

Standards for the reception of applicants for international protection. Recast

2008/0244(COD) - 01/06/2011 - Modified legislative proposal

BACKGROUND: on 7 May 2009, the European Parliament adopted its position on the Commission proposal which approves the great majority of the proposed amendments. The proposal was discussed in the Council mainly under the Czech and the Swedish Presidencies but negotiations have been difficult and no position was reached on the text in the Council. By presenting the modified proposal, the Commission intends to use its right of initiative to boost up the work towards achieving a true Common European Asylum System (CEAS).

The modified proposal brings together the knowledge and experience built up during the negotiations and in consultations with other stakeholders such as UNHCR and NGOs, into a simplified and more coherent reception system in line with fundamental rights.

The modified proposal should be viewed together with the [modified proposal on the Asylum Procedures Directive](#). That proposal, inter alia, aims to improve the efficiency and quality of national asylum systems which should reduce Member States' reception cost by enabling them to deliver decisions quicker.

CONTENT: the main objective of this modified proposal is to further clarify and provide more flexibility to the proposed reception standards so that they can be easier built into the national legal systems. At the same time it maintains the key elements of the 2008 proposal, namely ensuring adequate and comparable reception conditions throughout the EU. It also continues to guarantee full respect of fundamental rights as it is informed by developing case law of the Court of Justice of the European Union and the European Court of Human Rights. This is especially the case as regards the right to freedom of movement and respect of dignity.

Lastly, the proposal enhances the consistency within the CEAS legislative package, in particular with the modified proposal on the Asylum Procedures Directive. Where necessary, it also includes amendments resulting from the negotiations on the Qualification Directive and the Dublin Regulation to ensure coherence in respect of horizontal issues.

The modified proposal mainly addresses the following issues:

Making implementation easier for Member States: the modified proposal grants Member States more latitude in the implementation of some of the proposed measures in comparison to the 2008 proposal, which addresses concerns on potentially high financial implications and administrative constraints and costs. This is achieved by proposing better defined legal notions, more simplified reception standards and devices, and more adaptable rules that could be more easily built into national practices.

These amendments concern in particular:

- guarantees for detained asylum seekers,
- reception conditions in detention facilities,
- deadlines for access to the labour market,
- level of health care provided for persons with special reception needs and identification mechanisms for such needs,
- access to material support and the reporting obligations aimed to ensure better monitoring of the Directive's key provisions.

The modified proposal also better ensures that Member States have the tools to address cases where reception rules are abused and/or become pull factors. In particular, the modified proposal allows more cases of withdrawal of material support, provided that necessary guarantees are applied and that the situation of particularly vulnerable persons is respected.

Clear and strict rules on detention: it is necessary to establish strict and exhaustive EU rules to ensure that detention is not arbitrary and that fundamental rights are respected in all cases. The Commission is concerned about the wide use of detention of asylum seekers while the EU asylum acquis is silent on this issue. The modified proposal therefore retains the general approach of the 2008 proposal on the issue of detention. In particular, **detention may only occur under prescribed grounds and only if it is in line with the principles of proportionality and necessity, after an individual examination of each case.** Necessary guarantees shall be available such as access to an effective remedy and free legal assistance where necessary. Reception conditions in detention must also respect human dignity. The proposed amendments are fully in line with the EU Charter of Fundamental Rights and recent case law of the ECtHR in its interpretation of Article 3 of the Convention.

At the same time more flexibility for some of the proposed detention rules and clarification of different notions has been introduced in order to facilitate their implementation, and to accommodate certain particularities of Member States' different legal systems (e.g. concerning access to free legal assistance and the possibility of the administrative authorities to issue a detention order). The modified proposal also introduces **more adaptable conditions of detention** in relation geographical areas where it is practically difficult to always ensure the full set of guarantees proposed, namely border posts and transit zones. Several amendments were also introduced, in line with EU rules on detention applicable for third country nationals subject to a return decision to ensure, where appropriate, a more consistent approach on detention rules of third country nationals.

Discussions in the Council revealed that in certain circumstances it is in the best interests of unaccompanied minors to be kept in detention facilities, in particular to prevent abductions which reportedly do occur in open centres. In this respect, the **modified proposal allows the detention of unaccompanied minors, only if it is established that it is in their best interests**, as defined in the proposed Directive, and that alternative non-detention measures will not be effective. Moreover it has to be ensured through an individual examination of the situation that detention will not harm their health and well-being. Moreover, detention may only be applied if the necessary reception conditions can be offered in the specific detention facility (access to leisure activities, including in open air etc.). This proposed provision is in line with the European Court of Human Rights case law.

Ensuring dignified standards of living: new measures are provided:

- **addressing special reception needs:** this has been identified as one of the areas where current national standards are very problematic. Identifying special reception needs not only has a bearing on access to appropriate treatment, but could also affect the quality of the decision-making process. The modified proposal aims to ensure that national measures are put in place for the swift identification of the **special reception needs of vulnerable persons** and the continuous support and monitoring of individual cases. Particular attention is placed on the special reception needs of particularly vulnerable groups such as minors and victims of torture. At the same time the modified proposal introduces a simplified format of this identification process and a clearer link between vulnerable persons and persons with special reception needs. The proposal does not include reference to equal treatment with nationals concerning access to health care, taking note of the position of the European Parliament and strong reservations in the Council;
- **material support to applicants:** the evaluation of the implementation of the current Directive noted deficiencies in relation to the level of material support Member States provide to asylum applicants. Although the current Directive stipulates the obligation of ensuring adequate standards of treatment, it has been difficult in practice to define the required level of support. It is therefore

necessary to introduce points of reference that could better "quantify" this obligation and can also be effectively applied by national administrations. During Council negotiations and recent consultations with Member States it became clear that relevant points of reference are actually envisaged under national law or practices in this respect, although they are quite divergent. Taking note of this fact, the modified proposal allows flexibility and **does not aim to establish a single EU point of reference** but allows the applications of different national benchmarks in this respect provided that they are measurable and can facilitate the monitoring of the level of support provided to applicants.

Enhancing self-sufficiency of asylum seekers: access to employment could prevent exclusion from the host society and promote self-sufficiency among asylum seekers. Mandatory unemployment on the other hand imposes costs on the State through the payment of additional social welfare payments and could encourage illegal working. In this respect, facilitating access to employment is beneficial both for asylum applicants and the host Member State. A higher degree of flexibility is allowed by the modified proposal concerning access to the labour market, in line with the provisions on the duration of the examination of an asylum application set out in the Asylum Procedures Directive modified proposal.