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**COMMISSION STAFF WORKING DOCUMENT**

*accompanying the*

Proposal for a

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

**laying down minimum standards for the reception of asylum seekers**

**Impact Assessment**

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**Lead DG: Justice, Freedom and Security**

## **1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

### **1.1. Background**

#### *1.1.1. Policy context*

Work on the creation of a Common European Asylum System (CEAS) started immediately after the entry into force of the Treaty of Amsterdam in May 1999, as advocated by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of common minimum standards. The Reception Conditions Directive was the first of five pieces of EU asylum legislation flowing from the Tampere Conclusions. It aims to establish reception conditions that will normally suffice to provide asylum seekers with a 'dignified standard of living and comparable living conditions in all Member States'.

Since the Directive was adopted during the initial stages of creation of the CEAS and discussed under unanimity in the Council, the level of ambition of the final text was rather low and only reached the lowest common denominator. This outcome is also reflected in the Commission's Evaluation Report on the application of the Reception Conditions Directive, which highlights a number of deficiencies notably with regard to access to material reception conditions and health care, freedom of movement, treatment of vulnerable persons such as minors and victims of torture, and access to employment.

The Hague Programme invited the Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before the end of 2010. The proposal to amend the Reception Conditions Directive thus seeks to address adequately the deficiencies identified during the first phase of the asylum legislation.

#### *1.1.2. Organisation and timing, consultation and expertise*

The report issued by the Commission on 26 November 2007<sup>1</sup> (the Evaluation Report), thereby fulfilling its obligation under Article 25 of the Directive, provided an overview of the transposition and application of the Directive by Member States, highlighting points where clarification of the existing provisions and/or further harmonisation is required. The Evaluation Report was prepared on the basis of two studies conducted to gather the necessary information on the implementation of the Directive.<sup>2</sup>

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<sup>1</sup> COM (2007) 745

<sup>2</sup> European Migration Network 'Reception Systems, their capacities and the social situation of asylum applicants within the reception system in the EU Member States', and Odysseus Academic Network Report, *Comparative Overview of the Implementation of Directive 2003/9 of 27 January 2003 laying down Minimum Standards for the Reception of Asylum Seekers* in

Additionally, the Commission considered that before proposing any new initiative, it needed to engage in in-depth reflection and debate with all the relevant stakeholders on the future architecture of the CEAS. It therefore presented, on 6 June 2007, a **Green Paper**<sup>3</sup> on the future of the CEAS aiming to identify possible options for shaping the second phase of asylum legislation and incorporating a number of areas for consideration, including reception conditions. The response to the public consultation encompassed 89 contributions from a wide range of stakeholders<sup>4</sup>, including 20 Member States, regional and local authorities, the Committee of the Regions and the European Economic and Social Committee, UNHCR, academic institutions, political parties and a large number of NGOs.

Furthermore, **experts' meetings** were organised between December 2007 and March 2008 with academics<sup>5</sup>, Member States<sup>6</sup>, NGOs and UNHCR<sup>7</sup> and Members of the European Parliament<sup>8</sup> in order to seek their opinion on further amelioration of reception condition standards. Member States were, in addition, consulted on the areas the Commission envisages to address in the second phase of asylum legislation in relation to reception conditions, during the Immigration and Asylum Committee meeting held on 5 March 2008.

Preparatory to the Impact Assessment, the Commission arranged for an **external study**<sup>9</sup> to be conducted. The problem, objectives and policy options assessed were based on the Evaluation Report in the light of an analysis of the contributions to the Green Paper and the conclusions of the experts' meetings as well as contributions from the contractor. Important data were collected also from literature reviews mainly in the form of reports by UNHCR, ECRE and Save the Children. The report also incorporates comments submitted during the inter-service steering group meeting attended by representatives of the RELEX, SANCO, EAC and ELARG Directorates-General, which took place on 20 June 2008. The Directorates-General consulted will also have the opportunity to submit their comments on the final text of the Commission's proposal to amend the Reception Conditions Directive during the Inter-Service Consultation procedure.

## 1.2. The Impact Assessment Board

The Impact Assessment was revised to take into account the opinions issued by the Impact Assessment Board (IAB) on 26 September 2008 and 13 October 2008. All the

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the EU Member States (this impact assessment uses the updated version of this report that will be made available as soon as possible on the EUROPA website).

<sup>3</sup> COM (2007) 301

<sup>4</sup> The 89 contributions received are available at:

[http://ec.europa.eu/justice\\_home/news/consulting\\_public/gp\\_asylum\\_system/news\\_contributions\\_asym\\_system\\_e.htm](http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asym_system_e.htm).

<sup>5</sup> This meeting took place on 7 December 2007

<sup>6</sup> Meetings took place in the context of contact committees on 11, 12, 25 February and in the Immigration and Asylum Committee of 5 March 2008

<sup>7</sup> 18 February 2008

<sup>8</sup> 5 March 2008

<sup>9</sup> Impact assessments on certain instruments of the Common European Asylum Policy, Ernst&Young Financial Business Advisors S.P.A. (Specific contract No JLS/2007/A1/xx). The external study will be published at:

[http://ec.europa.eu/dgs/justice\\_home/evaluation/dg\\_coordination\\_evaluation\\_annexe\\_en.htm](http://ec.europa.eu/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_en.htm)

comments made by the IAB were taken into consideration in the revised Impact Assessment: the budgetary and employment impacts of the proposed measures are further quantified and some data on costs or numbers of asylum seekers affected are provided; the principle of subsidiarity is elaborated with a view to better justifying the necessity and added value of EU action, and the interaction of this principle with fundamental rights is further developed; systematic reference is made to the number of Member States affected by the various parts of the proposal.

### **1.3. State of play: Existing legal instruments**

The Reception Conditions Directive is the only existing legal instrument at EU level dealing with the reception of asylum seekers within EU territory.

At international level, 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 Refugee Convention) provides for certain reception standards for those lawfully in the territory of the contracting parties. It specifically provides *inter alia* for the right to wage-earning employment, the right to self-employment, access to housing, access to the labour market and the right to education. The Reception Conditions Directive refers to the Refugee Convention and states that, at its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a CEAS based on full and inclusive application of the Refugee Convention.

Respect for fundamental human rights is always to be taken into consideration when implementing asylum policies. The right to liberty and security, protection against torture and inhuman and degrading treatment or punishment, the prohibition of discrimination, the right to an effective remedy, the right to a family life and the rights of the child, as prescribed under international human rights law, apply to all human beings irrespective of their residence status.

## **2. SECTION 2: PROBLEM DEFINITION**

### **2.1. Scope of the problem**

Apart from a slight increase between 1996 and 2002, fuelled by further armed conflicts in the former Yugoslavia, in the last 15 years (1992-2007) there has been a substantial and sharp drop in the number of asylum applications in the EU: considering only EU 15, for example, the number of applications fell from 672,385 recorded in 1992 to 161,890 in 2007.

Taking a closer look at the most recent trends, since 2003 the number of asylum seekers in the EU has almost halved: from a total of 337,235 asylum applications lodged in EU 27 in 2003 to 186,890 in 2007 (- 45%). Most EU Member States have recorded a drop in the number of applications lodged, with a particularly significant fall in some of them (e.g. Slovenia (-65%), Austria (-63%), France (-44%)), while a limited number of Member States have witnessed a significant increase in asylum applications: Greece (105%), Sweden (37%), Hungary (62%) and Cyprus (49%). It should be noted, however, that the figures for 2007 reveal an increase in the numbers of those seeking protection in Europe.

As stressed in the Commission's Policy Plan on asylum,<sup>10</sup> refugee flows worldwide are mainly driven by push factors<sup>11</sup> (such as political instability, no/poor rule of law, lack of respect for human rights, undemocratic regimes, wars and civil conflicts) and consequently, notwithstanding the positive impact that the EU's and the Member States' external policies might have in the long term, it cannot reasonably be expected that the above-mentioned push factors will disappear soon. It is therefore necessary to ensure that protection can be sought and obtained by third-country nationals in the Member States of the EU, in compliance with international obligations to which all Member States are party, first and foremost the Refugee Convention of 28 July 1951 and the related Protocol of 31 January 1967.

It should be noted that taking into consideration the fact that asylum flows are mostly influenced by push factors in the countries of origin, it is extremely difficult to foresee how the envisaged Commission measures will affect current asylum trends<sup>12</sup>.

## **2.2. What is the issue or the problem that may require action?**

As will be illustrated below, the fact that Member States are allowed a wide margin of manoeuvre when implementing the Reception Conditions Directive has first and foremost led to the establishment of low reception standards. As a result, reception conditions at national level may not always guarantee an adequate level of treatment for asylum seekers, whereas in some cases differences in treatment between asylum seekers and nationals could amount to discrimination.

It should be emphasised that low standards concerning the level of social rights granted to asylum seekers raise strong concerns about respect for fundamental rights; although the Directive itself does not infringe international or EU standards of treatment, as emphasised by the Commission's Evaluation Report as well as by reports from NGOs the wide margin of discretion granted to Member States in implementing its provisions could lead to policies that might be perceived as not being fully in line with fundamental rights established by the EU Charter of Fundamental Rights as well as the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Rights of the Child, and the UN Convention Against Torture.

Secondly, the diversity of national policies has not led to a limitation of the phenomenon of secondary movement, which was one of the objectives of the current Reception Conditions Directive (Recital 8).

### *2.2.1. – The Reception Conditions Directive does not always guarantee adequate standards of treatment for asylum seekers*

As provided under Article 63 of the Treaty establishing the European Community (TEC),<sup>13</sup> the Reception Conditions Directive aims at guaranteeing minimum reception

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<sup>10</sup> Policy Plan on Asylum 'An integrated approach to protection across the EU' COM(2008) 360

<sup>11</sup> Pull factors may also play a role at a second stage, i.e. when the asylum seeker considers where to seek protection: the level of benefits granted by a country, the chances of receiving protection, the existence of members of his/her community, etc. will partially determine the choice of destination for the asylum seeker.

<sup>12</sup> For more information see Policy Plan 'The Persistence of refugee flows towards the EU', page 5



standards for asylum seekers for as long as they legally remain in the territory of a Member State.

A number of information sources highlight specific deficiencies in relation to the standard of reception facilities available to asylum seekers. The Green Paper adopted by the Commission underlines the fact that the wide discretion allowed to Member States in interpreting the key elements of the Directive has had the result of 'negating the desired harmonised effect'.<sup>14</sup> This position is also shared by the Commission's Evaluation Report, which points to a number of deficiencies in relation to addressing the needs of asylum seekers in Member States. Various stakeholders such as national and international institutions and organisations, including UNHCR, NGOs and individuals, have also submitted to the Commission information indicating various shortcomings in Member States' reception systems.

The Directive sought to bring about a level playing field covering the different national asylum policies in relation to the reception of asylum seekers. However, because it was adopted during the initial stages of creation of the CEAS and discussed under unanimity in the Council, the level of ambition of the final text was rather low and only reached the lowest common denominator. In this respect the Directive provides for a number of results-based obligations allowing for a wide degree of discretion in the way these obligations are to be met by Member States. Additionally, these results-based obligations are in some cases vaguely formulated, which renders their monitoring by the Commission a particularly difficult exercise.

Consequently, the lack of strictly and/or clearly defined benchmarks for Member States' reception policies has led to the setting of standards of treatment below the level the Directive was intended to ensure, notably with regard to access to employment, health care, the level and form of material reception conditions, free movement rights and the needs of vulnerable persons. Additionally, the legal ambiguity of the text makes it difficult to clearly substantiate infringement cases before the European Court of Justice (ECJ).

The main deficiencies are manifested in the following areas:

1. Detention of asylum seekers

According to the EU legislation and international standards, an asylum seeker cannot be detained for the sole reason that he/she is an applicant for asylum; detention in this respect could only apply under limited and clearly defined circumstances.

The Reception Conditions Directive and the Asylum Procedures Directive tackle to a certain extent the issue of grounds and procedural safeguards of detention<sup>15</sup>, whereas

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<sup>13</sup> Article 63 provides for the adoption by the Council of 'minimum standards on the reception of asylum seekers in Member States' within a period of five years after the entry into force of the Treaty of Amsterdam

<sup>14</sup> p 5

<sup>15</sup> The Reception Conditions Directive states in Article 7(3) that Member States may, when it proves necessary for example for legal reasons or reasons of public order, confine an applicant to a particular place in accordance with their national law. According to Article 18 of the Asylum Procedures Directive, Member States shall not hold a person in detention for the sole

both legislative instruments are silent on the issue of conditions and length of detention. Deficiencies in the area of law are linked both to the issue of low standards, notably as far as conditions of detention are concerned, and to diverse policies, in particular concerning grounds of detention.

### *Grounds of detention*

Member States apply numerous grounds for detention, sometimes specific to asylum seekers or equally valid for foreigners. Two extreme cases can be emphasised, where asylum seekers are detained only for reasons of criminal investigation or penal sanction and where detention is only applied at the border if the conditions for entering the territory are not fulfilled. Asylum seekers are also detained on grounds of a procedural nature such as accelerated procedures, Dublin determination procedure, in cases of late or multiple applications, or based on their behaviour.

It should be noted in this respect that the EU legislation on detention (namely the Reception Conditions Directive and the Asylum Procedures Directive) vaguely defines the circumstances under which detention could be legitimate and provides room for different interpretations by Member States in this area of law. Specifically, Article 7(3) of the Reception Conditions Directive, under which 'when it proves necessary' an asylum seeker may be detained, could be used to justify various detention regimes, even in cases where as a matter of course a Member State will detain any asylum seeker for breach of immigration rules.<sup>16</sup> Such policies would seem disproportional taking into consideration the fact that the great majority of asylum seekers arrive in the EU irregularly. Although ECtHR (European Court of Human Rights) case-law does not lay down exhaustive rules on the issue of grounds of detention, the Committee of Ministers of the Council of Europe Recommendation on measures of detention for asylum seekers as well as the UNHCR guidelines on the criteria and standards relating to the detention of asylum seekers should be taken into consideration and applied by Member States in this respect.

### *Conditions of detention*

It has been brought to the attention of the Commission that detained asylum seekers often have to contend with difficult living conditions, are extremely isolated and are at times deprived of essential facilities.<sup>17</sup> Although conditions of detention in the different Member States vary and some detention centres provide acceptable accommodation conditions and adequate access to basic facilities, in a large number of cases conditions fall below the standards intended by the Directive.

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reason that he/she is an applicant for asylum and, if detention takes place, Member States shall ensure that there is a possibility of speedy judicial review.

<sup>16</sup> Malta practises systematic detention of all asylum seekers entering the territory irregularly (in the sense that they do not have the necessary documents). Detention lasts as long as it takes for the asylum application to be determined. Where an application is still pending after 12 months, the asylum seeker is released.

<sup>17</sup> JRS report on '*Detention in the 10 New Member States - A Study of Administrative Detention of Asylum Seekers and Irregularly Staying Third Country Nationals in the 10 New Member States of the EU*'

In certain Member States legislative measures are taken to avoid the detention of certain categories of asylum seekers with special needs,<sup>18</sup> although this is not the case for the majority of Member States. Detention of certain categories of vulnerable persons, notably minors, raises great concerns, especially in cases where they are kept together with adults. In a number of Member States minors do not have access to education when in detention. It is hard to contest the fact that under some circumstances detention of vulnerable persons, especially minors, could cause further traumatising and thus even endanger a fair asylum procedure.

The issue of conditions of detention cannot be separated from the issue of legality of detention. The ECtHR's case-law illustrates a clear link between conditions of detention and arbitrary detention. Specifically, in the *Ammur* case, the Court stated that 'quality in this sense implies that where a national law authorises deprivation of liberty – especially in respect of a foreign asylum seeker – it must be sufficiently accessible and precise in order to avoid all risks of arbitrariness.<sup>19</sup> In *Saadi*<sup>20</sup> the Court paid particular attention to the conditions of detention like social support, special facilities for different groups, short period, etc., and held that under the specific circumstances detention was not arbitrary.

Moreover, inadequate conditions of detention could amount to an infringement of Article 3 of the ECHR (European Convention on Human Rights). In this respect, in the case of *Mubilanzila Mayeka and Kaniki Mitunga*<sup>21</sup> the Court found that conditions of detention in the case of a minor were such that they amounted to inhuman and degrading treatment. Finally, the same conclusion was reached in the *Dougoz*<sup>22</sup> case where it was upheld that conditions such as overcrowding, insufficient sanitary and sleeping facilities in combination with duration of detention infringed the Convention. The developing case-law of the ECtHR thus illustrates that Member States need to pay particular attention to conditions of detention.

### *Length of detention*

Length of detention is not regulated within the EU. The maximum period of detention is usually one month, but in many Member States detention could be indefinite.<sup>23</sup> The *Saadi* case leaves room for questioning detention on account of its length. Although the Court concluded that, in that particular case, there was no violation of Article 5 of

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<sup>18</sup> minors according to legislation in Austria, Finland, Hungary and Lithuania; unaccompanied minors according to legislation in Poland; victims of torture, rape or other serious forms of psychological, physical or sexual violence according to the legislation of the United Kingdom, Finland and Poland; the disabled according to legislation in Poland and to practice in Sweden; vulnerable persons in general according to legislation in Finland and in Malta according to the policy of the Ministry for the Family and Social Solidarity (those persons will be released after a period of detention of around 2 months maximum when their special needs will have been identified)

<sup>19</sup> *Ammur v France* application no. 19776/92, 25.6.1996, para 50

<sup>20</sup> *Saadi v. the United Kingdom* application no. 13229/03, 29.01.08

<sup>21</sup> *Mubilanzila Mayeka and Kaniki Mitunga v Belgium*, application no 13178/03, 12.10.06

<sup>22</sup> *Dougoz v Greece*, application number 40907/98, 6.03.01

<sup>23</sup> United Kingdom, Finland, Lithuania, Bulgaria, Romania, Sweden, Denmark, Ireland, Malta, Netherlands, Estonia

the ECHR, taking into consideration the fact that the applicant was detained for one week, the decision could have been different if detention was longer.

### *Legal Safeguards*

Article 21(2) of the Directive obliges Member States to grant asylum seekers access to legal assistance when they introduce an appeal against negative decisions relating to free movement on a Member State's territory. However, the freedom given to Member States as to how to implement the Directive is problematic. At least two Member States do not provide statutory entitlement to legal assistance. In other cases, only legal counselling is available and legal representation of the asylum seeker before the authority is financed on the basis of non-state resources. In other cases where the state provides for lawyers, the system does not work effectively due to a lack of training on how to deal with asylum claims.<sup>24</sup> The need to ensure access to legal assistance is a very important prerequisite to the legality of detention itself. This has been emphasised in the *Saadi* case, where the Court stressed the importance of ensuring access to legal assistance while in detention.

Additionally, access to information as stipulated under Article 5 of the Reception Conditions Directive is also of relevance in cases of detention. This provision obliges Member States to inform asylum seekers, within a maximum period of fifteen days after they have lodged the asylum application, of at least any established *benefits* and of the obligations with which they must comply relating to reception conditions. This obligation does not seem to cover Article 5 of the ECHR, which states that everyone who is arrested shall be informed *promptly*, of the reasons for his arrest and the charge against him'. In the light of this it could be submitted that the fifteen-day period within which detained asylum seekers must be informed of their rights and the grounds of detention might be too long, aggravating their vulnerable position even more.

## 2. Vulnerable asylum seekers

The Commission has identified the deficiencies in addressing special needs and providing medical assistance and qualified counselling to vulnerable persons as the most serious concern in the area of reception of asylum seekers in relation to both diverse and inadequate standards of treatment. The Directive imposes an obligation on Member States to take into consideration the specific situation of vulnerable persons. However, since it does not specify how this obligation should be met, there is in practice a lack of established concrete mechanisms at national level designed to account for such needs. Additionally, the obligation to 'take into consideration' special needs is vaguely formulated, which impedes the Commission's monitoring role in this respect.

### *Identification mechanisms*

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<sup>24</sup> Odysseus report, p. 62

It should be underlined that identifying special needs not only has a bearing on access to appropriate treatment, but could also affect the quality of the decision-making process in relation to the asylum application, especially for traumatised persons.<sup>25</sup>

At least eleven Member States, some of which receive large numbers of asylum applications, do not lay down a formal procedure for identifying special needs, either in legislation or in policy instructions. Six Member States make provision for such a mechanism at the beginning of the asylum procedure, but in at least two of those the identification procedures seem inadequate. Moreover two Member States identify special needs only in the case of unaccompanied minors.

In those Member States where such procedures have been established, needs are identified at different stages of the asylum procedure: for example, at the time of the medical screening of asylum seekers (2 Member States); upon lodging the asylum application (6 Member states); at the time of the first hearing in the context of the asylum procedure; upon arrival on the territory or at the border; or during an interview with a social assistant in the centre. In come cases, therefore, the identification of such needs does not occur at the initial stage of the asylum procedure, which could affect in a negative way the asylum determination procedure.

Moreover, the mechanisms established in order to identify special needs are not usually proactive. As a consequence, the identification process starts only if an asylum seeker displays behaviour or other signs which could indicate the existence of special needs. The lack of proactive mechanisms is confirmed by the fact that in many countries there is no specific institution responsible for identifying special needs. Instead, it is left to the many different actors in the procedure (such as border guards, reception centre staff, caseworkers, NGOs, the police, etc.) to detect, throughout the asylum process, signs or behaviour which could indicate special needs. This approach carries with it the risk that special needs may go undetected and, if not addressed, eventually become aggravated.<sup>26</sup>

#### *Access to health care and housing*

Deficiencies have also been detected in relation to access to health care and treatment in at least eight Member States. Although this deficiency concerns all asylum seekers, it has a particularly negative impact on persons with special needs, given their vulnerable situation.

The Directive provides that Member States shall ensure access to '*necessary health care*' that would include at least '*emergency care and essential treatment of illness*'. Additionally, it stipulates that '*necessary medical or other assistance*' must be

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<sup>25</sup> In Belgium, the place of registration is chosen according to the needs of the beneficiary depending on availability; in Spain, vulnerable asylum seekers have priority for access to reception centres for refugees; in Hungary, women on their own and single parents with minor children are accommodated in a protected environment; in the Czech Republic, vulnerable asylum seekers are housed in the protected zones of centres that are more secure than others; in Sweden, there are apartments which are specially equipped for disabled persons.

<sup>26</sup> Odysseus report p. 84 – 90, ECRE proposal for revision of the EC Directive on the Reception of Asylum Seekers p. 14, EURASIL workshop on traumatised persons in the asylum procedure, 20 May 2008 Brussels

available to applicants who have special needs, and that victims of torture and violence must receive '*necessary treatment*'. Due to the fact that the meaning of these notions is difficult to determine, this obligation has, in some cases, been interpreted too narrowly, failing to guarantee adequate standards.

In the main, although the vast majority of Member States in their national legislation do recognise the right of asylum seekers to health care, only basic health services are granted to asylum seekers. Moreover, access to psychological care and counselling has been particularly problematic in many Member States. Only in a limited number of cases have Member States established specific centres for asylum seekers suffering from psychological disorder, added psychologists or psychiatrists to the medical teams working in reception centres or made health services available externally.

As regards referral of asylum seekers to specialists who can provide care, the reception centre staff and medical staff play a central role in the majority of Member States. However, it seems that there is no clear system for such referrals since, as stated above, there is no clear system of identification of special needs which require specialist care.<sup>27</sup>

Further obstacles with regard to access to health care could arise from administrative procedures in Member States or documentation requirements that the asylum seeker might not be able to fulfil.

In relation to housing arrangements, incidents reported by stakeholders regarding gender-based violence within accommodation centres are of great concern.<sup>28</sup> The Directive obliges Member States to 'pay particular attention to the prevention of assault' within accommodation centres, but this does not entail any specific obligation to prevent sexual assault within those premises. Many of the services provided in accommodation centres are not gender-sensitive, which makes it difficult to prevent such incidents. It is questionable in this respect whether housing conditions provide for an adequate environment for the development of family life and the respect of private life.<sup>29</sup>

#### *Access to education*

Member States must provide access to the education system within three months from the date of lodging the application. This flexibility has been built in with a view to adjusting the legislation to the different schooling systems in the EU. However, according to the Directive, this period may be extended to one year where specific education is provided in order to facilitate access to the education system. Member States in principle provide access within the three-month time frame and it seems that the possibility to extend it to one year has not been transposed into national laws.<sup>30</sup>

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<sup>27</sup> Information gathered during the EURASIL workshop on traumatised persons in the asylum procedure, 20 May 2008 Brussels

<sup>28</sup> Manual on 'Prevention and Monitoring of Sexual and Gender-Based Violence Among Persons in Need of International Protection in Central Europe and the Baltic States' 2004 by Menedék (Hungarian Association for Migrants), funded by the PHARE programme.

<sup>29</sup> See n.29 JRS report

<sup>30</sup> Odysseus p. 92-93

The Commission's Green Paper on "Migration & Mobility: Challenges and Opportunities for EU Education Systems"<sup>31</sup>, adopted on 3 July 2008, recognises the educational difficulties caused by segregated schooling and underlines the importance of pre-school education. In general, major difficulties are faced by minors in Member States where no preparatory schooling is made available, especially in the form of language classes with a view to facilitating their integration into the national education system. Where such practices are adopted at national level, they assist minors in benefiting to the fullest possible extent from the national education system and avoid the creation of segregated schools that could lead to their isolation from the hosting Member State.

#### *Inadequate training of staff*

The Directive's Articles 14(5), 19(4) and 24(1) aim at ensuring that training of persons working in accommodation centres takes into account the specific needs of unaccompanied minors as well as the gender dimension. There is at present no specific provision ensuring that personnel are adequately trained with a view to addressing specific needs of victims of torture or rape in particular. In practice, specific training on addressing the needs of torture victims very rarely occurs.

#### *Scope of the problem*

The Reception Conditions Directive obliges Member States to "regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions and provide full information on the type, name and format of the documents provided for by Article 6". Member States have, however, failed to collect this information at national level. Owing to the lack of statistical data it is difficult to get a more accurate picture of the extent of the problems that require attention regarding vulnerable persons. In general, very little statistical information is available in the Member States on the number of asylum seekers with special needs or those who use specialised or specially adapted facilities. Where such statistical evidence is available, it refers mainly to unaccompanied minors, single-parent families or elderly persons (although there is no agreed definition of elderly persons).<sup>32</sup>

### 3. Material Reception Conditions<sup>33</sup>

The Reception Conditions Directive obliges Member States to provide asylum seekers with material reception conditions that include 'housing, food and clothing provided in kind or as financial allowances or in vouchers, and a daily expenses allowance'.<sup>34</sup> In all cases material reception conditions should ensure 'a standard of living adequate for the health of applicants and capable of ensuring their subsistence'.<sup>35</sup> Moreover, whenever housing is provided, Member States must ensure family unity as far as

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<sup>31</sup> Green Paper on Migration & mobility: challenges and opportunities for EU education systems, 3.7.2008, COM (2008) 423

<sup>32</sup> Ibid. For available statistical data see Annex II

<sup>33</sup> Statistics on material reception conditions are not available at EU level. It is not known how many asylum seekers are put up in accommodation centres and in private housing or what costs are incurred regarding granting access to material reception conditions.

<sup>34</sup> Article 2(j)

<sup>35</sup> Article 13(2)

possible. This obligation leaves a wide margin of discretion as to the form of the material reception conditions that are to be provided by Member States. The Evaluation Report underlined a number of concerns with regard to the level of material reception conditions granted in some Member States that seems not to be in line with fundamental rights. The huge diversity of national policies on this issue further hampers the harmonisation process in respect of reception standards within the EU

#### *Level of material reception conditions*

Both the Evaluation Report, several contributions sent to the Commission by NGOs<sup>36</sup> and individuals identify a number of problems in relation to the level of financial allowances given to asylum seekers. In general, material reception conditions are problematic in a large number of Member States where they are partially or entirely provided in the form of money; at least 15 Member States seem to give very low financial allowances to asylum seekers;<sup>37</sup> the amounts involved seem to be inadequate to ensure the health and/or subsistence of asylum seekers and are only rarely commensurate with the minimum social support granted to nationals. Even in cases where this minimum standard is applied, it might still not be sufficient, as asylum seekers lack family and/or other informal kinds of support. Additionally, it should be noted that poor reception conditions could even lead to a distortion of the system for determining responsibility in respect of an asylum claim (Dublin system); in particular, because Greece applies very low material reception standards, at least four Member States have refused to return asylum seekers to Greece despite the fact that Greece is responsible for processing their claim.

#### *Withdrawal/reduction of reception conditions*

The Directive allows Member States to reduce or withdraw reception conditions under specific circumstances such as non-compliance with reporting duties, abandoning the determined place of residence, lodging a late asylum application, etc.<sup>38</sup> It should also be noted that no right of appeal against such decisions is provided for by the Directive.

The provisions for reducing or withdrawing access to reception conditions, already envisaged in the current text of the Directive, are meant to ensure that the reception system is not abused. However, as the reduction or withdrawal of reception conditions can affect the standard of living of applicants, the Commission considers it important to ensure that asylum seekers are never left destitute under such circumstances. In the UK the policy of withholding reception conditions from asylum seekers who fail to demonstrate that they applied within three days of arrival was stopped as a result of a House of Lords ruling which held that such practice was incompatible with Article 3 of the European Convention on Human Rights. The judgment made it clear that the

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<sup>36</sup> Including ECRE, *the EC directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and access to Employment in Accordance with EU legislation?* November 2005, Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006.

<sup>37</sup> Odysseus report, page 26

<sup>38</sup> All Member States have transposed this option into their national legislation



reduction or withdrawal of basic reception conditions, such as food, housing and access to health care, is inconsistent with human rights and fundamental rights under international legal instruments.<sup>39</sup>

In this respect, further guidance and safeguards are required with a view to ensuring that fundamental rights are respected.

#### 4. Access to the labour market<sup>40</sup>

Article 11 of the Reception Conditions Directive recognises asylum seekers' right to access the labour market. However, it allows Member States to determine the period during which asylum seekers cannot access employment, which in any case should not exceed one year in the event that a decision at first instance has not been taken and the delay cannot be attributed to the asylum seeker. Enjoyment of this right is subject to the conditions laid down in national legislation and Member States may also give priority to other categories of non-nationals.

Two problematic issues regarding access to the labour market have been identified.<sup>41</sup> First and foremost the Evaluation Report has identified low standards of treatment. In particular, it has been noted that although asylum seekers are in principle granted access after a maximum period of one year, actual access to the labour market could be hindered to a great extent by the imposition of restrictive conditions at national level with regard to certain economic sectors and the amount of time the asylum seeker can work, and by prohibiting the exercise of independent or commercial activity. It should be noted in this respect that almost two thirds of Member States require asylum seekers to possess a permit or an authorisation to work. In those Member States, access to the labour market will be dictated by the constraints flowing from the work permit system of the Member State concerned. In some cases the work permit could also be subject to a number of limitations like working hours or the type of work to be carried out.

Secondly, time frames for granting access differ between Member States. Half of the Member States allow access to employment after 12 months upon submission of an application. The other half, with one exception,<sup>42</sup> has opted for more favourable provisions ranging from immediate access to 6 months.<sup>43</sup> As stated in Recital 7 of the current Directive, the harmonisation of legislation is considered to be a means of limiting secondary movement of asylum seekers between Member States; it is therefore clear that disparities regarding access to work jeopardise the realisation of this goal. In particular, asylum seekers might be inclined to move to a Member State

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<sup>39</sup> *R(Q) v Secretary of State for the Home Department [2004] QB 36*, confirmed by the opinion of the Lords of Appeal for the judgement in the case *Regina v Secretary of State for the Home Department [2005] UKHL 66*

<sup>40</sup> No statistics are available at EU level regarding the number of asylum seekers currently employed in Member States.

<sup>41</sup> Odysseus report, p.78-81 and ECRE, 'The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?' November 2005.

<sup>42</sup> Lithuania does not grant access to the labour market to asylum seekers.

<sup>43</sup> Immediate access to employment is allowed in Greece, whereas the limitation period is 20 days in Portugal, 3 months in Austria and Finland, 4 months in Sweden, 6 months in Italy, Spain, Netherlands, Cyprus and 9 months in Luxembourg.

that allows quicker access to employment. Retaining in this respect the wide margin of manoeuvre allowed under the current provisions of the Directive would not be conducive to limiting this phenomenon.

Studies have pointed to the negative impact that unemployment, exclusion and the lack of personal autonomy have on physical and mental health. The unemployed and socially excluded have a lower life expectancy, resulting from a number of interconnected factors including loneliness, boredom, social isolation, loss of self-esteem, anxiety and depression. For asylum seekers this may exacerbate their already vulnerable position.<sup>44</sup>

Easier access to employment for asylum seekers could prevent exclusion from the host society, and thus facilitate integration. It would also promote self-sufficiency among asylum seekers. Mandatory unemployment on the other hand imposes costs on the State through unnecessary social welfare payments. Finally it should be noted that, as stated in the Commission Communication on the 'Links between legal and illegal migration'<sup>45</sup>, labour market restrictions could encourage illegal working. This is particularly relevant for those Member States which create obstacles on access to the labour market and which grant very low welfare assistance to asylum seekers at the same time. In these circumstances asylum seekers will be inclined to seek employment even in irregular forms that could lead to distortion of the labour market.

## 5. Applicants for subsidiary protection

The Reception Conditions Directive applies to individuals who lodge an asylum claim under the Refugee Convention and their family members as long as they are allowed to remain in the territory. At present there is no obligation to extend the application of the Directive to persons applying for subsidiary protection status.<sup>46</sup> Only three Member States<sup>47</sup> exclude, by law, the application of the Reception Conditions Directive in the case of applicants for subsidiary protection. However, the recognition of subsidiary forms of protection and the institutionalisation of the principle of single procedure has in practice led these Member States to grant the reception conditions intended for refugee candidates to all persons seeking international protection.<sup>48</sup>

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<sup>44</sup> Conclusion of EQUAL event: 'Getting asylum seekers into employment – challenges and opportunities' Chania (Crete – Greece), 1-2 June 2006

<sup>45</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions 'Study on the links between legal and illegal migration', COM(2004) 412

<sup>46</sup> The reason this category of applicants was left outside the scope of the Directive is due to the fact that at the time of its adoption, the concept of subsidiary protection was not covered by EU law. Subsidiary protection is now an integral part of EU law as reflected in Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

<sup>47</sup> Only three Member States exclude in law the application of the Directive in relation to subsidiary protection applicants. However, since the introduction of a common application form for refugee and subsidiary protection statuses, the latter category of applicants do benefit in practice from reception conditions.

<sup>48</sup> This implies the setting up of a single procedure to determine both whether the applicant is in need of refugee or subsidiary protection status and other protection needs

Although this deficiency does not significantly affect asylum applicants, neither does it lead to divergence in national policies in this respect, it should still be clarified so as to reflect current developments in EU legislation and to ensure equal treatment amongst all asylum seekers.

#### 6. Asylum seekers within certain types of procedures or locations

The Evaluation Report on the application of the Reception Conditions Directive has clearly demonstrated that a number of Member States either exclude entirely the application of the Directive or provide lower reception standards depending on the stage of the asylum procedure (for example, four Member States act in this way at the very beginning of the procedure,<sup>49</sup> while three Member States do so when the asylum seeker falls under the scope of the Dublin II Regulation<sup>50</sup>) or the location (at the border).<sup>51</sup> Of greater concern is the fact that this restrictive approach is applied by at least nine Member States in detention centres.

Although in legal terms there is no decisive evidence to show that the Directive does not apply in the cases described above, it could be submitted that its scope of application (both in terms of *ratione personae* and *ratione materiae*) is inadequately defined. This ambiguity leaves wide room for interpretation of these obligations. These ambiguities could more effectively be clarified by an express provision in the Directive.

#### 2.2.2. *Different standards of treatment, between vulnerable asylum seekers and vulnerable nationals, could lead to discrimination.*

The International Covenant on Economic, Social and Cultural Rights states that parties shall 'recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.<sup>52</sup> Similarly, the Reception Conditions Directive provides that Member States need to ensure 'a standard of living adequate for the health of applicants and capable of ensuring their subsistence'.<sup>53</sup>

Under the Directive Member States could employ various mechanisms in order to abide by this requirement. Even if this leads to the adoption of different measures than those applied for nationals, Member States are in compliance with their obligations as long as the adequacy test is met. However, in the cases referred to above, where reception standards are low, it could be argued that different treatment of asylum seekers - and in particular vulnerable persons - could amount to discrimination.

Close examination of the ECtHR's reasoning regarding non-discrimination invites a more careful interpretation of the obligations imposed on Member States under the Directive, with particular reference to vulnerable persons. The ECtHR stated in its

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<sup>49</sup> See case: CONSEIL D'ETAT (Section du contentieux, 1ère et 6ème sous-sections) Séance du 14 mai 2008, Lecture du 16 juin 2008 Nos 300636,300637 Association LA CIMADE

<sup>50</sup> Odysseus Report p. 33, 23 and 94

<sup>51</sup> Although this specific limitation is only applied by a small number of Member States, it is still considered problematic especially since the Dublin procedure can be very lengthy

<sup>52</sup> Article 11

<sup>53</sup> Article 13

judgement of 15 February 2006 in the case of *Niedzwiecki v Germany* that it 'does not discern sufficient reasons justifying the different treatment with regard to child benefits of aliens who were in possession of a stable residence permit on one hand and those who were not, on the other'.<sup>54</sup> The case involved a German law providing that a foreigner was only entitled to child benefits if he was in possession of a stable residence permit. The Court found, in this respect, that there had been a violation of Article 14 (right not to be discriminated) in conjunction with Article 8 (right to family life) of the Convention. The same reasoning was employed by the Court in its judgment in the case of *Okpiz v Germany*,<sup>55</sup> also concerning child benefits.

Furthermore, in the *Poirrez*<sup>56</sup> case, the ECtHR found that France's refusal to grant access to disabled adults' allowance to a non-national breached Article 14 of the Convention as it was an instance of discrimination on grounds of nationality. It was further stated in this case that the applicant's right to receive the specific social benefit was established irrespective of the fact that he was paying taxes and/or other contributions to the contracting party. The recent *Sampanis*<sup>57</sup> case further consolidates the case-law of the Court as regards the level of treatment for vulnerable persons. In this case the Court stated that 'given the Roma community's vulnerability, which made it necessary to pay particular attention to their needs, and considering that Article 14 required in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognised the particularity of the case and facilitated the enrolment of the Roma children, even if some of the requisite administrative documents were not readily available'.

In the cases cited above, the Court's case-law reveals the intention to strictly scrutinise differential treatment that is solely based on grounds of nationality, at least in relation to vulnerable persons. As stated in the case of *Gaygusuz v Austria*<sup>58</sup>, where the Court examined the contracting party's decision not to grant emergency assistance benefits in the event of unemployment to a third-country national, 'very weighty reasons would have to be put forward' to pass the test of Article 14 of the Convention. Also in this case it was found that the national policy infringed the principle of non-discrimination since it was not based on any objective and reasonable justification.<sup>59</sup>

The Reception Conditions Directive allows Member States a wide margin of discretion when adopting reception policies for asylum seekers in their territory. This discretion should be reconsidered in light of the need to ensure - at least in specific cases concerning vulnerable persons that the application of different standards that are lower than those applied for nationals does not amount to discrimination. Concretely, let us consider the case of a pregnant woman and EU national being entitled to specific medical monitoring during her pregnancy under the Member States' legislation: if an asylum seeker under the same circumstances were to be excluded

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<sup>54</sup> *Niedzwiecki v Germany*, application no. 58453/00, 15 February 2006, para. 33

<sup>55</sup> *Okpiz v Germany*, application no. 59140/00, 15 February 2006, para. 34

<sup>56</sup> *Koua Poirrez v. France*, application no. 40892/98, 30 September 2003 para 46

<sup>57</sup> *Sampanis and Others v. Greece* application no. 32526/05, 5.6.08

<sup>58</sup> *Gaygusuz v Austria* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, para.23

<sup>59</sup> For related case law on Article 14 see *Petrovic v Austria* judgement of 27 March 1998, *Willis v UK* application number 36042/97

from this benefit, the said policy might not be justifiable in the eyes of the Court. Additionally, regarding education rights for children, the Directive stipulates that Member States must allow access to education under *similar* conditions as nationals. Although under international human rights standards there is no obligation to provide access under the *same* conditions, concerns regarding equal treatment will emerge if standards applicable to non-national children are less favourable.

It should also be noted that the technical requirements for substantiating a claim for discriminatory treatment under the Convention have been lifted by the coming into force of Protocol 12 on 1 April 2005.<sup>60</sup> The Protocol prohibits discrimination based on sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2.2.3. *Secondary movements of asylum seekers and refugees applying for international protection in more than one Member State impose an unfair strain on national administrations and on asylum seekers*

Secondary movements are understood as being the phenomenon of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States. The main reasons for this are differences in recognition rates as well as the level of reception conditions established at national level and the rights granted.

From an asylum seeker's point of view, moving from one Member State to another entails financial costs, as well as distress and uncertainty. Looking at the phenomenon from the Member States' perspective, it is clear that it is inefficient and resource-consuming. Asylum procedures will be initiated, involving human and other resources, only to be abandoned some time later if, for instance, the asylum seeker fails to appear for an interview because he/she has moved on to another Member State, where a new procedure has started.

Measuring the scale of multiple applications by asylum seekers is a complex task, but the available statistical data<sup>61</sup> give an indication that the phenomenon of asylum shopping is a relevant issue that must be tackled in the EU context.

According to the Eurodac Regulation, Member States are obliged to fingerprint every third-country national applying for asylum over the age of 14. According to the annual statistics on the activities of the Eurodac Central Unit, in 2007 a total of 197,284 asylum applications were recorded in the system. Out of the total number of applications recorded, 16.17% were multiple applications (17% in 2006). Such a figure would suggest that in 31,910 cases, the same person had already made at least one asylum application before (in the same or in another Member State). The Commission has stressed the link between this phenomenon and the application of

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<sup>60</sup> Under this Protocol, standing requirements for raising an infringement of Article 14 are no longer required to illustrate that the facts at issue fall within the remit of one or more of the substantive provisions of the Convention and its Protocols. Additionally, if the Treaty on the Functioning of the European Union ('TFEU') comes into force, Article 21 stipulating that 'any discrimination on grounds of nationality shall be prohibited' would reinforce this obligation. These new developments would provide further legal bases upon which a discriminatory claim could be substantiated.

<sup>61</sup> For statistical data see Annex IV

reception conditions within the framework of the Reception Conditions Directive. The Directive states that 'the harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception'.<sup>62</sup> As stressed in the previous section, the wide margin of discretion afforded under the Directive to Member States in implementing certain obligations as well as the legal ambiguity embedded in the scope of some of these obligations, has led to large differences in the rights granted at national level to asylum seekers. It is argued that these differences increase secondary movements to a certain extent

The phenomenon of secondary movements is driven by numerous factors such as recognition rates in Member States, cultural and linguistic links, geographic position, etc., and it is therefore not easy to determine the precise impact which the differences in national reception policies could have on secondary movement. However, reception conditions should be seen as part of the asylum system as a whole; although they are not the only reason reinforcing secondary movements, they are nevertheless one of the driving factors that need to be addressed during the second phase of asylum legislation.

In this respect it can be argued, on the basis of existing statistical data, that asylum seekers are aware of national asylum policies and legislative amendments and often reorient their choice after a restrictive change. Indeed, countries which have introduced restrictive measures have often seen a decrease in the number of asylum applications soon after the changes were implemented, for example Germany after 1993, Spain in 1995, Denmark in 2001. Most emblematic is the recent example of Sweden, which restricted its asylum policies concerning Iraqi asylum seekers and has witnessed a substantial decrease in the number of asylum applications from that country (from 1 555 applications between January and June 2007 to 306 between January and June 2008). Additionally, this restrictive policy had an impact on its neighbouring countries since Iraqi asylum seekers registered applications in Germany, the Netherlands and Finland instead.

### **2.3. How would the problem evolve, all things being equal?**

The identified problems are likely to continue in the future if no legislative action is taken to address them. The existing EU and national measures do not satisfactorily tackle the problems described above.

Level of treatment: The wide discretion left to Member States in implementing the Directive also contributes, as stated in the previous section of this impact assessment, to the establishment of low standards of treatment of asylum seekers in relation to reception conditions. For example, vagueness in the definition of the circumstances in which an asylum seeker can be detained has led to some Member States systematically detaining all asylum seekers while others never use detention. Moreover, the lack of clear benchmarks regarding the level and form of material reception conditions that should be available to asylum seekers has led to cases where asylum seekers are left in poverty.

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<sup>62</sup> Recital 8

As a result, if no action is taken to limit the Member States' room for manoeuvre, these differences will continue to result in the adoption of low standards of treatment.

Practical cooperation via related fora such as EURASIL will, to a certain extent, develop a number of good practices regarding the reception of asylum seekers. Moreover, EU funding possibilities in the area of asylum, such as the European Refugee Fund, would continue to assist Member States in ameliorating their reception capacities. However, as the first phase of the asylum legislation has illustrated, in the absence of EU intervention, practical cooperation on its own will prove insufficient to adequately address all the problems identified already in the field of asylum legislation.

Secondary movements: Given the very wide margin of manoeuvre permitted by the Reception Conditions Directive, the differences in reception conditions between Member States are so big in terms of access to housing, employment, health, education, social insurance, etc. that they are not limiting secondary movements of asylum seekers who look for a more adequate level of support during the asylum procedure. Lack of harmonised standards will perpetuate secondary movements and the overburdening of those Member States providing generous reception facilities; the said Member States might then be inclined to lower their standards so as to avoid a possible increase in asylum applications on their territory.

It should be noted that, taking into consideration the wide margin of manoeuvre given to Member States in implementing the Directive and the fact that the current text of the Directive is in some respects ambiguous, it is extremely difficult to substantiate clear cases of non-compliance. Accordingly, in the absence of legislative intervention the identified problems would continue.

## **2.4. Does the EU have the power to act?**

### *2.4.1. The EU's right to act*

Title IV of the EC Treaty (TEC) on visas, asylum, immigration and other policies related to free movement of persons confers certain powers in these matters on the European Community. These powers must be exercised in accordance with Article 5 TEC, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

The current legal base for Community action in the area of asylum policy is established in Article 63 (1) and (2) TEC. These provisions state that the Council is to adopt “measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties” and also “measures on refugees and displaced persons” in areas such as Member State responsibility, reception conditions, refugee qualification, granting of protection (including temporary protection) and balancing of Member States' efforts in receiving asylum seekers.

The reasons and need for a common intervention at EU level are clearly expressed in the section below.

#### 2.4.2. EU added value and the principle of subsidiarity

The principle of subsidiarity, as stipulated in Article 5 of the TEC, states that in areas where the Community has no exclusive power to act, it should only act 'if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community'. Furthermore, any action taken must not go beyond what is necessary to achieve the objectives set by the Treaty. It is therefore necessary to examine whether the actions proposed by the Commission in the area of reception conditions for asylum seekers are in line with the test of 'comparative efficiency':<sup>63</sup> is it better for the actions to be taken by the Community or the Member States? At the Tampere European Council of 15-16 October 1999, Member States agreed to work towards the establishment of a Common European Asylum System (CEAS) incorporating *inter alia* common minimum conditions of reception of asylum seekers. To that end, the Council was urged to adopt the necessary decisions according to the timetable set in the Treaty of Amsterdam.

Consequently the Council adopted, on 27 January 2003, Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers (the Reception Conditions Directive), aiming to:

- lay down in national law minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions (Recital 7);
- harmonise reception conditions in order to limit the phenomenon of secondary movements influenced by the variety of conditions for reception (Recital 8).

In this respect, common minimum standards for the reception of asylum seekers have already been established at EU level during the first phase of asylum legislation. The Hague Programme, adopted by the European Council on 4 November 2004 to set out the required actions for the second phase of asylum legislation, reconfirmed the Tampere objectives and stated that the aims of the CEAS would be the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection. The Hague Programme therefore clearly demonstrated once again the Member States' continued support for the **necessity of further Community action** in relation to a CEAS that requires further harmonisation **in the area of asylum**.

In preparation for the second phase of asylum legislation, the Commission issued an evaluation report on the implementation of the Reception Conditions Directive which, along with contributions sent by stakeholders during the Green Paper consultation process, forms the basis of the present proposal amending the Directive. The report identified a number of deficiencies at national level attributable mainly to the wide margin of discretion afforded to the Member States in implementing the Directive. These deficiencies have resulted in two main problems:

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<sup>63</sup> Commission Communication to the Council and the European Parliament, Bull. EC 10-1991, p.116



- low, and in some cases discriminatory reception standards, notably in relation to access to the labour market, addressing vulnerable groups, detention and material reception conditions;
- wide divergences in national reception policies that may make asylum seekers more inclined to move to those Member States that offer better reception standards.

In order to rectify this, the Commission's proposal aims to ensure:

- **better** standards of reception with a view of ameliorating the level of treatment of asylum seekers in line with international standards, and;
- **further harmonisation of reception standards** in order to reduce secondary movements in so far as these are linked to the diversity of national reception standards.

It is submitted that these objectives can only be attained **jointly**. In particular, in the absence of EU action:

i) reception standards will not be raised by Member States' unilateral actions; on the contrary, 'a race to the bottom' would occur since those Member States currently providing more generous reception conditions will be inclined to lower their standards in order to avoid being seen as offering too generous reception conditions. As stated in a previous section of this report (secondary movements), some Member States that established stricter asylum policies witnessed a decrease in the number of asylum applications received. Such examples point to a possible link between the level of treatment afforded in a Member State and asylum flows. Indeed, it could also be submitted that the fact that Sweden receives five times more asylum applications than Spain, which is a border country, may be attributed to the higher standards of protection it grants to asylum applicants.

Lowering reception standards would raise strong concerns from a fundamental rights point of view, namely in relation to the right to liberty, the right to be protected against torture and mistreatment, and the right to human dignity; This would be particularly problematic in the case of those Member States whose reception standards for asylum applicants are already low. It should be stressed that the EU has a moral and legal duty to ensure that Member States, when implementing EU legislation, respect fundamental rights and the principles established under international human rights law.

ii) further harmonisation will not be achieved and therefore secondary movements, in so far as they are linked to the divergence of national reception policies, will not be limited.

Consequently **EU action is necessary** in order to attain higher and more harmonised standards, based on the existing minimum standards on the reception of asylum seekers. The European Court of Justice's reasoning on the principle of subsidiarity in the Working Time Directive case<sup>64</sup> is particularly relevant. The Court stated that once

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<sup>64</sup> Case C-377/98, *Netherlands v Council*, para 52

the Council 'has found it necessary to improve the *existing* level of protection (minimum standards in the area of health and safety) and to *further harmonise* the law in this area while maintaining improvements already made, the achievement of this objective necessarily presupposes Community action'.

Finally, it should be underlined that the EU actions discussed in this impact assessment will not go beyond what is required in terms of adding value at the EU level. The proportionality of the options will be carefully assessed so as to clarify whether or not they go beyond what is necessary to achieve the objectives described under section 3.

## **2.5. Consultation with Stakeholders**

The following main findings regarding the necessary improvements to the Reception Conditions Directive emerged from the replies to the Green Paper on the future CEAS and from the consultations the Commission had with various stakeholders, as referred to in point 1.1.2:

**Member States express general support** for measures to achieve further harmonisation in the second stage of asylum legislation regarding reception conditions. They retain, however, specific reserves depending on the subject. The Member States' position appears to be as follows:

- General consensus on the necessity of further standardisation in the form and level of material reception conditions while allowing for certain flexibility, taking into consideration Member States' socio-economic differences;
- Majority supports the idea of further approximation of the rules on access to the labour market. Some express concerns in relation to reducing time restrictions to access employment and eliminating the requirement for a work permit;
- Some focus on the need to established harmonised rules regarding access to health care and education;
- Majority supports measures with a view to better addressing special needs. Some Member States prefer to tackle deficiencies in this policy area within the framework of practical cooperation.

**UNHCR and NGOs** strongly support the harmonisation process. They focus particularly on:

- the possibility of giving access to the labour market to asylum seekers after six months of stay in the EU;
- further harmonisation in the form and level of material reception conditions;
- the need to ensure that detention should be restricted as much as possible by regulating duration and conditions of detention coupled with the need for clarification of the grounds for detention;
- the importance of providing higher standards regarding access to health care, education and addressing special needs;

- the importance of exchanging best practices especially regarding training of staff who deal with asylum seekers

### **3. SECTION 3: OBJECTIVES**

#### **3.1. Global objectives**

The global objectives for future development of measures on reception conditions for asylum seekers in the second phase of the CEAS are as follows:

1. To ensure higher standards in terms of reception conditions for persons in need of international protection;
2. To contribute to reducing the phenomenon of secondary movements.<sup>65</sup>

#### **3.2. Specific objectives**

The proposal to amend the Reception Conditions Directive should pursue the following specific objectives:

1. To clearly define the scope of application of the Directive;
2. To facilitate access to the labour market;
3. To guarantee legal safeguards for detained asylum seekers and to ensure that detention is not arbitrary;
4. To ensure adequate standards for material reception conditions;
5. To guarantee that the needs of vulnerable groups are adequately addressed.

#### **3.3. Operational objectives**

The following non-exhaustive list of operational objectives is suggested:

1. To extend the application of reception conditions to subsidiary protection;
2. To ensure the application of reception conditions in detention facilities;
3. To ensure the application of reception conditions to all types of procedures;
4. To shorten the period of prohibiting access to the labour market and limit the adoption of further restrictions that in practice hinder access to employment;
6. To establish modalities to assist the Commission as well as the Member States in effectively monitoring the implementation of adequate standards of living;

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<sup>65</sup> This global objective is a cross-cutting objective which concerns also the other legislative areas of the CEAS (i.e. procedures). In this case the global objective consists in contributing to reducing the uneven distribution of asylum seekers, secondary movements and asylum shopping by amending the reception conditions legislation: by achieving all the specific and operational objectives individuated, the policy intervention will contribute to tackling the phenomena mentioned.

7. To provide for legal guarantees such as the right to be informed of the grounds for detention and the possibility to challenge detention before a national court in line with current EU rules;
8. To define grounds and conditions of detention;
9. To provide that detention for vulnerable persons such as minors would be used only if it is in their best interest and as a last resort;
10. To ensure that mechanisms are established at national level with a view to identifying special needs and to provide adequate treatment;
11. To facilitate access to education for minors.

#### **4. POLICY OPTIONS**

Given the different types of problems identified, it is not possible to come up with one single all-embracing policy option. Accordingly, different policy options in relation to legislation and practical cooperation measures are presented below with regard to each identified problem. Practical cooperation measures are considered separately from the legislative ones. The preferred policy option could comprise both types of intervention (legislative and practical cooperation) or only one.

##### **4.1. Option 1: Status Quo**

Developments in Member States will continue within the current framework. The existing legal framework would remain unchanged and ongoing activities would continue. The Commission will continue monitoring the implementation of the Reception Conditions Directive. Taking into consideration the level of ambiguity concerning certain obligations envisaged under the current Directive, it seems unlikely that the majorities of the deficiencies identified in this report could be rectified by initiating infringement procedures against Member States. The Commission will however, where necessary, not refrain from taking further procedural steps with a view to bringing cases of non-compliance before the ECJ.

#### **ANNEX I - Status quo**

Policy Option A: No EU action		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Relevance		

Policy Option A: No EU action		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Ensure higher and more equal standards in terms of reception conditions for people in need of international protection	0	<p>Maintaining the status quo <b>would prevent the CEAS from attaining equal and higher standards in terms of reception conditions</b> for people in need of international protection, since it would maintain the wide margin of discretion allowed under the current Directive.</p> <p>MS could autonomously decide whether to retain minimum standards or raise the level of treatment. This would naturally entail different application of reception conditions throughout the EU that would at least maintain low standards of treatment:</p> <ul style="list-style-type: none"> <li>• access to employment: the flexible rules of the current Directive have led to the application of divergent policies between MS regarding access the labour market. These differences in national policies has often led to low standards of treatment, notably concerning the application of very restrictive conditions on access to employment;</li> <li>• concerning the level and form of material reception conditions and access to health care, it should be stressed that too divergent policies are currently applied. In particular concerning financial support, this appears to be too low in some MS to ensure the applicants' subsistence. Access to health care has also proved inadequate in some cases. These concerns will be maintained in no action is taken.</li> <li>• free movement rights and detention: detention is currently applied widely by the majority of EU MS. Too divergent policies exist regarding grounds, length and conditions of detention, that have often proved inadequate to protect asylum seekers from arbitrary detention policies, as often found by ECtHR case-law.</li> <li>• With regard to the needs of vulnerable persons, considerable deficiencies remain in particular in relation to identifying special needs. This has been the greatest problem with regard to the implementation of the Directive during the first stage of the asylum legislation. These concerns will not be lifted if no action is taken.</li> </ul>
Reduce the phenomenon of secondary movements	0	<p>Maintaining the status quo would imply <b>no positive impact on the reduction of the phenomenon of secondary movements</b>, since the level of harmonisation of the reception conditions would remain unchanged. This would continue to influence flows of applicants for international protection between MS, in accordance with the level of reception conditions available in each MS.</p> <p>However, it must be specified that reception conditions are only one of the main drivers of the phenomenon of secondary movements in the context of the EU asylum system (others are, for example, recognition rates, geographical position of MS etc.), which would have to be considered in revising the EU asylum system in general.</p>
<b>Feasibility</b>		
Transposition feasibility	0	The policy option does not provide for further measures to be transposed and therefore there are no difficulties or risks in this sense.
Financial feasibility	0	No additional financial and administrative costs are anticipated, given the preserving of the status quo.
<b>Expected Impacts</b>		
Social impacts at EU and MS level	0	The extent of <b>secondary movements</b> currently taking place can negatively influence the <b>perception of asylum seekers</b> within countries of destination.

Policy Option A: No EU action		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Economic impacts at EU and MS level	0	The economic impacts of maintaining the status quo would vary among MS depending on the level of asylum seekers employed in the <b>informal labour market due to</b> : excess of labour supply and the possibility of accessing the national labour market (labour market restrictions etc.) At EU level this could <b>unbalance the distribution of the potential workforce</b> on the common labour market.
Impact on people in need of international protection	0	The impact of maintaining the status quo on persons in need of international protection would be that of keeping <b>access to treatment throughout the EU</b> unequal and inadequate with respect notably to employment, material reception conditions and health care due to the great differences in the application of the Directive at national level. Issues such as that of <b>detention would remain unchanged</b> , leaving asylum seekers in diverse and in some cases inadequate living conditions.
Impact on third countries	0	Preserving the status quo would have no impact on third countries.
<b>Fundamental rights</b>	0	As stated in the evaluation report, Member States' policies in certain cases seem to fall short of fundamental rights standards, which is of great concern in this respect. This is mainly attributed to the wide margin of discretion allowed under the Directive. If the status quo is preserved, this margin will remain the same and problems will continue.

## **4.2. Detention**

### **Legislative**

Option 1: This option envisages specifically addressing the issues of conditions, grounds and length of detention. Certain procedural guarantees will also be provided such as the right to be informed of the national procedures for challenging detention before a court or the right to be informed of the reasons for detention. Detention of any person identified as having special needs after an individual examination of their situation will be prohibited.

Option 2: As under option 1, the Directive will specifically address conditions and grounds of detention. In particular, conditions of detention will be introduced taking into consideration current EU rules and international legal standards and ECtHR case-law (i.e. separation of asylum seekers from other third-country nationals). Moreover, grounds of detention will be expressly specified in view of ensuring that detention is applied only as an exceptional measure. The issue of length of detention will not be specifically addressed; however a number of minimum standards will be laid down, such as ensuring that detention is never indefinite or unduly prolonged.

Procedural guarantees will also be provided in the Directive such as the right to be informed of the national procedures for challenging detention before a court and the right to be informed of the reasons for detention. Access to legal assistance will also be facilitated and periodic review of detention will also be foreseen.

Concerning vulnerable persons this option states that they could only be detained if it is considered, after an individual examination of their situation, that their health and well-being will not deteriorate. Minors would not be detained unless it is in their own interest, whereas unaccompanied minors should never be detained.

### **Practical cooperation**

The Member States could make use of best practices in the area of detention especially in exchanging best policies with those Member States that provide for alternatives to detention (financial guarantee, provision of a guarantor, etc.). This could be achieved within the EURASIL framework.

## **4.3. To guarantee that the needs of vulnerable persons and other persons with special needs are timely and adequately addressed**

### **Legislative**

Option 1: Under this option special needs would be dealt with in a horizontal way. The EU could adopt a new legislative instrument with a view to addressing all aspects of vulnerable persons. This would include modalities of reception (including access to the labour market, freedom of movement, access to health care, education of minors and training of staff in contact with asylum seekers), access to the asylum procedure, Dublin II cases and return when not legally on the territory.

Option 2: This option aims at ensuring higher standards of treatment for persons with special needs by providing clearer guidelines within the existing Directive on how to better cater for this category of applicants, especially minors.

This would be achieved by more clearly defining certain key notions in the Directive such as 'necessary medical or other assistance' with a view to at least covering psychological assistance. Additionally this option aims to ensure that vulnerable persons have access to health care under the same conditions as nationals.

Moreover, this option envisages the establishment of an identification procedure available upon lodging an application as well as throughout the asylum procedure if necessary, providing for adequate treatment and follow-up of individual cases.

To ameliorate accommodation conditions in reception centres, the Directive would expressly place an obligation on Member States to prevent gender-related crimes. Concerning minors, this option aims at ensuring that in all cases children will have access to education within three months and that they will benefit from preparatory classes and specific education in view of their access and full integration into the national schooling system. Finally, under this option the Directive will expressly provide for the need to ensure adequate training in relation to the specific needs of victims of torture or rape.

### **Practical Cooperation**

Option 1: Member States would exchange best practices regarding the establishment of mechanisms that would sufficiently address special needs within the EURASIL framework. For example, Member States could exchange views on how to ensure a proactive approach to identifying special needs and guarantee the availability of adequate treatment. Furthermore, best practices concerning training of staff in contact with asylum seekers could also be exchanged.

Option 2: The Commission would coordinate efforts for the adoption of an EU handbook that could include: best training practices, guidelines on identification of special needs, accommodation of vulnerable persons, etc.

## **4.4. To ensure adequate standards for material reception conditions**

### **Legislative**

#### *Level of material reception conditions*

Option 1: Under this option the Directive would expressly allow asylum seekers to fully integrate into the social welfare system of the hosting Member State. In relation to housing facilities in particular, the Directive would stipulate that authorities must ensure, as soon as possible but in any case not exceeding a period of three months, the removal of asylum seekers from accommodation centres and their re-allocation to individual accommodation.

Option 2: This option entails reinforcing the Commission's monitoring role in ensuring the correct implementation of the Directive regarding the level of material reception conditions available to asylum seekers in Member States. This will be achieved by introducing the following measures: Firstly, a quantitative approach will



entail the introduction of benchmarks regarding access to material reception conditions (i.e. minimum level of social assistance provided to nationals). Secondly, to ensure the correct implementation of this provision a reporting requirement will be introduced for Member States (what criteria are taken into consideration when granting financial support, how are special needs taken on board, provide data on the number of asylum seekers receiving financial support, etc.)

#### *Withdrawal/reduction of reception conditions*

Option 1: Under this option Member States would be prohibited from reducing or withdrawing reception conditions in all circumstances except where asylum seekers have sufficient resources and do not require additional financial assistance. In that case this option foresees that asylum seekers would at least have access to necessary treatment of illness. Moreover, this option would guarantee the right to appeal against a decision to withdraw or reduce reception facilities.

Option 2: This option envisages retaining the conditions currently stipulated under the Directive concerning the reduction/withdrawal of reception conditions. In these cases this option foresees that asylum seekers would at least have access to necessary treatment of illness. Moreover, this option would guarantee the right to appeal against a decision to withdraw or reduce reception facilities.

#### **Practical cooperation**

Member States could exchange best practices in relation to the modalities adopted for ensuring a flexible reception conditions system that guarantees high levels of treatment of asylum seekers. This could be achieved within the EURASIL framework. In particular, ideas could be shared on how to ensure the right to privacy and family life in accommodation centres or regarding the structure of the social welfare system with a view to effectively addressing the needs of asylum seekers.

#### **4.5. Facilitate access to the labour market**

##### **Legislative**

Option 1: The Directive would be amended with a view to ensuring access to employment immediately upon lodging an application for international protection. It would further ensure that no additional restrictions to employment could be imposed (such as requirements for a work permit, sectoral or seasonal restrictions, time limitations, etc.)

Option 2: This option entails shortening the period during which asylum seekers cannot access employment, for example from immediately to a maximum of six months. This option also ensures that no additional restrictions to employment can be imposed (such as requirements for a work permit, sectoral or seasonal restrictions, time limitations, etc.) if in practice they would hinder the asylum seeker's right to access employment (i.e. Member States could require a work permit as long as this would not further delay access to the labour market).

#### **Practical cooperation**

Option 3: Member States could exchange best practices on regulating access to the labour market in a more effective way without endangering asylum seekers' rights to access employment. For example, a Member State's tradition of not requiring work permits and/or of allowing immediate access to employment could be presented as a counterpoint to those Member States which apply stricter measures in this domain. This exchange could occur within related fora such as EURASIL.

#### **4.6. Define the scope of application of the Directive**

##### **Legislative**

Option 1: This policy option aims at making it clear that reception conditions must be available to all areas hosting asylum seekers including detention centres and to all types of procedures including Dublin cases. It further envisages amending the Directive in order to extend its scope to include subsidiary protection applicants.

Option 2: This option will make it clear that reception conditions must be available to all areas hosting asylum seekers including detention centres and to all types of procedures including Dublin II cases. It further envisages extending the scope of the Directive to include subsidiary protection applicants, but this would not happen immediately as provision would be made for a transitional period.

Option 3: This option envisages amending the Directive in order to extend its scope to include applications for subsidiary protection. Regarding the applicability of the Directive in cases of detained asylum seekers or asylum seekers under specific procedures such as Dublin cases, this option provides for the current wording of the Directive to be retained and for this issue to be addressed by initiating infringement procedures against those Member States that apply such exclusive practices.

#### **5. ASSESSMENT OF POLICY OPTIONS AND IDENTIFICATION OF PREFERRED POLICY OPTION**

Each policy option is assessed against all the alternatives in order to identify the preferred policy option for each specific objective.

Administrative costs are presented in Annex V and Budgetary and Labour Market impacts in section 6.1 below. However, this impact assessment does not include detailed implementation costs as it is not possible to identify, from the data submitted by Member States in relation to the application of the Reception Conditions Directive, all the relevant costs incurred in this policy area.

##### **5.1. Detention**

##### **Legislative**

Option 1 will to a great extent ensure a more coherent and common approach to detention throughout the EU. It would also ensure higher standards of treatment for asylum seekers since it provides for certain procedural safeguards such as the right to be informed of the grounds for detention and the possibilities under national law whereby detention may be challenged. This option also ensures higher standards of treatment of detainees by referring to conditions of detention. However, establishing

at EU level a maximum length of detention would be a difficult exercise, taking in particular into consideration the wide divergence of national approaches on this issue.

Option 2 provides the same level of protection to asylum seekers as in option 1 regarding conditions and grounds of detention. However option 2 foresees a more flexible provision concerning the issue of length of detention by introducing certain minimum conditions such as that detention should not be unduly prolonged and should be as short as possible.

Concerning vulnerable groups, option 2 prohibits the detention of children based on the principles established under the UN Convention on the Rights of the Child, while concerning other categories of vulnerable persons it ensures that they can only be detained if their already vulnerable situation will not be aggravated due to detention. In this respect the fundamental rights of vulnerable persons are well respected. In addition to what is provided under option 1, option 2 foresees for a periodic review of detention, thus enhancing the monitoring of the relevant provisions in the Directive both at national and at EU level. Additionally this option further facilitates access to legal assistance.

Based on the above, option 2 is the preferred measure from the point of view of ensuring that detention is not arbitrary. It presents the most balanced approach in addressing detention issues while guaranteeing higher standards of treatment for detained asylum seekers, especially vulnerable persons. Limiting the use of detention in certain circumstances would potentially also have a positive impact on the way asylum seekers are perceived by the hosting society, since in some cases society is inclined to assimilate detained asylum seekers with infringements of criminal law.

This option could elicit certain concerns, in particular from Member States applying a policy of indefinite detention for asylum seekers. However, Member States could actually achieve a saving by limiting detention practices (see below section 6.1). The establishment of a systematic review of detention should not entail high additional costs. Article 23 of the existing text of the Directive already imposes an obligation on Member States to ensure the 'appropriate guidance, monitoring and control of the level of reception conditions', so this new requirement could be accommodated within the framework of the existing obligation. This option would be welcomed by Member States that do not apply systematic detention and already ensure humane conditions for detainees as well as by UNHCR and NGOs.

### **Practical cooperation**

Practical cooperation could bring about the establishment of equally effective non-detention measures at national level and assist in the restriction of unnecessary detention, especially with regard to children. Practical cooperation in combination with clear legal obligations, concerning in particular procedural safeguards for detainees, would help to ensure that detention is not arbitrary.

In this respect practical cooperation will form part of the preferred policy option in combination with option 2.

## **5.2. To guarantee that the needs of vulnerable groups are timely and adequately addressed**

### **Legislative**

A horizontal approach, as foreseen in option 1, aimed at regulating all aspects concerning vulnerable asylum seekers, would avoid the 'piecemeal' approach currently applied and would therefore ensure more coherency in this area of law. Not being exclusively an asylum legal instrument (for example it would cover returns), it would have a wider scope of application than the Reception Conditions Directive which could create obstacles in terms of establishing a legal basis under the EU Treaty or if a legal basis is found, with regard to Council negotiations that could prove lengthy since certain parts of the proposal would require unanimity vote (those in relation to immigration).

Option 2 would enhance the standards of treatment regarding vulnerable persons in the areas already stipulated under the Directive, without referring to the issue of persons with special needs outside the asylum procedure. However, amendment of the current Directive would ensure a more immediate solution to deficiencies. Additionally, option 2 ensures higher standards of treatment since it provides *inter alia* for the timely detection of vulnerabilities, access to adequate healthcare and places an obligation on Member States to prevent gender-based violence in accommodation centres. Rights of children will also be reinforced by guaranteeing access to education within three months and the availability of preparatory classes ahead of their integration into the national education system.

This option could entail additional administrative costs as a result of establishing a national mechanism to detect vulnerabilities and ensuring adequate training to deal with victims of torture. Although this mechanism could be accommodated within an existing structure (such as a unit in a state hospital), specialists will have to be available for detecting special needs.

### **Practical cooperation**

Options 1 and 2 would further ensure higher standards of treatment of vulnerable persons. Exchange of best practices will assist in the implementation of national policies that take on board the vulnerable situation of persons with special needs. In this respect both examples of practical cooperation will form part of the preferred policy option in combination with policy option 2 (legislative).

## **5.3. To ensure adequate standards for material reception conditions**

### **Legislative**

#### *Level of material reception conditions*

Integrating asylum seekers into the national welfare system, as envisaged by option 1, would ensure higher standards of treatment of asylum seekers since their needs would be accommodated under the same modalities applicable to nationals. However, this approach would meet with practical obstacles and complicate access to material reception conditions for those applicants residing in reception centres. At present

asylum seekers' reception needs are channelled through a specifically designed system as stipulated by the Directive; in view of the particular administrative formalities and language requirements concerning access to material reception conditions for asylum seekers, their full integration into the national social welfare system might be unfeasible and costly. Similar obstacles will be faced by asylum seekers who are not fully aware of the national procedural formalities to be fulfilled before accessing material reception conditions.

Option 2 equally ensures a higher level of treatment of asylum seekers since Member States would be obliged to grant access to material reception conditions within the framework of specific benchmarks applied for nationals. Additionally a certain degree of flexibility is granted in deciding whether support would be channelled within the organised reception system or integrated into the national social support mechanisms. Option 2 will also enhance the Commission's role as guardian of the Directive by introducing a reporting requirement with regard to the benefits granted to asylum seekers. Regarding housing arrangements, Member States that mainly accommodate asylum seekers in reception centres will face practical and financial difficulties in meeting the requirement of transferring them within three months to private accommodation, as envisaged under option 1.

In the light of the above, option 2 is the preferred measure for addressing deficiencies with regard to material reception conditions, since it is feasible and it also ensures higher standards of treatment.

#### *Withdrawal/reduction of reception conditions*

Option 1 ensures to a high degree that asylum seekers are not left destitute since it only permits the reduction/withdrawal of reception conditions in cases where the asylum seeker clearly has sufficient resources.

Option 2 allows for the reduction or withdrawal of reception conditions as provided under the current Directive. However, taking into consideration the serious consequences that the reduction or withdrawal of material reception conditions may have for asylum seekers, especially persons with special needs, this option does not seem to ensure an adequate standard of living.

Both measures would entail the same administrative costs regarding the right of appeal against decisions on withdrawal/reduction of reception conditions, stemming from a likely increase in appeals in those Member States that do not already grant this right.

In this respect and also taking into consideration current jurisprudence inviting concerns concerning the risk to infringe fundamental rights, option 1 is the most appropriate policy option since it could ensure that asylum seekers are not left destitute in cases of reduction or withdrawal of material reception conditions.

#### **Practical cooperation**

In combination with option 2, practical cooperation would assist Member States in exchanging best practices regarding the implementation at national level of policies that ensure adequate standards of material reception conditions.

## **5.4. Facilitate Access to the Labour Market**

### **Legislation**

Immediate and unconditional access to employment for asylum seekers would significantly increase the possibilities for asylum seekers to become more self-sufficient and would most effectively address the phenomenon of secondary movements. However, this option presupposes a certain level of EU harmonisation of national policies on access to the labour market. Since this has not yet been achieved, option 1 would be likely to cause implementation difficulties within Member States. Moreover, Member States would be reluctant to adopt such a rigid labour market policy, given that this could result in more favourable treatment of asylum seekers as against other third-country nationals legally present on the territory who would still need to comply with certain restrictive employment requirements. Member States would also argue that immediate access to the labour market could become a 'pull factor' for third-country nationals seeking to enter the EU solely on economic grounds.

Option 2 incorporates the beneficial elements for asylum seekers envisaged under option 1. In particular it protects the right to employment against restrictive national policies, ensuring in this respect a high level of treatment for asylum seekers. It also promotes self-sufficiency and independence amongst asylum seekers and assists in facilitating integration into the hosting society and in avoiding unnecessary social welfare payments. Considering that further harmonisation of labour market rules would provide asylum seekers with less incentive to move to another more 'generous' Member State, this policy option would also assist in limiting secondary movements, although to a lesser extent than option 1 since the application of different time restrictions will still be possible.

Option 2 however would interfere to a lesser extent with national labour policies, for two main reasons: First and foremost, although it shortens time restrictions for accessing the labour market, it retains the notion of a maximum period, from immediately to six months, during which access must be granted; it therefore leaves room for Member States to adopt their national time frames on accessibility of employment. Secondly, it does not exclude the imposition of conditions allowing Member States to control to a certain extent the supply and demand on the labour market. Access to the labour market under option 2 is therefore not unconditional. The aim of the option is merely to better clarify the right already enshrined in the current Directive, that asylum seekers must be able to access employment.

In the light of the above and also based on current policies (almost half of the Member States already allow access to employment either immediately or within six months) and on contributions received from stakeholders to the Green Paper consultation process, option 2 seems the most feasible and justified way to facilitate access to the labour market since, as stated above, it retains a certain level of flexibility for Member States and ensures at the same time higher standards of treatment for asylum seekers.

### **Practical cooperation**

As stated above, it is difficult to lay down common rules on access to the labour market within the EU. Practical cooperation, channelled by the Commission, would be one way to promote best practices in Member States that can ensure the correct implementation of the Directive. Within this non-legislative framework, the experience of those Member States establishing less restrictive labour market policies would be compared to those that impose the most restrictions. In this respect, this forum could illustrate feasible ways of retaining a flexible labour market policy while facilitating access to employment for asylum seekers.

Practical cooperation will be most effective in combination with option 2 since certain obligations need to be ensured with a view to achieving the set objective of facilitating access to the labour market (such as shortening time restrictions). Accordingly, this measure will be favoured in combination with legislative intervention under option 2.

**5.5. Further clarify the scope of application of the Directive and extend it to cover subsidiary protection applicants**

**Legislative**

At present, since in practice Member States do not exclude reception conditions in the case of applications for subsidiary protection, the transposition of the extension of the Directive at national level with a view to covering these cases would not be problematic. In this respect, providing a transitional period for the implementation of this extension seems unnecessary. With regard to the issue of application of the Directive in detention centres and during certain types of legal procedures, although there is no clear evidence suggesting that these cases are not to be covered, the wording of the Directive leaves room for some ambiguity. In view of this uncertainty, it might be difficult to provide a strong legal basis with a view to initiating an infringement case against those Member States practising such policies.

In the light of the above, the policy option that would most effectively ensure a clear definition of the scope of the Directive in the above-mentioned cases is option 1. Under this option the Directive would explicitly and thoroughly clarify both the *rationae materiae* (detention centres, border procedures, Dublin cases, etc.) and the *rationae personae* (subsidiary applicants). The effectiveness of this clarification will be seen once the new Directive enters into force, thereby guaranteeing equal treatment amongst asylum seekers without unnecessary delays.

**Presentation of the Preferred Policy Option**

Operational Objectives	PREFERRED POLICY OPTION:
<p><b>To guarantee legal safeguards for detained asylum seekers and to ensure that detention is not arbitrary</b></p>	<p><b>Legislate</b></p> <p>Under this option the Directive will specifically address conditions and grounds of detention. In particular, conditions of detention will be introduced taking into consideration current EU rules and international legal standards and ECtHR case-law (i.e. separation of asylum seekers from other third-country nationals). Moreover, grounds of detention will be expressly specified in view of ensuring that detention is applied only as an exceptional measure. The issue of length of detention will not be specifically addressed. However a number of minimum standards will be laid down, such as ensuring that</p>

Operational Objectives	PREFERRED POLICY OPTION:
	<p>detention is never indefinite or unduly prolonged.</p> <p><b>Practical cooperation</b></p> <p>The Member States could make use of best practices in the area of detention especially in exchanging best policies with those Member States that provide for alternatives to detention (financial guarantee, provision of a guarantor, etc). This could be achieved within the EURASIL framework.</p>
<p><b>To guarantee that the needs of vulnerable groups are timely and sufficiently addressed</b></p>	<p><b>Legislate</b></p> <p>This option aims at ensuring higher standards of treatment for persons with special needs by providing clearer guidelines within the existing Directive on how to deal with this category of applicants, especially minors. This would be achieved by more clearly defining certain key notions in the Directive, such as 'necessary medical or other assistance' with a view to at least covering psychological assistance. Moreover, this option envisages the establishment of an identification procedure available upon lodging an application as well as throughout the asylum procedure if necessary, providing for adequate treatment and follow-up of individual cases. To ameliorate accommodation conditions in reception centres, the Directive would expressly oblige Member States to prevent gender-related crimes. Concerning the issue of education of minors, this option aims at ensuring that in all cases children will have access to education within three months and that they will benefit from preparatory classes in view of their access and full integration into the national schooling system. Finally, under this option the Directive will expressly provide for the need to ensure adequate training with a view to addressing specific needs of victims of torture or rape.</p> <p><b>Practical Cooperation</b></p> <p>-Member States would exchange best practices regarding the establishment of mechanisms that would sufficiently address special needs within the EURASIL framework. For example, Member States could exchange views on how to proactively identify special needs and guarantee the availability of adequate treatment. Furthermore, best practices concerning training of staff in contact with asylum seekers could also be exchanged.</p> <p>-The Commission would coordinate efforts for the adoption of an EU handbook that could include best training practices, guidelines on identification of special needs, accommodation of vulnerable persons, etc.</p>
<p><b>To ensure adequate standards for material reception conditions and access to health care while taking into account gender and age-specific considerations</b></p>	<p><b>Legislate</b></p> <p><i>Level of material reception conditions</i></p> <p>This option entails reinforcing the Commission's monitoring role in ensuring the correct implementation of the Directive regarding the level of material reception conditions available to asylum seekers in Member States. Specifically, this will be achieved by introducing the following measures: Primarily, a quantitative approach will be followed by means of benchmarks regarding access to material reception conditions (minimum amount of social support). Secondly, to ensure the correct implementation of this provision a reporting requirement will be introduced for Member States (what criteria are taken into consideration when granting financial support, how are special needs taken on board, provide data on the number of asylum seekers receiving financial support, etc.)</p> <p><i>Withdrawal/ reduction</i></p> <p>Under this option Member States would be prohibited from reducing or withdrawing reception conditions in all circumstances except where asylum seekers have sufficient resources and do not require additional financial assistance. In that case this option foresees that asylum seekers would at least have access to necessary treatment of illness. Moreover, this option would guarantee the right to appeal against a decision to withdraw or reduce reception facilities.</p> <p><b>Practical cooperation</b></p> <p>Member States could exchange best practices in relation to the modalities adopted for ensuring a flexible</p>



<b>Operational Objectives</b>	<b>PREFERRED POLICY OPTION:</b>
	reception conditions system that guarantees high levels of treatment of asylum seekers. This could be achieved within the EURASIL framework. In particular, ideas could be shared on how to ensure the right to privacy and family life in accommodation centres or regarding the organisation of a social welfare system in view of effectively addressing the needs of asylum seekers.
<b>Facilitate access to labour market</b>	<p><b>Legislate</b></p> <p>This option entails imposing a shorter period during which asylum seekers cannot access employment, for example from immediately to a maximum of six months upon lodging an application for asylum. This option also ensures that no additional restrictions to employment can be imposed (such as requirements for a work permit, sectoral or seasonal restrictions, time limitations, etc) if in practice they could hinder the asylum seeker's right to access employment ( i.e. Member States could require a work permit as long as this would not further delay access to work).</p> <p><b>Practical cooperation</b></p> <p>Member States could exchange best practices on regulating access to the labour market in a more effective way without endangering asylum seekers' rights to access employment. For example, a Member State's tradition of not requiring work permits and/or of allowing immediate access to employment could be presented as a counterpoint to other Member States' stricter measures in this domain. This exchange could occur within related fora such as EURASIL.</p>
<b>Define the scope of application of the Directive</b>	<p><b>Legislate</b></p> <p>This policy option aims at making it clear that reception conditions must be available to all areas hosting asylum seekers including detention centres and to all types of procedures including Dublin II cases. It further envisages amending the Directive in order to extend its scope to cases involving subsidiary protection applicants.</p>

## 6. ASSESSMENT OF PREFERRED POLICY OPTION

On the basis of the assessment of the policy options presented in section 5 it is clear that none of the individual policy options completely addresses the problems or fully achieves the objectives sought. However, by combining different policy options, a higher degree of effectiveness could be achieved.

Accordingly, the preferred option has been designed by merging the policy options that correspond to each specific objective. The preferred policy option combines legislative amendments with a view to ensuring higher standards of treatment for asylum seekers and practical cooperation measures that would allow more coherent and efficient implementation of the legislation.

### 6.1. Budgetary and Labour Market impacts of envisaged measures

#### I. Access to the labour market

Shortening time restrictions regarding access to employment (from a maximum of 12 to a maximum of 6 months) would have an insignificant **employment impact** on the national labour market. According to available EU data, in 2006 there were 216,525,000 economically active persons between 15 and 64 years old, of whom **198,226,000 were actually employed**. Asylum applications in 2007 reached 227,000. Thus, assuming that requests for employment were made by all asylum seekers and that they all have in practice gained access to the labour market, their number would represent an increase of just **0.11%** in the employed population and **0.10%** in the economically active population. These percentages are in reality even lower since some of the asylum seekers are not of working age (elderly, minors). Consequently these rates are rather trivial and are not likely to have an impact on the labour market.

It should also be underlined that Member States may have the power to impose labour market restrictions, notably with a view to meeting labour market demand in those economic sectors that lack manpower and in order to avoid overburdening specific sectors.

As far as **economic impact** is concerned, facilitating access to the labour market could even achieve savings for those Member States currently granting access within 12 months from the time an asylum application is registered. This is mainly due to the fact that access to the labour market will assist asylum seekers in becoming more self-sufficient, and therefore additional welfare assistance would be avoided. Member States would further benefit from contributions made by employed asylum seekers to their fiscal system through labour taxation.

At national level, this proposed measure does not seem to have stirred great concerns. The time frame of 6 months is considered appropriate, judging from contributions sent to the Commission during the Green Paper consultation process. It should also be emphasised in this respect that a number of Member States have already shortened time restrictions in regard to access to employment without any significant impact on their national labour market (immediate access to employment is allowed in Greece,

whereas the limitation period is 20 days in Portugal, 3 months in Austria and Finland, 4 months in Sweden, 6 months in Italy, Spain, Netherlands, Cyprus, and 9 months in Luxembourg).

## **II. Vulnerable groups**

### *Identification of special needs and access to health care*

The preferred option involves the establishment of a mechanism at national level for identifying those asylum seekers with special needs. From a legal point of view the current Directive does not explicitly require a specific procedure to be put in place in order to detect special needs; it merely requires that the needs of vulnerable asylum seekers, once identified, should be taken into account by the authorities. In this respect, the proposed measure introduces a new obligation for Member States that affects all asylum seekers, since the identification of special needs would have to take place once an application has been lodged.

In the current circumstances it seems that a large number of Member States would be faced with additional financial efforts in implementing this provision. At least 11 Member States, some of which receive large numbers of asylum applications, currently do not provide for such a procedure. Six Member States operate such a mechanism at the beginning of the asylum procedure but in at least two of those the identification procedures seem inadequate, and two Member States identify special needs only in the case of unaccompanied minors and only at a later stage of the asylum procedure.

Based on information from National Red Cross Societies managing reception centres for asylum seekers, the costs that such an identification procedure entails could vary in Member States from €50 to a maximum of €150 per person. This procedure always includes a medical examination by a physician and screening by a doctor or nurse specifically trained to detect special needs; in particularly difficult cases, specific psychological or psychiatric screening is also provided. Additionally, based on information received from one Member State carrying out such a procedure for all newly arrived asylum seekers, the costs incurred are €195 per person including a medical examination, screening by qualified personnel in order to detect special needs and translation services.

It should be emphasised that all Member States already provide for a medical examination upon the lodging of an asylum application. In this respect additional costs will be incurred only for the upgrading of this examination in order to ensure the involvement of qualified personnel in this procedure. The Directive leaves it to Member States to decide on the modalities that need to be established in order to comply with this new obligation; therefore Member States could operate within existing frameworks such as the medical examination.

Moreover, the envisaged measure aimed at ensuring equal access to health care for vulnerable persons and nationals would entail costs for those Member States currently providing a lower level of treatment for this category of applicants. Six Member States already provide for equal access to health care.

The budgetary consequences of this proposed measure are difficult to assess, taking into consideration the divergences in EU healthcare policies (for example, some Member States cover preventive health care whereas others do not). It should be noted, however, that the impact should not be extensive, taking into consideration the fact that asylum applicants in 2007 represented 0.04% of the total EU population. Since access to health care under the same conditions as nationals will only affect vulnerable asylum seekers who require specific treatment, this percentage will be even lower.

It should be emphasised that deficiencies identified in Member States concerning the treatment of vulnerable persons raise strong concerns regarding respect of fundamental rights. Consequently it is extremely important to rectify these problematic situations through legislative intervention. In this respect the political and legal implications of these deficiencies should prevail over the financial considerations.

#### *Access to education for minors*

Currently, it seems that the great majority of Member States do not delay in general access to education for minors for more than three months after the application for asylum is lodged. In this respect the envisaged amendment (of ensuring, **without any derogation**, access within a maximum of three months) should have no substantive impact on Member States.

### **III. Including in the scope of the Directive applicants for subsidiary protection**

Only three Member States exclude by law applicants for subsidiary protection from the scope of the Directive. However, due to the introduction of a common asylum application for both forms of international protection (refugee and subsidiary protection status), applicants for subsidiary protection are not, in practice, distinguished from applicants for refugee status and therefore do benefit from reception conditions. However, for reasons of legal clarity and coherence with the EU body of law, it is necessary to ensure that they are covered by the Directive.

In this respect the envisaged measure aiming to cover in the Directive subsidiary protection applicants does not entail any economic impact for Member States.

### **IV. Clarifying that Dublin applicants should benefit from Reception Conditions**

Three Member States refuse to apply reception conditions to Dublin cases (for the period 2003-2006 the average number of affected applicants per year in all three Member States was approximately 8,600). In this respect the envisaged amendment ensuring that Dublin applicants benefit from reception conditions would have no significant economic impact at EU level.

It should also be underlined that the envisaged provision merely clarifies an existing obligation under the current Directive; any costs these three Member States would face would be attributed to the fact that their policies are not in line with the current Directive on this issue.

## V. Detention

The preferred option concerning detention is twofold: it concerns i) the application of the Directive in detention facilities, and ii) the grounds and conditions under which detention is applied.

*Scope:* At least nine Member States do not apply the Reception Conditions Directive to detention areas. It is not possible to estimate the number of affected asylum seekers due to the fact that Member States either do not provide data on the number of detained asylum seekers or available data are not comparable since they include other third-country nationals in detention.

As stated in the problem definition of this report, the envisaged amendment providing that reception conditions apply to all geographic areas and facilities hosting asylum seekers is merely a clarification of an existing obligation. In this respect costs deriving from the implementation of this new provision would be attributed to the fact that these nine Member States are not in line with the **current** Directive.

This proposed provision should also be examined together with the envisaged measures concerning grounds and conditions of detention.

*Application of detention:* Currently, the majority of Member States apply detention on various grounds. The proposal seeks to ensure that detention in the area of asylum should be seen as unnecessary and applied only in exceptional cases. It should be emphasised that limiting the use of detention would actually achieve savings for Member States; owing to the high number of staff employed in detention centres in order to meet security requirements, detention policies prove to be more costly than accommodating asylum seekers in open reception centres.

If Member States decide to apply detention under the exceptional grounds set out in the new Directive, they would need to comply with certain requirements, namely that asylum seekers can only be detained in specialised facilities separated from other third-country nationals, that male and female asylum seekers must be kept apart, etc. These conditions of detention could entail costs for those Member States that currently lack the required infrastructure. However, as stated above, the fact that the use of detention will be limited will already achieve savings. Additionally, the example of those Member States (at least five) currently using non-detention measures (financial guarantee, provision of a guarantor, etc., especially in relation to vulnerable groups) could be followed by the others in order to limit costs even further. It should also be emphasised that the envisaged provisions on detention aim to align the current Directive with international standards, namely the UN Convention on the Rights of the Child and the EU Charter of Fundamental Human Rights.

Finally, concerning the introduction of legal safeguards such as the right to judicial review and the right to be informed of the grounds for detention, these are already provided for in EU law, in particular in the Asylum Procedures Directive, and in other international instruments such as the ECHR. The implementation of these provisions should therefore not impose an additional financial burden, as Member States should already comply with these standards.

## VI. Material reception conditions

EU Member States spend in total €1.5 billion per year for reception services provided to asylum seekers. This figure roughly indicates the current economic impact of the implementation of the Reception Conditions Directive in Member States. In reality, costs are lower since some Member States also include in their data services provided to other third-country nationals (non-asylum applicants).

*Level of material reception conditions:* the envisaged measure introduces a benchmark to be taken into consideration when Member States grant financial assistance to asylum seekers, namely the minimum amount of social welfare available to nationals. The rationale behind this is to quantify the meaning of 'adequate' standards of treatment under the current Directive and to further enhance the Commission's monitoring role in this respect.

Currently, at least 15 Member States seem to provide very low financial allowances to asylum seekers, whereas at least seven Member States provide financial assistance identical or very close to that provided to nationals.

It should be noted that the envisaged provision does not impose any new obligations on Member States. Social welfare is already considered by Member States as the minimum amount that must be granted to a person to allow him/her to live in human dignity; in this respect the set benchmark corresponds to Member States' existing obligation of ensuring for asylum seekers a 'standard of living adequate to ensure their health and subsistence'. Moreover, it should be emphasised that the envisaged measure is in line with the principle of proportionality; Member States are free to provide material reception conditions in other forms rather than in financial assistance. The level of financial assistance is therefore to be adapted depending on the level of assistance Member States provide in kind, for example.

Those Member States that do not adhere to the **current** principle set out in the Directive would face additional costs in implementing the proposed provision. However, as stated above, these costs could be offset against savings achieved on social welfare payments, due to the facilitated access to the labour market.

*Withdrawal:* The preferred option aims to ensure that withdrawal of material reception conditions could only be applied if the asylum seekers have sufficient means to survive.

However, the proposed measure does not impose any new obligation on Member States; Member States must implement the Reception Conditions Directive in line with fundamental rights, namely the right to life and the right to human dignity. In this respect they must already ensure that, in cases of reduction or withdrawal, the asylum seeker does not become destitute.

It should also be noted that Member States often decide to reduce material reception conditions under certain circumstances but they very rarely decide to withdraw all provided support.

## 6.2. Other Impacts:

Preferred policy option

Assessment Criteria	Rating	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
<b>Relevance</b>		
<p><b>Ensure higher and more equal standards in terms of reception conditions for people in need of international protection</b></p>	+	<p>The policy option could <b>strongly contribute</b> to achieving <b>equal and higher standards of reception conditions</b>. The provisions established would be crucial to ensuring that, even while maintaining a certain margin of discretion, all MS would transpose the Directive in such a way as to <b>avoid the establishment of extremely different standards of treatment</b>. This would <b>increase the overall level of the reception conditions</b> granted by MS to people in need of international protection:</p> <ul style="list-style-type: none"> <li>• facilitating access to the labour market (prohibiting certain restrictions if these hinder or delay access and shortening time restrictions to access) would help applicants for international protection to benefit from employment, which means the opportunity to be self-sufficient while waiting for a decision concerning their application. However, it must be specified that the provisions on the possibility of imposing a time restriction in terms of access to the labour market, ranging from immediately to a maximum of six months, would leave a certain degree of discretion to MS;</li> <li>• limiting detention by providing that it only occurs in exceptional cases would safeguard the right to liberty. Introducing legal guarantees and monitoring detention would generate more equal and fair application of detention measures throughout the EU, would ensure more humane detention conditions and would assist in avoiding arbitrary detention decisions;</li> <li>• introducing measures to ensure adequate standards for material reception conditions and access to health care (i.e. introduction of benchmarks concerning the level of material reception conditions granted, further elaboration of the meaning of “adequate” or “necessary treatment of illness”, etc.) would lay down clearer rules in relation to the level and form of material reception conditions that should be available to asylum seekers and would assist the Commission in monitoring the implementation of the related provisions;</li> <li>• establishing measures to guarantee that the needs of vulnerable groups are sufficiently and timely addressed (i.e. introduction of an identification procedure for persons with special needs) would be useful to achieve a more level playing field between MS and to ensure higher standards of treatment;</li> <li>• exchanging best practices and adopting guidelines in all the fields of reception conditions could be a very useful instrument for diffusing and adopting effective solutions. These instruments of practical cooperation, introduced as accompanying measures to the legislative intervention, would reinforce the positive effects of legislation. Particularly, the participation of UNHCR and NGOs in the meetings within EURASYL could represent a significant input in defining and implementing best practices towards establishing higher level of protection for asylum applicants.</li> </ul>
<p><b>Reduce the phenomenon of secondary movements</b></p>	+	<p>The policy option would have an impact in terms of reducing the phenomenon of secondary movements, since it would generate a 'standardised' rules. In this respect differences between MS's reception policies would be limited to a great extent and applicants for international protection would therefore be less inclined to move to another MS in order to be granted 'more generous' reception conditions.</p> <p>However, it must be specified that reception conditions are only one of the main drivers of this phenomenon (others are, for example, the recognition rates or the geographic position of the hosting MS). This intervention has weak relevance to this objective if not accompanied by parallel improvements in the other areas of the EU asylum system.</p>

Preferred policy option		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
<b>Feasibility</b>		
<b>Transposition feasibility</b>	+	<p>In terms of transposition feasibility, difficulties could arise concerning some of the provisions proposed:</p> <ul style="list-style-type: none"> <li>the possibility of limiting the restrictions on access to the labour market might not be acceptable for some MS that already apply numerous labour conditions. It should be stated however that the proposed policy option maintains a certain margin of discretion for MS concerning the imposition of labour market conditions; Moreover, almost half of the MS already allows access to employment either immediately or within a maximum period of 6 months, therefore the proposed time limitations is not expected to bring forward substantial oppositions from MS.</li> <li>concerns could arise, but in relative terms, regarding the introduction of conditions of detention since MS would need to adapt their policies to these new guidelines. However, it must be specified that this would determine minor problems taking into consideration the fact that these guidelines are mainly based on already existing international obligations in view of ensuring humane treatment of all persons in the territory of a MS, including detainees;</li> <li>the proposed measures would require MS to ensure adequate levels of material reception conditions, taking into consideration the level of support available to nationals, which would require considerable commitment on the part of MS; However, some MS already allow asylum seekers to access the national social aid system;</li> <li>the introduction of the reporting mechanism on the types of social benefits and amounts granted to asylum seekers would constitute an additional form of supervision which would ensure the correct application of legislation. MS might raise concerns regarding the feasibility of such a reporting system; On the other hand MS are already obliged to provide such information as signatory parties to the International Convention on Economic, Social and Cultural rights (part IV of the Convention);</li> <li>the introduction of guidelines for essential notions such as treatment of illness and access to health care could raise concerns since MS may give different interpretations to these concepts; However, the proposed legislation will not provide common definitions of these notions, allowing MS a certain degree of manoeuvre in this respect;</li> <li>the introduction of the possibility to appeal against the withdrawal or reduction of reception conditions might be problematic for those MS which do not at present provide for this possibility.</li> <li>adopting a procedure for the identification of vulnerable persons throughout the entire asylum process would raise concerns in terms of how such a mechanism could be established in practice. However, the proposed Directive does not require MS to set up a new institutional framework in order to ensure identification of special needs; consequently MS could arrange for the identification procedure to take place at the time of the medical examination which almost all of them already carry out.</li> </ul>



Preferred policy option		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
<b>Social impacts at EU and MS level</b>	+	<p>The effects the policy option would deliver from a social perspective can be perceived both in a positive and negative sense.</p> <p>Some <b>main positive aspects</b> must be stressed:</p> <ul style="list-style-type: none"> <li>• through facilitated access to the labour market, applicants for international protection would, in principle, become financially independent. This could serve as a basis for stronger social integration.</li> <li>• due to the measures with regard to access to material reception conditions applicants for international protection would, in principle, receive the necessary resources to benefit from adequate living conditions. Consequently this could prevent exclusion trends from the hosting MS;</li> <li>• through the guarantees determined by the new identification procedure, applicants for international protection with special needs would, in principle, receive the necessary protection and resources to address their specific situation and to allow them to benefit from living conditions aligned to their needs. This could prevent exclusion trends from the hosting MS;</li> <li>• ensuring that vulnerable persons have access to the same health care as nationals would allow them to benefit from an important motor of social integration, creating a vital link between them and the hosting society.</li> </ul>
<b>Social impacts at EU and MS level</b>	+	<p>On the other hand, two <b>main negative aspects</b> could be stressed:</p> <ul style="list-style-type: none"> <li>• EU citizens might negatively perceive applicants for international protection as additional competition on the labour market;</li> <li>• EU citizens might negatively perceive access to 'social aid' for applicants for international protection. Citizens might consider unjustified the fact that applicants have access to these benefits.</li> </ul>
<b>Impact on people in need of international protection</b>	+	<p>The present intervention would deliver an overall positive impact on people in need of international protection:</p> <ul style="list-style-type: none"> <li>• it would guarantee that persons in need of international protection would have fairer opportunities to find employment and could become self-sufficient;</li> <li>• it would guarantee that detention would be applied in accordance with international law. Moreover, the prohibition of detention of unaccompanied minors and other vulnerable groups would significantly strengthen their fundamental rights.</li> <li>• additionally it would guarantee a number of very significant safeguards for detained asylum seekers such as access to legal assistance and the right of appeal against detention;</li> <li>• the reporting mechanism with regard to access to material reception conditions would guarantee that asylum seekers can benefit from adequate level of support, in particular when financial assistance is provided;</li> </ul>

Preferred policy option		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
	+	<ul style="list-style-type: none"> <li>it would assist in ensuring that asylum seekers are not left destitute when reception conditions are reduced or withdrawn. It would also ensure a right to appeal against decision to reduce/withdraw reception conditions, which will ensure that such decisions are justified and based on the circumstances of each individual.</li> <li>it would ensure the proper and timely identification of special needs and access to adequate health care;</li> <li>it would provide the necessary attention with regard to housing to gender and age-specific concerns, and to cases of persons with other special needs, and would provide the highest possible standards since, in cases of access to health care, persons with special needs would enjoy equal treatment with nationals;</li> <li>it would guarantee a more comprehensive application of reception conditions through the adoption and application of best practices. Also, the participation of UNHCR and NGOs in the meetings within EURASYL could represent a significant input in defining best practices aiming primarily at the establishment of higher level of protection.</li> </ul>
<b>Impact on third countries</b>	+	It is extremely difficult to assess the impact on third countries of the proposed provisions (i.e. in terms of whether ameliorating reception conditions would increase asylum flows). Such an impact could only be assessed in combination with other elements of the asylum procedure such as recognition rates of asylum applications, as well as several 'push factors' such as the level of political stability in neighboring third-countries.
<b>Fundamental rights</b>	+	<p>Respect for and protection of fundamental rights would be increased through this option:</p> <ul style="list-style-type: none"> <li>easier access to the labour market would allow applicants to be more self-sufficient and would facilitate their integration into the hosting MS.</li> <li>the proposed measures would ensure that detention is in general unnecessary and should only be applied in exceptional cases. In this respect the right to freedom would be reinforced.</li> <li>ensuring adequate level of material reception conditions by establishing concrete benchmarks and by introducing a reporting mechanism with a view to monitor the implementation of these benchmarks would strengthen the protection of the right to dignity for asylum applicants;</li> <li>the right to appeal against a decision to withdraw or reduce reception conditions would strongly contribute to the respect of fundamental rights of asylum seekers by ensuring that they are never left destitute;</li> <li>the identification procedure for special needs would contribute greatly in ensuring full respect of the fundamental rights of vulnerable applicants. Moreover, equal treatment with nationals in relation to access to healthcare, would guarantee higher standards of treatment in this respect;</li> <li>the participation of UNHCR and NGOs in the meetings within EURASYL should represent a significant input in defining and individuating best practices directed primarily towards the application of interventions with the particular aim of granting full respect of fundamental rights.</li> </ul>

### 6.3. Assessment and considerations of proportionality and EU added value

The preferred option is proportional to the objectives set out in this impact assessment and represents a balanced solution between the benefits obtained (i.e. having a more

efficient and more protective system) and the efforts Member States must make to implement them.

The preferred option ensures that the Directive will be more consistently applied by Member States, while also providing for greater consistency with EU asylum legislation, in particular the Qualification Directive and the Asylum Procedures Directive.

## **7. MONITORING AND EVALUATION**

In order to monitor the Member States' adherence to the revised Directive, regular evaluation and reporting by the Commission will take place.

Subsequent monitoring and evaluation of the preferred policy option are important to assess its efficiency and effectiveness in addressing the underlying problems and meeting the policy objectives. The indicators listed below could be used to assess the progress and effectiveness of the preferred option in achieving the main policy objectives. These indicators will be used by the Commission in the following cases:

1. To evaluate and assess the information received from Member States for the purpose of preparing the report on the application of the Directive, as envisaged in Article 28 of the proposal. The report would be compiled once the deadline for implementation of the Directive at national level expires.
2. To evaluate and assess the information submitted by Member States on a yearly basis concerning access to the labour market, material reception conditions and treatment of vulnerable groups, in accordance with Article 26 of the Directive.

Regular expert meetings will continue to take place with a view to discussing implementation problems and exchanging best practices between Member States.

### **Indicators**

- Transposition by all Member States of the amendments proposed to the Directive on Reception Conditions
- Number of asylum seekers in a Member State
- Number of asylum seekers employed in a Member State
- Number of asylum seekers identified as having special needs and number of referrals to appropriate treatment
- Number of Dublin requests and transfers
- EURODAC hits
- Amounts of benefits granted to asylum seekers
- Number of persons benefiting from ERF-funded activities

- Level of financial resources allocated for the ERF
- Level of financial resources allocated for practical cooperation activities
- Number of training activities carried out

## **ANNEX I– GLOSSARY**

### **Asylum**

Asylum is a form of protection given by a State on its territory based on the principle of ‘non-refoulement’ and internationally or nationally recognised refugee rights. It is granted to persons who are unable to seek protection in their country of citizenship and/or residence in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

### **Common European Asylum System**

Rules and principles at European Union level leading to a common asylum procedure and a uniform status, valid throughout the Union, for those granted asylum. The major aims and principles were agreed to in October 1999 at the European Council in Tampere (Finland) by the Heads of State or Government. The second phase in the establishment of the Common European Asylum System started with the adoption of The Hague programme in November 2004.

### **Dublin system**

The Dublin Convention and its successor, the Dublin Regulation, set the rules concerning which Member State is responsible for handling an asylum application. The objective of the system is to avoid multiple asylum applications, also known as ‘asylum shopping’. The Dublin system comprises the Dublin and Eurodac Regulations and their implementing regulations.

### **Geneva Convention**

The convention relating to the status of refugees done at Geneva on 28 July 1951. The convention is supplemented by the New York Protocol of 31 January 1967. All Member States are party to the convention and the protocol, which are the basis on which the Common European Asylum System is built.

### **Non-refoulement**

The key principle of international refugee law, which requires that no State shall return a refugee in any manner to a country where his/her life or freedom may be endangered. The principle also encompasses non-rejection at the frontier. Its provision is contained in Article 33 of the 1951 Convention Relating to the Status of Refugees and constitutes the legal basis for States’ obligation to provide international protection to those in need of it. Article 33(1) reads as follows: ‘No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’. Article 3 of the European Convention for the Protection of Human

Rights and Fundamental Freedoms, in the light of the case-law of the European Court of Human Rights and Article 3 of the UN Convention Against Torture and Other

Cruel, Inhumane and Degrading Treatment or Punishment, are also considered as bases for ‘non refoulement’ obligations.

### **Reception Conditions**

Reception conditions are defined in the Reception Conditions Directive as the full set of measures that Member States grant to asylum seekers in accordance with this Directive.

### **Refugee**

A person who fulfils the requirements of Article 1(A) of the Geneva Convention, Article 1(A)

defines a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

### **Refugee status**

This is defined in the EU legislative instruments as the status granted by a Member State to a person who is a refugee and admitted as such to the territory of that Member State. In terms of the Geneva Convention, refugee status is defined as the status possessed by a person who fulfils the requirements of the refugee definition as laid down in the convention.

### **Subsidiary protection**

The EU Qualification Directive created the subsidiary protection status in order to give protection to certain categories of persecuted people who are not covered by the 1951 Geneva Convention on refugees. It grants a lower level of rights than the Geneva Convention status.

### **Tampere European Council**

In October 1999 the Tampere European Council adopted a comprehensive approach to put into practice the new political framework established by the Treaty of Amsterdam in the area of Justice and Home Affairs. The Council set ambitious objectives and deadlines for action in all relevant areas, including asylum and immigration, police and justice cooperation and fight against crime.

### **Temporary protection**

People sometimes need temporary protection after being temporarily displaced from their homes, e.g. Kosovo in 1999. The EU adopted a directive on temporary protection in July 2001, the provisions of which have not been enacted so far.

## **The Hague programme**

The Tampere programme, adopted by the Tampere European Council in 1999, set the agenda for work in the area of Justice and Home Affairs for the period 1999-2004. Likewise, the European Council adopted in 2004 The Hague programme, which covers the period 2005-2010, and provides, inter alia, for the continuation of efforts aimed at establishing common European asylum and immigration policies.

## **Unaccompanied minors**

Unaccompanied minors are persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; this includes minors who are left unaccompanied after they have entered the territory of Member States.

## **Vulnerable persons**

In accordance with the Reception Conditions Directive, vulnerable persons refers to minors, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Under national law and practices Member States could further categorise vulnerable persons.

## **ANNEX II – Statistical Data for Persons with Special Needs**

### Unaccompanied Minors

	2003	2004	2005	2006	2007
Austria (<18)			706	358	466
Belgium (<18)	589	599	584	449	519
Finland	110	140	220	112	98
Germany (<16)	977	636	331	186	180
Hungary	190	59	41	61	73
Latvia			3		
Lithuania	24	11	9	3	5
Norway	916	424	322	349	403
Slovenia	34	105	83	20	24
Sweden	561				1264

#### ***c) Available figures for elderly asylum seekers:***

- AT: (>50 yrs old): 492 in 2005, 291 in 2006, 325 in 2007.
- DE: decreasing number (> 50 yrs old): from 1,173 in 2003 to 553 in 2007.
- RO: 7 elderly asylum seekers in period 2003 – 2007.
- SE: (> 65 yrs old): 316 in 2003, 519 in 2007.

#### ***d) Available figures for other groups:***

- BE: FGM cases: 78 in 2006, 96 in 2007; victims of trafficking: less than 10 cases where victims identified themselves as such (time period not clear).
- LV: 1 pregnant woman in 2006, 1 single parent family in 2008.
- RO: 4 disabled asylum seekers, 5 pregnant women, 10 single parent families, 2 victims of torture, 7 victims of SGBV (in period 2003 – 2007).



### **ANNEX III - The Likely Administrative Costs of the Preferred Policy Option**

Administrative costs associated with the preferred policy option

The administrative costs<sup>66</sup> have been assessed with regard to information obligations associated with:

- the legal duty of staff to address the special needs of applicants for international protection;
- the obligation to inform detainees on the rules of the detention facilities;
- the obligation to submit a yearly report to the Commission with regard to Articles 6, 11, 13, 14, 17 and 22 of the Directive.
- the establishments of instruments of practical cooperation (EU guidelines and diffusion of best practices, EU training of staff in contact with applicants with special needs).<sup>67</sup>

These are the main elements of the preferred policy option which entail additional administrative costs and which have been associated with the types of obligation and required actions listed in the table below.<sup>68</sup>

#### **Classification of type of obligation and actions required in relation to each individuated policy measure**

<b>Policy measure</b>	<b>Type of obligation</b>	<b>Type of action required</b>
Identification procedure concerning applicants with special needs	Submission of recurring reports	Familiarising with the information obligation
		Filling forms and tables
		Submitting the information
		Filing the information
Obligation to inform detainees on the rules of the detention facilities	Other – Creation of information	Familiarising with the information obligation
		Training members and

<sup>66</sup> According to EC IA guidelines, "Administrative costs are defined as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including costs of labeling, reporting, monitoring and assessment needed to provide the information and registration".

<sup>67</sup> Administrative costs have been assessed according to the EU Standard Cost Model Manual.

<sup>68</sup> The provided classification of type of obligation and actions required in relation to each individuated policy measure entailing additional administrative costs have been established according to the EU Standard Cost Model Manual.

		employees about the information obligations
		Retrieving relevant information from existing data
		Adjusting existing data
		Copying
		Submitting the information
Obligation to submit a yearly report to the Commission with regard to Articles 6, 11, 13, 17 and 22 of the Directive.	Other – Creation of information	Familiarising with the information obligation
		Training members and employees about the information obligations
		Retrieving relevant information from existing data
		Adjusting existing data
		Copying
		Submitting the information
Definition of EU guidelines and diffusion of best practices	Other – Creation of information	Producing new data
		Submitting the information
EU training of staff in contact with applicants for international protection regarding special needs	Submission of recurring reports	Training members and employees about the information obligations

Firstly, the **legal duty of staff to refer special needs of applicants for international protection** requires MS reception personnel to recognise and register special needs through appropriate forms which would then have to be submitted and filed in order for MS administrations to be aware of these people’s needs and consequently provide them with adequate treatment. MS administrations will therefore have to familiarise themselves with this new obligation imposed by this policy option. So, this particular measure would be **supported by EU training of staff** in contact with applicants for international protection in order for them to be able to recognise special needs.

Secondly, the obligation to inform detainees on the rules of the detention facilities would entail the preparation of a leaflet that would include all related information.

This measure would only affect those Member States that at present provide either no information to detainees or provide the required information orally.

Thirdly, the reporting mechanism would require MS to submit yearly data to the Commission concerning the implementation of Articles 6, 11, 13, 17 and 22 respectively. Specifically, MS would have to collect data on how many asylum seekers are covered under the Reception Conditions Directive, how many are benefiting from social benefits, the types of benefits applicable to asylum seekers etc, and detail information with regard to the documentation provided to asylum seekers indicating their status in the MS.

Finally, the drafting of **EU guidelines, adoption of an EU handbook and diffusion of best practices** would take some time. Once this procedure is completed, the guidelines must be submitted to the MS.

#### 1. Main assumptions used to assess the costs associated with the preferred policy option

On the basis of these elements, the administrative costs have been assessed according to two scenarios:

- Scenario “t0”: first year of implementation of the preferred PO
- Scenario “t0+2”: third year of implementation of the preferred PO.

These scenarios have been developed in order to assess the main administrative costs related to the “start-up” expenses of the new measures and those related to the costs needed to maintain these measures.

#### *Main assumptions of Scenario “t0”<sup>69</sup>*

With reference to Table III, the following main assumptions have been made in order to provide an estimate of the administrative costs the preferred policy option entails:

- Concerning implementation costs for familiarisation with the obligations and training of the personnel of MS Asylum Services<sup>70</sup>, in the absence of available and comparable information about the number of staff in charge of reception conditions in MS, the following estimations have been made:

- (1) an average of 6 senior officials (director, deputy directors and heads of units) per MS would be deputed to familiarise themselves with the obligations for the

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<sup>69</sup> It must be noted that the numbering of the assumption is related to the numbering of the voices of cost indicated in Table IV.

<sup>70</sup> The need for familiarisation with obligations relates to the following measures: (i) the legal duty of staff to refer special needs of applicants, (ii) the ensuring of information on organisations or groups defending applicants’ rights, (iii) the reporting requirement concerning the implementation of Articles 6, 13, 17 and 22 of the Directive and (iv) the requirement to inform detainees of the rules of the detention facilities.

submission of reports (assumption: two working days required, for an estimated total of 96 working hours per MS);<sup>71</sup>

- (2) an average of 395 officials per MS would be involved in training about the obligations for submitting and generating information<sup>72</sup> (assumption: two working days of training course, for an estimated total of 6,320 hours per MS);
- (3) an average of 395 officials per MS would be involved in training about the identification of special needs of vulnerable people (assumption: two working days of training course, for an estimated total of 158,000 hours at EU level). The number of officials has been estimated on the basis of the average number of applications for international protection for each MS in the past five years (2003-2007). As shown in the table below, MS have been categorised according to ranges of average applications and, for each category, a corresponding range of reception personnel has been estimated:

<b>Categorisation of Member States by average number of applications</b>	<b>Number of persons working in the domain of reception conditions</b>
MS with below 150 applications	Fewer than 20 persons
MS with between 150 and 2,500 applications	Between 20 and 50 persons
MS with between 2,500 and 5,000 applications	Between 50 and 150 persons
MS with between 5,000 and 10,000 applications	Between 150 and 500 persons
MS with between 10,000 and 30,000 applications	Between 700 and 1,000 persons
MS with more than 30,000 applications	More than 1,000 persons

- Concerning implementation costs for the remaining actions.<sup>73</sup> The following assumptions were made in terms of working hours (WH) for the following actions:

<sup>71</sup> The submission of reports is related to: (i) Legal duty of referring special needs (ii) the reporting requirement concerning the implementation of Articles 6, 13, 17 and 22 of the Directive and (iii) the requirement to inform detainees of the rules of the detention facilities.

<sup>72</sup> The information is related to: (i) Legal duty of referring special needs, (ii) the reporting requirement concerning the implementation of Articles 6, 13, 17 and 22 of the Directive and (iii) the requirement to inform detainees of the rules of the detention facilities

<sup>73</sup> Filling forms and tables; Submitting the information; Filing the information; Retrieving relevant information from existing data; Adjusting existing data; Copying; Producing new data.

- (4) 0,5 WH for filling the forms to be submitted for each vulnerable/person with special needs identified. This would occur for each vulnerable applicant and the annual number of these people entering on average each MS is estimated to be 5,742;<sup>74</sup>
  - (5) 0,1 WH in each MS for submitting the information concerning vulnerable persons (considering that most information will be submitted electronically);
  - (6) 0,5 WH in each MS to file the information for the registration of vulnerable persons;
  - (7) 40 WH for a MS to retrieve all the necessary information that must be submitted to the Commission in relation to Articles 6, 11, 13, 17 and 22 of the Directive and to detained asylum seekers with regard to the rules of the detention facility;
  - (8) 0,1 WH in each MS for submitting the information in relation to Articles 6, 11, 13, 17 and 22 of the Directive, and to detained asylum seekers with regard to the rules of the detention facility;
  - (9) 0,5 WH in each MS to file the information submitted in relation to Articles 6, 11, 13, 17 and 22 of the Directive, and to detained asylum seekers with regard to the rules of the detention facility;
- Tariffs have been estimated on the basis of the EU average hourly labour cost in Public Administration (NACE L), extracted from Eurostat data. Eurostat provides hourly and monthly labour costs and gross earnings per economic sector. However, for government (NACE section L, Public administration and defence; compulsory social security) we only have information on the New Member States. Additional data were required to extend our information on labour costs to the entire EU27. Eurostat provides a number of possible indicators, namely average personnel costs in services in the EU27 in 2003 (NACE sections G, H, I, and K),<sup>75</sup> median gross annual earnings in industry and services in the EU25 in 2002 (the outcome of the Structure of Earnings Survey 2002),<sup>76</sup> and average hourly labour costs in industry and services of full-time employees in enterprises with 10 or more employees in 2002.<sup>77</sup> The relative differences between Member States in the level of labour costs in the NMS according to the various sources compares fairly well. OECD data

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<sup>74</sup> This assumption is based on an estimate drawn from a study carried out by ICAR (Information Centre about Asylum and Refugees) concerning vulnerable groups in the asylum process in the UK which, receiving the highest average number of applications in the past 5 years (2003-2007), constitutes a representative sample on which to base an estimate of the proportion of vulnerable applicants among the total applications in the EU (Vulnerable groups in the asylum determination process, Thematic Briefing prepared for the Independent Asylum Commission Information Centre about Asylum and Refugees (ICAR), 2007).

<sup>75</sup> Eurostat, "Main features of the services sector in the EU", *Statistics in Focus – Industry, trade and services* 19/2007.

<sup>76</sup> Eurostat, "Earnings disparities across European countries and regions. A glance at regional results of the Structure of Earnings Survey 2002", *Statistics in Focus – Population and social conditions* 7/2006.

<sup>77</sup> Eurostat, *Europe in Figures 2005*, p. 169.

were used to forecast the level of annual labour costs per Member State in 2008.<sup>78</sup> Information on the annual hours worked per employee in the total economy per Member State in 2005 was taken from the total economy database of the Groningen Growth and Development Centre.<sup>79</sup> The end result is an average hourly labour costs of employees in NACE section L (public administration and defence; compulsory social security) of €24.30 in the EU27 in 2008, and €23.30 excluding Denmark.

*Main assumption of Scenario “t0+2”<sup>80</sup>*

With reference to Table III, the following main assumptions have been made in order to provide an estimate of the administrative costs the preferred policy option entails:

- Concerning implementation costs for familiarisation with the obligations and training of the personnel of MS Asylum Services,<sup>81</sup> no additional cost should be sustained two years after starting the implementation of the preferred option;
- Concerning implementation costs for the remaining actions<sup>82</sup>, starting from the main assumption of no need for drafting the EU guidelines and best practices on the application of the policy option, the following assumptions were made in terms of WH for the stated actions:
  - (1) 0,5 WH for **filling the forms** to be submitted for each vulnerable/person with special needs identified. This would occur for each vulnerable applicant and the annual number of these people entering on average each MS is estimated to be 5,742;<sup>83</sup>
  - (2) 0,1 WH in each MS for **submitting the information** concerning vulnerable persons (considering that most information will be submitted electronically);

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<sup>78</sup> OECD Economic Outlook 81 database. The average increase in labour costs in Poland, Hungary, the Slovak Republic and the Czech Republic was applied to the New Member States that are not a member of the OECD.

<sup>79</sup> Groningen Growth and Development Centre and the Conference Board, Total Economy Database, January 2007, <http://www.ggdc.net>. The average annual number of hours worked in the New Member States was 1,855 hours per worker, while the Eurostat data on labour costs per hour and per month result in an annual number of hours worked in NACE section L of 1,800 hours, suggesting that the data match.

<sup>80</sup> It must be noted that the numbering of the assumption is related to the numbering of the voices of cost indicated in Table V.

<sup>81</sup> The necessity of familiarisation with obligations relates to the following measures: (i) the legal duty of staff to refer special needs of applicants, (ii) the ensuring of information on organisations or groups defending applicants' rights.

<sup>82</sup> Filling forms and tables; Submitting the information; Filing the information; Retrieving relevant information from existing data; Adjusting existing data; Copying; Producing new data; Designing information material.

<sup>83</sup> This is based on the assumption that no relevant change would be observed in the overall number of applicants for international protection in the EU between t0 and t0+2 and, consequently, also in the number of vulnerable people. The use of the same number for t0 and t0+2 depends also on the fact that the total number of applicants used for calculating the number of vulnerable people is the average of the last five years observed (2003-2007), which gives a standardised measure of the intensity of the flows.

- (3) 0,5 WH in each MS to **file the information** for the registration of vulnerable persons;
  - (4) 36 WH for a MS to **retrieve all the necessary information** that has to be submitted to the Commission in relation to Articles 6, 11, 13, 17 and 22 of the Directive and to detained asylum seekers with regard to the rules of the detention facility;
  - (5) 0,1 WH in each MS for **submitting the information** in relation to Articles 6, 11, 13, 17 and 22 of the Directive, and to detained asylum seekers with regard to the rules of the detention facility;
  - (6) 0,5 WH in each MS to **file the information** submitted in relation to Articles 6, 11, 13, 17 and 22 of the Directive, and to detained asylum seekers with regard to the rules of the detention facility;
- Tariffs: no significant changes in the tariffs (see Scenario “0”) due to the limited period elapsed from “Scenario 0” and the expected inflation rates at EU level.

**EU Cost Model: Policy option obligations in scenario 't0'**

Proposal on the future development of measures on reception conditions for asylum seekers, based on Council Directive 2003/9/EC						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)			
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat	Reg
1			Submission of (recurring) reports	Familiarising with the information obligation	MS Asylum Services	23		96,00		2.236,8	1,00	25	25	55.920		100%		
2			Submission of (recurring) reports	Training members and employees about the information obligations	MS Asylum Services	23		6.320,00		147.256,0	1,00	25	25	3.681.400		100%		
3			Submission of (recurring) reports	Training members and employees about the information obligations	EU DG JLS Services	23		158.000,00		3.681.400,0	1,00	1	1	3.681.400		100%		
4			Submission of (recurring) reports	Filling forms and tables	MS Asylum Services	23		0,50		11,7	5.742,00	25	143.550	1.672.358		100%		
5			Submission of (recurring) reports	Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0,10		2,3	5.742,00	25	143.550	334.472		100%		
6			Submission of (recurring) reports	Filing the information	MS Asylum Services	23		0,50		11,7	5.742,00	25	143.550	1.672.358		100%		
7				retrieving relevant information from existing data	MS Asylum Services	23		40,00		932,0	1	25	25	23.300				
8				Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0,1		2,3	1	25	25	58				
9				filing the information	MS Asylum Services	23		0,5		11,7	1	25	25	291				
													<b>Total administrative costs (€)</b>	<b>11.121.556</b>				



**EU Cost Model: Policy option obligations in scenario 't0 + 2**

Proposal on the future development of measures on reception conditions for asylum seekers, based on Council Directive 2003/9/EC						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)			
						i	e	i	e						Int	EU	Nat	Reg
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group													
1			Submission of (recurring) reports	Filling forms and tables	MS Asylum Services	23		0,50		11,7	5.742,00	25	143.550	1.672.358		100%		
2			Submission of (recurring) reports	Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0,10		2,3	5.742,00	25	143.550	334.472		100%		
3			Submission of (recurring) reports	Filing the information	MS Asylum Services	23		0,50		11,7	5.742,00	25	143.550	1.672.358		100%		
4			Submission of (recurring) reports	Retrieving relevant information from existing data	MS Asylum Services	23		36,00		838,8	1,00	25	25	20.970		100%		
5			Submission of (recurring) reports	Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0,10		2,3	1,00	25	25	58		100%		
6			Submission of (recurring) reports	Filing the information	MS Asylum Services	23		0,50		11,7	1,00	25	25	291		100%		
<b>Total administrative costs (€)</b>													<b>3.700.506</b>					

**ANNEX IV**

Multiple applications – EURODAC

	EURODAC registered asylum applications	All multiple applications		3rd and subsequent multiple applications	
		Total n.	All multiple applications/ EURODAC registered asylum applications	Total n.	3rd and subsequent multiple applications/ EURODAC registered asylum applications
2003	238,325	16,429	6.89%	1,860	0.78%
2004	232,205	31,307	13.48%	7,873	3.39%
2005	187,223	31,636	16.90%	9,307	4.97%
2006	165,958	28,593	17.23%	9,236	5.57%
Total	823,711	107,965	13.11%	28,276	3.43%