup>

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<sup>81</sup> **FR, SI:** scrutiny reservation on the whole article.

<sup>82</sup> **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 MS. Ensuring the material reception conditions from the moment of making an application would lead to practical difficulties and is not appropriate. After the wish for international protection is expressed, the applicant can refuse to submit an application for protection. In relation to this, we think that it would be more appropriate for the lodging/registration of an application for international protection to be a reference moment. **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.

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↓ 2013/33/EU

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

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↓ 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 subject to the condition that applicants do not have sufficient means<sup>83</sup> 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~~ ⌚.

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<sup>83</sup> NL: clarify: is this part of an assessment of applicants means?

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions ~~☞ and of the health care provided in accordance with~~ ~~☞ and of the health care provided for in this Directive, pursuant to the provision of paragraph 3,~~ if the applicants have sufficient ~~☞ means to have an adequate standard of living in accordance with paragraph 2 resources~~ ~~☞~~, for example if they have been working for a reasonable period of time, ~~☞ and, with regard to health care, if the health care provided to applicants is not provided free of charge to nationals~~ ~~☞~~

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

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↓ new

5. When assessing the resources of an applicant, when requiring an applicant to cover or contribute to the cost of the material reception conditions<sup>84</sup> 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.~~<sup>85</sup>

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<sup>84</sup> AT: insert "and health care" after "conditions".

<sup>85</sup> CZ: reservation because this provision goes beyond practical feasibility, creates administrative burden. DE: scrutiny reservation. SI: difficult to apply in practice; it is redundant, the provisions of the current Directive are sufficient. COM: it is supposed to be an individual assessment; it is necessary in addition to para 3 and 4.

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↓ 2013/33/EU

⇒ new

↻ Council

~~6.5.~~ Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by ~~the~~ practice to ensure adequate standards of living for nationals.<sup>86</sup> ↻ These Member States shall inform the Commission and the [European Union Agency for Asylum] of these level(s) of reference<sup>87</sup> applied by national law or practice. ↻ Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially 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.~~ ↵

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<sup>86</sup> **PL:** streamlining of terms: "adequate" or "dignified"?

<sup>87</sup> **ES, FR, IT:** need to consider different levels of reference within Member States (for instance in ORs).



↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article ~~18~~ 17

**Modalities for material reception conditions<sup>88</sup>**

1. Where housing is provided in kind, it ~~is~~ ~~to~~ ~~be~~ ~~provided~~ ~~by~~ ~~the~~ ~~Member~~ ~~States~~ ~~to~~ ~~ensure~~ ~~that~~ ~~such~~ ~~housing~~ ~~provides~~ ~~for~~ ~~the~~ ~~applicant~~ ~~with~~ ~~an~~ ~~adequate~~ ~~standard~~ ~~of~~ ~~living~~ ~~which~~ ~~guarantees~~ ~~applicants'~~ ~~subsistence~~ ~~and~~ ~~protects~~ ~~their~~ ~~physical~~ ~~and~~ ~~mental~~ ~~health~~.<sup>89</sup> ~~To~~ ~~this~~ ~~effect~~ ~~that~~ ~~end~~, the housing provided shall ~~and~~ ~~take~~ ~~one~~ ~~or~~ ~~a~~ combination of the following forms:
- (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;
  - (b) accommodation centres ~~which guarantee an adequate standard of living~~;
  - (c) private houses, flats, hotels or other premises adapted for housing applicants.<sup>90</sup>

<sup>88</sup> ES: reservation on this article.

<sup>89</sup> AT, DE, EE, LU, NL, 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.

<sup>90</sup> ES: paragraph 1 should read as follows (or see another option for Article 17 in paragraph 9):  
1. Where housing is provided in kind, it shall [...] take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border, in transit zones or in first accommodation centres; (b) accommodation centres which guarantee an adequate standard of living; (c) private houses, flats, hotels or other premises adapted for housing applicants which guarantee an adequate standard of living;"

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↓ 2013/33/EU

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.

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↓ 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).~~

4. Member States shall take appropriate measures to prevent ~~as far as possible~~ assault and gender-based violence, including sexual assault and harassment ~~when providing housing in accordance with paragraph 1 accommodation~~ ~~within the premises and accommodation centres referred to in paragraph 1(a) and (b).~~<sup>91</sup>
- 

↓ 2013/33/EU

5. Member States shall ensure, as far as possible, that dependent adult applicants<sup>92</sup> with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.
6. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.
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↓ 2013/33/EU

⇒ new

7. Persons ~~providing material reception conditions, including those~~ working in accommodation centres, shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.<sup>93</sup>

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<sup>91</sup> **DE:** scrutiny reservation. **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? **HU:** clarify "accommodation". **COM:** appropriate measures will depend on the type of accommodation.

<sup>92</sup> **PL:** clarify definition of "dependent adult applicants".

<sup>93</sup> **PL:** this provision extends the list of employees, which should be provided with training courses, to all providing material reception conditions. It seems appropriate that the scope of this provision is limited only to individuals directly working with applicants.

8. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.
9. In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:
  - (a) an assessment of the specific needs of the applicant is required, in accordance with Article ~~22~~ 21;
  - (b) housing capacities normally available are temporarily exhausted.<sup>94</sup>

<sup>94</sup> **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 centre aimed at providing temporary accommodation.*".

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Such different conditions shall in any ~~event~~ ☒ circumstances ☒ ~~cover basic needs~~ ⇒ ensure access to health care in accordance with Article 18 and a **dignified** standard of living<sup>95</sup> for all applicants ↻ **which is** in accordance with Union law and international obligations, **in particular by the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child** ↻ ↵<sup>96</sup>.

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↓ new

↻ Council

When **resorting to** ↻ **applying** ↻ ~~those~~ ↻ ~~these~~ ↻ exceptional measures, the Member State concerned shall inform the Commission and the European Union Agency for Asylum. It shall also inform the Commission and the European Union Agency for Asylum as soon as the reasons for applying these exceptional measures have ceased to exist.<sup>97</sup>

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<sup>95</sup> **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.

<sup>96</sup> **DE:** scrutiny reservation, reference to international obligations is too vague.

<sup>97</sup> **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, PL:** 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. ~~From the moment a Member State becomes aware, based on evidence obtained in particular from the Eurodac system, that it is not the Member State where an applicant is required to be present in accordance with Article 4(2a) of Regulation (EU) No XXX/XXX [Dublin Regulation], the applicant shall not be entitled to the reception conditions set out in Articles 14 to 17 in any Member State other than the one in which he or she is required to be present in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], without prejudice to Union law and international obligations.~~
2. ~~Member States shall ensure a dignified standard of living for all applicants.~~
3. ~~1a. Notwithstanding paragraph 1, p Pending the transfer under Regulation (EU) No XXX/XXX [Dublin Regulation] of a minor to the Member State responsible, Member States shall provide him or her with access to suitable education, which may include access to national education systems educational activities.~~

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↓ 2013/33/EU (adapted)

⇒ new

Article ~~19~~ 18

**Health care**<sup>98</sup>

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

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↓ 2013/33/EU

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

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<sup>98</sup> **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. **HU:** scrutiny reservation; does not support the principle of a single Member State responsible, as set out in the relevant provisions of the Dublin-proposal, Chapter III. Asylum applicants should only have the right to "emergency health care", and not to "the necessary health care" **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.

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

### CHAPTER III

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

Article ~~20~~ 19

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

1. ⇒ With regard to ↻ **an** applicants who ~~are~~ **is** required to be present on their territory in accordance with Article 4(2a) of ↻ Regulation (EU) No XXX/XXX [Dublin Regulation], ↻ Member States may ⇒ ~~, in the situations described in paragraph 2~~ ↻:

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↓ new

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



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↓ 2013/33/EU (adapted)

⇒ new

~~(b)~~—reduce or, in exceptional and duly justified cases, withdraw ~~material reception conditions~~ ⇒ the daily expenses allowances, ←<sup>99</sup>

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<sup>99</sup> **BE:** to reduce or withdraw the daily allowances is not a deterrent sanction. In BE the average allowance is 30€per month. It should be possible to withdraw material reception conditions and only provide emergency healthcare in cases set out in article 19 (2) a to h. Moreover sanctions are a transversal issue which should be discussed through asylum proposals. **BG:** reservation in relation to BG's proposal and comment in Art. 2(7). At the same time, BG understands that in case MSs are exempted from the obligation to provide a daily expenses allowance to applicants, the former would be deprived of the opportunity to apply the disciplinary clause in paragraph 1(b) for reducing or withdrawing the daily allowances in the situations described in paragraph 2. In relation to the above, the provision in Article 19 is to be further considered. BG introduces a scrutiny reservation. **CZ:** should be "financial" allowances instead of "daily" allowances. **ES:** keep the original text (maintain "material reception conditions") as, among other reasons, not all the countries (e.g. Spain) have daily allowances. **CY:** reservation; disagrees with the deletion of 'material reception conditions' in 1(b) in a way that MS can only reduce or withdraw the daily allowance. **NL:** it seems that there is an attempt to merge two objectives in the same article but failure in providing an efficient sanctions system against applicants not cooperating. **AT:** the existing paragraph 1 regarding to the possibility to withdraw material reception conditions should be maintained; keep "material reception conditions" and delete "the daily allowances". **SI:** scrutiny reservation on the difference between (a) and (b). **FI:** clarify para 1 further and its link with para 2; there should be "may" in both paragraphs. **COM:** it is difficult to withdraw or reduce housing, food because they are minimum standards of living; little room for manoeuvre in the case of material reception conditions. Regarding the wording "daily" or "financial" allowances, proposes to stick to "daily" which is part of the material reception conditions while "financial" might be confusing.

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

2. ~~⊗~~ Paragraph 1 applies ~~⊗~~ where **an applicant** ↻ he or she Ⓞ:<sup>100</sup>

- (a) abandons the ~~place of~~ residence ↻ in a specific place Ⓞ determined by the competent authority without informing it or, if requested, without permission ⇒, or absconds ⇐; or
- (b) does not ↻ **cooperate with the responsible authorities, including by not complying** Ⓞ with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or<sup>101</sup>
- (c) has lodged a subsequent application as defined in Article [4(2)(i)] of Directive 2013/32/EU Regulation (EU) No XXX/XXX [Asylum Procedures Regulation];<sup>102</sup> or
- ⊗ (d) has concealed financial resources, and has therefore unduly benefited from material reception conditions; or ⊗

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<sup>100</sup> **FR:** scrutiny reservation; add other grounds, for example, the not effective cooperation of the person in the registration process. **COM:** up to the MS to propose additional needs.

<sup>101</sup> **CY:** reservation; according to paragraph 2(b) in case that an applicant does not appear in personal interviews or doesn't comply with reporting duties or with requests to provide information, MSs can apply paragraph 1 and can reduce or withdraw the daily allowance. On the other hand, for the same reasons, MSs can reject the application as abandoned, according to Art. 39 APR, and therefore can withdraw all the material reception conditions.

<sup>102</sup> **EL:** in case of an applicant who lodges a subsequent application in another MS as provided for in Art. 4(2)(i) APR [and notwithstanding EL reservation with regard to this article], which is the MS that would reduce the reception conditions?

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↓ new

→ Council

- (e) has seriously → or repeatedly ← breached<sup>103</sup> the rules of the accommodation centre or  
→ has ← behaved in a seriously violent way<sup>104</sup>; or
- (f) fails to → participate in attend ← compulsory integration measures →, provided or  
facilitated by the Member State ←; or<sup>105</sup>
- ~~(g) has not complied with the obligation set out in Article [4(1)] of Regulation (EU) No  
XXX/XXX [Dublin Regulation] and has travelled to another Member State without  
adequate justification and made an application there; or~~
- (h) has been sent back after having absconded to another Member State.

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<sup>103</sup> **EL:** clarify the notion "serious breach". more precise wording is needed.

<sup>104</sup> **BE:** sanctions in 1(a) and (b) seem rather soft for seriously violent behaviour. In BE more severe sanctions are possible. **FI:** scrutiny reservation on "seriously". **COM:** "seriously" is used in the current Directive; open to suggestions.

<sup>105</sup> **CZ,** supported by **IE:** to delete because reservation on mandatory integration measures. **FI:** to reformulate because we talk about people we don't know if they will stay. **COM:** integration measures are not compulsory. If there are integration measures, they can be withdrawn/reduced

↓ 2013/33/EU (adapted)

⇒ new

↻ Council

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

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

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

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

~~4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.~~<sup>106</sup>

~~3.5.~~ Decisions ~~⇒ replacement,~~ ~~⇐~~ **⇐ in accordance with paragraphs 1, 1a and 1b** ~~☉ material reception conditions~~ or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken ~~individually,~~ objectively and impartially ~~☒~~ on the merits of the individual case ~~☒~~ and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to ~~persons covered by Article 21~~ ~~⇐~~ applicants with special reception needs<sup>107</sup> ~~⇐~~, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article ~~19~~<sup>18</sup> and shall ensure a<sup>108</sup> standard of living **⇐ in accordance with Union law and international obligations** ~~☉~~ for all applicants.

~~4.6.~~ Member States shall ensure that **⇐ the daily expenses allowance in accordance with paragraph 1, or material reception conditions in accordance with paragraph 1a,** ~~☉~~ ~~material reception conditions~~ are not ~~⇒ replaced,~~ ~~⇐~~ withdrawn or reduced before a decision is taken in accordance with paragraph ~~35.~~

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<sup>106</sup> **PL:** this paragraph should be reintroduced for MS to be able to apply their own sanctions.

<sup>107</sup> **FI:** is the addition of "applicants with special reception needs" necessary? should not be for all applicants?

<sup>108</sup> **AT:** the definition of a "dignified standard of living" and the difference in level and extent to an "adequate standard of living" needs to be clarified. Furthermore the minimum level of material reception conditions in case of withdrawal needs to be clarified as well. AT insists on the current possibility of a maximum withdrawal of material reception conditions as a sanction for applicants persistently refusing the cooperation with the competent authorities and other relevant procedural obligations.

## 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 person~~**

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

~~☉~~ ~~The authority with which the application for international protection is made~~<sup>110</sup> shall ~~initiate~~ ~~☉~~ that assessment shall be initiated ~~⇒ as early as possible~~ ~~↔~~<sup>111</sup> ~~within a reasonable period of time after an application for~~ ~~☉~~ ~~by identifying~~ **first signs of** special reception needs based on **visible physical** signs<sup>112</sup> or **on** the applicants' statements or behaviour. That ~~assessment~~ ~~☉~~ and may be integrated into existing national procedures ~~⇒~~ or into the ~~assessment referred to in Article [19] of Regulation (EU) No XXX/XXX [~~ ~~☉ Asylum~~ ~~☉ Procedures Regulation]~~ ~~↔~~. Member States shall ~~☉~~ ~~continue that assessment throughout the~~ ~~asylum procedure for international protection.~~ ~~☉~~<sup>113</sup> ~~ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they~~

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

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<sup>109</sup> **AT, BE, BG, DE, EL, IT, LU:** reservation on new proposals. **ES:** reservation on both paragraphs 1 and 2.

<sup>110</sup> **SI,** supported by **AT:** replace with "reception authority". **IT:** not necessarily an authority, it could also be an international organisation.

<sup>111</sup> **BE:** reinsert "as early as possible".

<sup>112</sup> **EL:** replace "physical signs" with "obvious signs".

<sup>113</sup> **FR:** prefers previous text. **NL,** supported by **AT:** better than previous text, but a distinction should be made between the identification of signs and the responsibility for the assessment of special needs.

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↓ 2013/33/EU

→ Council

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

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↓ new

→ Council

2. For the purposes of paragraph 1, Member States shall ensure that the personnel of the authorities<sup>114</sup> 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;<sup>115</sup>

(b) include information concerning the applicant's special reception needs in the applicant's file → **held by the competent authorities** ← , together with the indication of the signs referred to in point (a) as well as recommendations as to the type of support that may be needed by the applicant; → **and** ←

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<sup>114</sup> **HU:** reservation on paragraph 2. **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.

<sup>115</sup> **EL:** scrutiny reservation on the requirement to train constantly the personnel of all authorities involved, in order to be able to detect first signs that an applicant needs special reception conditions. Clarify what kind of training is envisaged.



(c) ~~following subject to their prior consent,~~ refer applicants to the appropriate medical practitioner ~~a doctor or a~~ psychologist for further assessment of their psychological and physical state where there are indications that their psychological or physical state could affect their reception needs, including where there are indications that applicants may have been victims of torture, rape or of another serious form of psychological, physical or sexual violence ~~.~~ ~~and that this could affect the reception needs of the applicant; and~~<sup>116</sup>

(d) The competent authorities shall take into account the result of the ~~that~~ examination referred to in point (c) when deciding on the type of special reception support which may be provided to the applicant.<sup>117</sup>

↓ 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].

<sup>116</sup> FI: introduce flexibility in the text to take account of MSs systems.

<sup>117</sup> CZ: to add that the result of the examination must be communicated by the applicant to the competent authority. Without approval of the applicant there is no possibility to obtain the result of the examination. 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.

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↓ 2013/33/EU (adapted)

↻ Council

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

[46. Those working ⇒ with minors, including ↻ **the temporary representative and the representative as provided for in Article 23** ☒ ↻ ~~with unaccompanied minors~~, ⇒ shall not have a verified ↻ **criminal** ☒ record ~~of child-related crimes or offenses~~ and ↻ shall ~~have had and shall continue to~~ receive ☒ continuous and ☒ appropriate training concerning ⇒ the rights and ↻ ~~their~~ needs ⇒ of unaccompanied minors, including ↻ **those relating to** ☒ **concerning** any applicable child safeguarding standards ↻ , and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.]

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

Article ~~24~~ 23

### Unaccompanied minors<sup>118</sup>

{↻ **-1. Member States shall ensure that an unaccompanied minor is assisted in such a way to ensure that his or her general well-being is safeguarded and which enables the unaccompanied minor to benefit from the rights and comply with the obligations under this Directive.** ☒

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<sup>118</sup> AT, BG, ES, PL, SE: scrutiny reservation.

- ⇒ **1. For the purposes of paragraph -1, where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, Member States shall designate:** ☺
- ⇒ **(a) a temporary representative within forty-eight hours from when the application is made; and** ☺
- ⇒ **(b) a representative within fifteen working days from when the application is made.** ☺
- ⇒ **When a temporary representative is designated, his or her duties shall cease upon the designation of a representative.** ☺
- ⇒ **Where a representative is designated within forty-eight hours from when an unaccompanied minor makes an application, Member States need not apply point (a) of the first paragraph. In such cases, the representative shall carry out the tasks listed in paragraph 1d in addition to those listed in paragraph 1e.** ☺
- ⇒ **The duties of the temporary representative or representative shall cease when the competent authorities consider that the applicant is not a minor following the assessment referred to in Article 24 (1) of Regulation (EU) XXX/XXX [Asylum Procedures Regulation], or is no longer an unaccompanied minor.** ☺
- ⇒ **1a. When an organisation is designated as a temporary representative or as a representative, it shall assign a natural person for carrying out the tasks set out in paragraphs 1d and 1e respectively.** ☺
- ⇒ **1b. The temporary representative or the representative provided for in paragraph 1 of this Article may be the same as those provided for in Article 22(4) of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation].** ☺

- ⇒ **1c. The competent authorities shall immediately:** ☹
- ⇒ **a) inform the unaccompanied minor, in a child-friendly manner and in a language he or she can reasonably be expected to understand, of the designation of his or her temporary representative or representative and about how to lodge a complaint against them in confidence and safety;** ☹
  - ⇒ **b) inform the authority responsible for providing reception conditions that a temporary representative or a representative has been designated for the unaccompanied minor; and** ☹
  - ⇒ **c) inform the temporary representative and the representative of relevant facts pertaining to the unaccompanied minor.** ☹
- ⇒ **1d. The temporary representative shall meet the unaccompanied minor and carry out the following tasks:** ☹
- ⇒ **a) further explain where necessary the information to be provided in accordance with Article 5;** ☹
  - ⇒ **b) liaise with the authorities responsible for reception conditions to ensure immediate access for the unaccompanied minor to material reception conditions and health care where needed;** ☹
  - ⇒ **c) assist in case of restrictions referred to in Articles 7 or 19; and** ☹
  - ⇒ **d) assist in case of detention.** ☹
- ⇒ **1e. The representative shall meet the unaccompanied minor and provide assistance to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive.** ☹

- ⇒ **1f. The temporary representative and the representative shall perform his or her tasks in accordance with the principle of the best interests of the child. They shall have the necessary knowledge of the rights and special needs of minors and shall not have a verified criminal record.** ☺
- ⇒ **1g. A temporary representative or a representative shall be changed where necessary, in particular when the competent authorities consider that he or she has not adequately performed his or her tasks** ☺
- ⇒ **Organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be designated as a temporary representative or as a representative.** ☺
- ⇒ **1h. Member States shall place a temporary representative or a representative in charge of an adequate and limited number of unaccompanied minors at the same time to ensure that he or she is able to perform his or her tasks effectively.**<sup>119</sup> ☺
- ⇒ **1i. Member States shall appoint entities or persons responsible to supervise and monitor that the temporary representative and the representative perform their tasks in a satisfactory manner. Those entities or persons shall review complaints lodged by an unaccompanied minors against his or her temporary representative or representative.** ☺]

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<sup>119</sup> AT: delete this sentence, it should be the competence of the MS

1. Member States shall as soon as possible ~~⇒ and no later than five working days from the moment when an unaccompanied minor makes an application for international protection~~ ~~⇐ take measures to ensure that a~~ ~~☒~~ guardian ~~☒~~ representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. ~~⇒ The guardian appointed in accordance with Article [22] of Regulation (EU) No XXX/XXX [Procedures Regulation] may perform those tasks.~~ ~~⇐ The unaccompanied minor shall be informed immediately of the appointment of the~~ ~~☒~~ guardian ~~☒~~ representative. ~~☒~~ Where an organisation is appointed as guardian, it shall designate a person responsible for carrying out the duties of guardian in respect of the unaccompanied minor, in accordance with this Directive. ~~☒~~ The ~~☒~~ guardian ~~☒~~ representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article ~~22 23(2)~~, and shall have the necessary expertise to that end ~~⇒ and shall not have a verified record of child-related crimes or offences~~ ~~⇐~~. In order to ensure the minor's well-being and social development referred to in Article ~~22 23(2)(b)~~, the person acting as ~~☒~~ guardian ~~☒~~ representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become ~~⇒ appointed as guardians~~ ~~⇐~~ representatives.

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

↓ new

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

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

- (a) with adult relatives;
- (b) with a foster family;
- (c) in accommodation centres with special provisions for minors;
- (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article ~~22~~ 23(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

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



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↓ 2013/33/EU

⇒ new

↻ Council

Article ~~25~~ 24

### Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to ⇒ gender-based harm, ↻ trafficking in human beings, ↻ ↻ torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.<sup>120</sup>

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↓ 2013/33/EU

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

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<sup>120</sup> **NL:** focus should be on the need for treatment, not on the fact that applicants were victims of some form of abuse.

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↓ 2013/33/EU

⇒ new

## CHAPTER V

### APPEALS

Article ~~26~~ 25

#### Appeals

1. Member States shall ensure that decisions relating to the granting, ⇒ replacement ⇐ withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, before a judicial authority shall be granted.<sup>121</sup>

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↓ 2013/33/EU

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

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<sup>121</sup> **AT, CZ, DE:** see positions on Art. 19. **SE:** add reference to "the extent laid down in national law".

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

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

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

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

## CHAPTER VI

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

*Article ~~27~~ 26*

#### **Competent authorities**

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

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↓ 2013/33/EU

⇒ new

⇒ Council

Article ~~28~~ 27<sup>122</sup>

### Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established. ⇒ 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]<sup>123</sup> and any other reception conditions operational standards, indicators , of guidelines or best practices established in accordance with Article [12] of Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum] , without prejudice to Member States' competence for organising their reception systems in line with this Directive . ↵

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<sup>122</sup> **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. **LV, SI:** scrutiny reservation on the whole article.

<sup>123</sup> **BG, CY, EL, FI, FR, IT, LV, PL, PT:** reservation regarding the mandatory nature of these standards and guidelines. If not the case, then the non-binding nature of the standards should be explicit. **ES:** replace "take into account" by "consider". **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. **CLS:** what is mandatory is to "take into account" EUAA operational standards.

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]. ⇐<sup>124</sup>

↓ new
⇒ Council

Article 28

**Contingency planning**<sup>125</sup>

1. Each Member State shall draw up a contingency plan setting out the planned measures to be taken to ensure ⇒ **,to the extent possible,** ☹ an adequate reception of applicants in accordance with this Directive in cases where the Member State is confronted with a disproportionate number of applicants<sup>126</sup> for international protection. The applicants for international protection are to be understood as those required to be present on its territory, ☹ [☹] including those for whom the Member State is responsible in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], taking into account the corrective allocation mechanism outlined in Chapter VII of that Regulation. ⇒ [☹]

<sup>124</sup> **BG:** reservation with relation to the newly proposed functions of the EUAA to monitor and assess MS 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 MS. **CZ:** scrutiny reservation; para 2 is difficult to transpose because of the used wording is not appropriate for a Directive. **AT, DE, FR, HU, IE, LV, NL, PT:** scrutiny reservation on the role of EUAA. **PL:** scrutiny reservation on the competences of EUAA. Clarify in the text that guidance should be developed by Member States and EUAA.

<sup>125</sup> **AT, BG, CY, CZ, DE, IE, EL, ES, FI, IT, FR, SI:** scrutiny reservation on the whole article. The criteria for drawing up such a plan is nowhere defined and therefore it renders unclear the scope of MS obligations about it.

<sup>126</sup> **BE, CY, EL, FR, IT, NL, SI:** clarify under which circumstances a MS can be considered as being confronted with disproportionate pressure. **CY:** for purposes of clarity, this Art. could refer to Art. 34 of the Dublin Regulation proposal. **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<sup>127</sup> ~~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<sup>128</sup> after entry into force of this Directive]. An updated contingency plan shall be notified to the European Union Agency for Asylum every ~~two~~ ~~five~~ years thereafter. The Member States shall inform the Commission and the European Union Agency for Asylum whenever its contingency plan is activated.<sup>129</sup>
3. The ~~European Union Agency for Asylum shall assist Member States to prepare and review their~~ contingency plans ~~,~~ ~~upon their request,~~ ~~and in particular the adequacy of the measures taken according to the plans, shall be monitored and assessed~~ in accordance with the ~~[second sub-paragraph of Article 5]~~ ~~procedure set out in [Chapter 5]~~ of Regulation (EU) No XXX/XXX [Regulation on the European Union Agency for Asylum].<sup>130</sup>

<sup>127</sup> **BG, CZ, EE, FR, PL:** not in favour of the application of a template developed by the EUAA.

<sup>128</sup> **FR:** prefers longer period.

<sup>129</sup> **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. **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. **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.

<sup>130</sup> **BG:** reservation because the provision goes too far and interferes with the national jurisdiction of Member States. **LV, PL:** reservation on the new powers of the Agency.

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↓ 2013/33/EU (adapted)

⇒ new

↻ Council

*Article 29*

**Staff and resources**

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary ~~basic~~ training with respect to the needs of both male and female applicants. ⇒ To that end, Member States shall<sup>131</sup> 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]. ⇐<sup>132</sup>
2. Member States shall allocate the necessary resources in connection with the national law implementing this Directive.

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<sup>131</sup> **PL:** no obligation, MS should be encouraged.

<sup>132</sup> **FR:** make clear that we talk about those having direct contact with the asylum seekers.



## CHAPTER VII

### FINAL PROVISIONS<sup>133</sup>

#### Article 30

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

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

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

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

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<sup>133</sup> **FR:** scrutiny reservation on the whole chapter.

Article 31<sup>134</sup>

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles ~~1 to 12, 14 to 28 and 30 and Annex I~~ 1 to 8, 11, 15 to 25 and 27 to 30 ~~by 20 July 2015~~ [6 ~~to~~ **18 24** ~~months~~ 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~~.

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<sup>134</sup> **BG:** scrutiny reservation

*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*

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