Asylum: reception of applicants, minimum standards

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The purpose of this report, is to give an overview of the transposition and application of Directive 2003/9 /EC laying down minimum standards for the reception of asylum seekers and to identify issues that may pose problems. Its findings have contributed to the preparation of the Green Paper on the Future of Asylum Policy. To recall, the Directive applies to all EU Member States other than Ireland and Denmark and was designed to harmonise the laws of the Member States concerning the reception conditions applicable to asylum seekers. It contributes to the establishment of an EU-wide level playing field in the area of asylum and helps to reduce the secondary movement of asylum seekers. The Directive is one of the "building blocks" of the first phase of the Common European Asylum System.

Transposition:

Member States had to transpose the Directive by 6 February 2005. Following expiry of the deadline for transposition, infringement procedures were opened against all those Member States, which had not fully communicated their transposition measures. As a result of this the Commission addressed 19 letters of formal notice and 10 reasoned opinions. The decision to bring the cases before the Court of Justice was taken against 6 Member States. Three cases were withdrawn, one was settledand two are still pending.

Implementation of specific provisions:

Scope of application: Virtually no problems were detected with regard to whom the Directive applies to. The vast majority of Member States decided to apply the Directive to persons applying for subsidiary protection. Minor difficulties were detected concerning the timeframe for applying the Directive. A serious problem, however, did arise concerning the application of provisions relating to premises hosting asylum seekers.

Procedural rules: The Directive requires that Member States provide asylum seekers with written information in a language they can understand, concerning their benefits and obligations under the Directive and on the organisations providing legal or any other kind of assistance. Asylum seekers are duly informed in the vast majority of Member States.Only a few Member States failed to (DE) or only partly failed (AT) to transpose this provision into their laws. Some problems were detected in some Member States (CY, SI, DE and MT), where the information given on organisations providing assistance to asylum seekers does not seem to be sufficient. Given the importance of this provision, the Commission encourages the Member States to make use of financial assistance under the European Refugee Fundin order to increase the number of languages in which the information is made available.

Documentation: Although the Directive obliges Member States to issue asylum seekers with a document stating their name and status within three days of their asylum application in fact most of the Member States have failed to transpose this provision into their national laws. Some have not introduced any provisions of this kind in their legislation (DE, NL, HU, EL, ES). Others have introduced a clear deadline in the legislation but do not comply with it in practice (IT, SE, UK, FR). All Member States issue appropriate documentation to non-detained asylum seekers. However, both the form and the content of the document vary considerably.

Procedure for withdrawal of reception conditions: According to Article 16, if a decision is taken to withdraw reception conditions, the Directive contains certain procedural rules including the right to appeal

against a negative decision and the right to free legal assistance during the appeal. No major problems were found as regards guaranteeing the individual, impartial and independent nature of withdrawal decisions. Certain deficiencies are noted regarding the possibility of appeals against certain negative decisions.

Material reception conditions and family unity: Member States are obliged to provide asylum seekers with material reception conditions (i.e. housing, food, clothing, etc.), but leave a wide margin of discretion with regard to the form. The report finds that accommodationis provided in kindin the majority of Member States. The most common form is collective housing. Only a few Member States (UK, BE, IT, SE) provide individual housing. Foodis provided in kind in the majority of Member States (with the exceptions of EE, LV, UK, FI, SE). Although the way the clothing needsof asylum seekers are covered varies considerably, the Member States that grant financial assistance to this end are still in the minority (AT, FI, LU, NL, PL, UK, ES, SE, PT, CY, sometimes BE and AT). No major problems were detected where material reception conditions are provided in kind and in reception centres. The main problems concerning application of the Directive were discovered in Member States where asylum seekers are given financial allowances.

Rights: Asylum seekers have the right to free movement within the Member States in which they apply for asylum and to choose their residence although this right might be limited for a number of reasons. Given the broad discretion of Member States in limiting the right to free movement and residence, no substantial problems in application of the pertinent provisions were reported and the majority of Member States grant the *right to free movement* for their entire territory.

Detained asylum seekers: Detention is foreseen by all Member States on numerous grounds. The report points out, however, that according to the Directive detention is an exception to the general rule of free movement, which might be used only when "it proves necessary", automatic detention without any evaluation of the situation of the person in question is contrary to the Directive.

Access to accommodation centres: Asylum seekers are entitled to contact UNHCR, their legal advisers and NGOs and the report found no particular problems with regard to the application of this provision.

Access to health care and employment: Asylum seekers are also entitled to conditional access to the labour market and health care. Due to the considerable flexibility of Article 11, no major problems were found with regard to the respect of the rules on the access of asylum seekers to labour markets.

Asylum seekers with special needs: As special needs of vulnerable asylum seekers must be addressed, Member States are obliged to identify them and offer them special care. The report finds that certain deficiencies in transposition have been identified**.** Although the majority of Member States recognise such persons by listing all the groups mentioned in the Directive or by using an open clause, some do not cover the full list in Article 17(1) or do not address persons with special needs at all (SK, FR, HU, LT, MT, PL, LV, EE and some regions of AT). Furthermore, in some Member States (UK, DE, AT, BE, LU, EL, IT, SK, SI) no identification procedure is in place. Despite the fact that it is not literally an obligation, there might be serious doubts as to how and whether persons with special needs are actually identified in Member States with no such tool. The report reminds the Member States that identification of vulnerable asylum seekers is a core element without which the provisions of the Directive aimed at special treatment of these persons will loose any meaning.

Needs of vulnerable asylum seekers: Addressing the needs of vulnerable persons has been identified as one of the main deficiency in the application of the Directive**.** The Directive specifies that **v**ulnerable asylum seeker must be provided with adequate rehabilitation services (minor victims of abuse, neglect, exploitation, etc.), legal representation (unaccompanied minors) or necessary treatment (victims of any act of violence). Unaccompanied minors are guaranteed legal representation by virtually all Member States. They are generally hosted with foster families or in special centres; tracing of their family members is also

legally or practically ensured. Only three Member States (DE, SE, PT) choose to host unaccompanied minors aged over 16 in accommodation for adults.

Conclusions:

Overall, the report finds that the Directive has been transposed satisfactorily in the majority of Member States. Only a few horizontal issues of incorrect transposition or misapplication of the Directive have been recorded. The Commission will examine and pursue all cases where problems have been identified. The Commission does note that the Member States do apply differing standards, leading it to conclude that a level playing field in the area of reception conditions is yet to be achieved. How to find an adequate response to this issues goes beyond the object of the present report, as it requires a wider political reflection on the level of ambition of the Common European Asylum System. These questions are therefore addressed in the Green Paper on the future of Asylum Policy which the Commission has recently published.