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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?

Introduction

The *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*¹ is one of five pieces of European asylum legislation flowing from the objectives of the Amsterdam Treaty and the 1999 Tampere Conclusions.² All EU Member States, with the exception of Ireland and Denmark who opted out of this Directive, were required to transpose the Reception Directive by 6 February 2005. However, at the time of writing many Member States have yet to fulfil their legal obligation in this regard.

The Reception Directive establishes minimum standards for the reception of asylum seekers in the European Union, which are deemed sufficient to ensure ‘a dignified standard of living and comparable living conditions in all Member States’.³ Reception conditions are defined in the Reception Directive as the full set of measures that Member States grant to asylum seekers in accordance with this Directive, including specific provisions on residence and freedom of movement, family unity, material reception conditions, schooling and the education of minors, employment and access to vocational training. According to the Reception Directive, the provisions apply to those who make an application for asylum under the 1951 Refugee Convention, as long as they are allowed to remain on the territory as asylum seekers, although Member States may decide to apply the Reception Directive to persons applying for other forms of protection.⁴

¹ Hereafter the ‘Reception Directive’.

² Article 63 of the Amsterdam treaty sets the framework for the development of EU minimum standards for certain asylum issues. See ECRE’s *Broken Promises - Forgotten Principles, An ECRE evaluation of the development of EU minimum standards for refugee protection, Tampere 1999 – Brussels 2004*, June 2004 for information on other pieces of asylum legislation.

³ See point (7) of the Preamble in the Reception Directive.

⁴ See Article 3 of the Reception Directive.

Importantly, Member States may also introduce or retain more favourable provisions in the field of reception conditions, as long as they are compatible with the Reception Directive.⁵

Since ECRE has already expressed its concerns with some of the provisions of the Reception Directive⁶, the focus in this report is on transposition and compliance with the Reception Directive by Member States. ECRE has carried out a limited monitoring exercise to see what progress Member States are making in implementing the Reception Directive in theory and practice. The exercise focused on three articles:

- Article 11: Employment
- Article 13: General rules on material reception conditions and health care
- Article 16: Reduction or withdrawal of reception conditions

These articles are key for asylum seekers' well-being and their ability to start the integration process. Article 13 establishes the grounds for the welfare of asylum seekers from their first day of arrival, and is crucial in setting basic reception conditions. Related to this is Article 16, which establishes provisions that might result in the reduction or withdrawal of these reception conditions. The provisions in Article 11 are very important for asylum seekers, since they relate to their prospect of accessing the labour market while their application is being processed. The main provision in Article 11 guarantees asylum seekers access after a maximum of 12 months. Employment is crucial in enabling asylum seekers to maintain their dignity, promote their integration, helping them increase their independence from state services, and establishing their self-sufficiency.

This report's aim is to show the current trends with regards to national legal frameworks and practices in EU Member States relating to the aspects of reception conditions covered by the three articles selected. It intends to provide an initial snapshot of the situation in those countries where ECRE has been able to gather information.⁷ Additionally, it is complemented with information published by one of ECRE's Member Agencies, Pro Asyl in Germany.⁸ Hence, in total the report will cover the situation in only 15 Member States, namely Austria, Czech Republic, Finland, France, Germany, Greece, Hungary, Lithuania, Luxembourg, The Netherlands, Poland, Slovakia, Slovenia, Spain, and the United Kingdom.⁹

⁵ See Article 4 of the Reception Directive.

⁶ See ECRE's *Information Note on the Council Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, June 2003.

⁷ Countries include Austria, Finland, France, Greece, Lithuania, Luxembourg, The Netherlands, Spain, and the United Kingdom.

⁸ Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English). It contains information about the following countries: Austria, Czech Republic, Germany, Hungary, Poland, Slovakia, Slovenia. ICF is a group of non-governmental organisations assisting to asylum seekers and refugees in Central Europe. The network is coordinated by Pro Asyl (Germany). The aim of the network is cooperation in asylum issues with focus on reception and accommodation conditions of asylum seekers in the Central European countries.

⁹ Countries not covered in this report are Belgium, Cyprus, Estonia, Italy, Latvia, Malta, Portugal, and Sweden.

Most of the data for this report was compiled by means of a questionnaire that was distributed to a number of refugee-assisting agencies (most of whom are ECRE members).¹⁰ The information was gathered between January and March 2005, and updated in October 2005. Factual information was provided by Member Agencies and interpreted and analysed in the ECRE Secretariat. It should be noted that the scope of the information presented has been determined by the limited resources available to ECRE. Nevertheless, the information collected enabled ECRE to gain some valuable insight into Member States' progress on legal transposition of the Reception Directive and actual implementation of the provisions related to articles 13, 16 and 11, including reductions or improvements of reception standards. It should be noted however that, since this report only covers these three articles of the Reception Directive and changes and developments in Member States are ongoing, this report is not an exhaustive account of the implementation process and follow-up on further developments in these Member States and on the rest of the EU will be needed.

The report is divided into the following sections:

- a) A brief description of the transposition process in general and the degree to which the Reception Directive has been transposed within the 15 EU Member States covered in this report;
- b) A presentation of the levels of compliance with Articles 13, 16 and 11, including a summary of the general trends;
- c) Concluding remarks, including key concerns and recommendations towards Member States and the European Commission.

¹⁰ Please consult Annex 4 for a list of Member Agencies involved.

The Transposition Process

In contrast with a Regulation, which requires the adoption of Community law with direct effect, a Reception Directive has to be transposed into law at the national level. In other words, a process of checking compliance with and, if necessary, amending existing national legislation and/or introducing new legislation must be undertaken by Member States to ensure transposition of the EU provisions. Thus, transposition can be successfully completed through a number of ways, e.g. legal procedures, administrative measures, depending on the existing national provisions within each of the Member States.

EU Member States were obliged to have completed transposition of the Reception Directive by 6 February 2005.¹¹ At the time of writing, only about half of the 15 Member States studied in this survey had effectively transposed the Reception Directive into their national legislation on time.¹² As of October 2005, the following facts emerged about these 15 Member States' transposition process:

- Countries that have transposed the Reception Directive on time:
 - Czech Republic
 - Hungary
 - The Netherlands
 - Lithuania
 - Poland
 - Slovak Republic
 - Spain
 - United Kingdom
- Countries that did not meet the deadline but have since transposed the Reception Directive:
 - Finland
- Countries that have not yet transposed the Reception Directive fully or partly:
 - Austria
 - France
 - Luxembourg
 - Germany
 - Greece
 - Slovenia.

What can be concluded from this is that a significant number of Member States did not transpose this EU Reception Directive by the required deadline (6 February 2005) and out of the 15 Member States here examined, six have yet to complete transposition.

¹¹ See Article 26 (1) of the Reception Directive.

¹² Member States that joined the EU on May 1st 2004 had to accept the *acquis communautaire* (including the Reception Directive as already agreed) automatically, and were given the same deadline for transposing it into their national legislation as 'old' Member States. The term *acquis*, deriving from French, is used in European Community (EC) law to refer to the total body of EC law accumulated so far.

Article 13 – Material Reception Conditions

According to Article 13 asylum seekers should be granted certain material reception conditions sufficient to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.¹³ In order to fully comprehend Article 13, reference needs to be made to Article 2 (Definitions), Article 14 (Modalities for material reception conditions) and Article 15 (Health care), as these are interlinked.

The Reception Directive specifies that material reception conditions shall refer to housing, food, and clothing, as well as access to health care (Article 2(j) and Article 13(3)). The specific material reception conditions as specified in the Reception Directive cover mainly housing and health care, under Article 14 and Article 15 respectively. Both state that what ought to be provided should guarantee an ‘adequate standard of living’ (Article 14 (1) (b)) and ‘necessary health care’ (Article 15 (1)), which further extends to include ‘necessary medical or other assistance to applicants who have special needs’ (Article 15 (2)).

This report cannot, on the basis of the limited information gathered, evaluate whether asylum seekers are accessing an ‘adequate standard of living’ in the selected Member States. Some useful information has been gathered, however, on whether asylum seekers have access to the conditions specified, and if so, which ones and in what form.¹⁴

Accessibility

The Reception Directive clearly states that material reception conditions should be available to applicants when they make their application for asylum (Article 13(1)).

The information received about seven Member States¹⁵ through the questionnaires, suggests that material reception conditions are accessible to all asylum seekers although to varying degrees. For example, since transposition, *Spain* now grants asylum seekers the right to access reception centres immediately after submitting their asylum claim. However, it was noted that in the *Netherlands* these conditions were not available for asylum seekers whose asylum application had been turned down at the first-instance stage, and who were awaiting a provisional ruling by the court to decide whether they should have a right to material reception conditions during their appeal procedure. In addition, in most cases the *Netherlands* does not grant access to reception conditions for asylum seekers who may make multiple asylum applications.¹⁶ Moreover, it is apparent that in all nine Member States for which we have received information through the

¹³ See Annex 1 for the full provisions referred to in the Article.

¹⁴ See Annex 2 (A).

¹⁵ These are: Austria, Finland, Greece, Lithuania, Luxembourg, the Netherlands, and United Kingdom. There was no specific information available on this particular question for France and Spain.

¹⁶ The Minister on Immigration and Integration has announced that she might want to give access to material reception conditions for all asylum seekers who make a subsequent asylum application. The new proposal is expected late 2005.

questionnaire, important differences exist between services provided to asylum seekers who are housed in reception centres and to those who are not.

Meeting the needs of asylum seekers

Article 13 (2) of the Reception Directive stipulates that Member States shall make provisions to ensure a ‘standard of living adequate for the health of applicants and capable of ensuring their subsistence’, but this is not defined and is thus open to interpretation by the individual Member States. ECRE tried to find out whether the existing material reception conditions are meeting the needs of asylum seekers in the Member States, according to practitioners in refugee-assisting agencies. The majority of Member States for which we received information through the questionnaire were rated as meeting the needs of asylum seekers ‘somewhat’ or ‘reasonably well’. The ratings of two Member States are worth highlighting, however: **Finland** seems to be meeting the needs ‘well’, while **France** was rated as not meeting them at all in the case of those asylum seekers not based in reception centres. This is partly due to the fact that material reception conditions differ tremendously for asylum seekers who have access to or who are housed in reception centres and for asylum seekers who are living in ‘independent’ accommodation. For the latter group, access to material reception conditions in **France** is either non-existent, poorly managed, or not sufficient to meet their basic needs, and thus does not afford them an adequate standard of living.

Forms of provision of reception conditions¹⁷

The Reception Directive specifies that material reception conditions shall refer to housing, food, and clothing, as well as access to health care (Article 2(j) and Article 13(3)), which may be provided in kind, financial allowances or vouchers (Article 13(5)).

Clothing

There seems to be a mixed picture with regards to the provision of clothing. Some countries provide it in kind in some reception centres (**Greece** and **Spain**), some give out cash allowances or vouchers (**Finland**, **Lithuania**, **Luxembourg**, the **Netherlands**, **Spain** and **United Kingdom**). Overall, all countries for which we have received information through the questionnaire do provide some sort of clothing provision. In **Luxembourg**, however, asylum seekers are provided clothing in the form of vouchers, which can only be used to obtain second-hand clothes and do not cover shoes. The **Netherlands** give asylum seekers a one-off allowance of 36,30 Euro to cover their clothing costs. It is questionable, in both examples, whether the current provisions can adequately fulfil the clothing needs of asylum seekers.

Housing

All Member States covered in this report provide some housing for asylum seekers in kind, which normally involves placing them in reception centres. However, it emerged from the information collected through the questionnaire that there are not enough places to accommodate all asylum seekers in reception centres and that the cash allowance

¹⁷ See Annex 2 (A).

provided for those not receiving housing in kind, if provided at all, is usually not sufficient to rent independent accommodation.

For example, in **France**, out of the 58,500 asylum seekers that arrived in 2004, 8,000 new places were created to accommodate them in reception centres that have currently reached their maximum capacity of accommodating 15,470 people. Asylum seekers in reception centres receive the necessary social, legal and administrative support. Those who cannot be housed in reception centres receive a cash allowance of 300 Euro per month from the state to pay their rent and any other expenses. This amount is not adjusted to consider the number of children in a family.¹⁸ Moreover, this benefit is only given for one year, even if the asylum procedure lasts longer.¹⁹

A similar situation currently exists in **Greece**, where out of 4,469 asylum applicants in 2004, 725 persons were granted a place in a reception centre. Asylum seekers need to be issued with an 'asylum seeker card', in order to access, amongst others, housing provisions. Although this card should be issued within three months, there are a large number of applications that are not examined by the authorities within this time frame.

In **Spain**, there is the possibility for asylum seekers living outside of reception centres to receive a cash allowance to cover all of their costs, amounting to the level of the official minimum wage, which is currently around 560 Euro per month. However, this is rarely put into practice, since most asylum seekers seem to be accommodated in reception centres.

In **Lithuania**, asylum seekers are placed in a 'foreigner registration centre'. This had previously been used solely as a detention facility for illegal migrants, but is now being used as both: a detention facility and reception centre. Not only does it lack the character of a social institution but the officers and staff are not properly trained to deal with asylum seekers, especially those with special needs.

Once it has transposed the Reception Directive, **Austria** aims to provide a mixture of housing in kind and support for private housing: namely an additional 10,000 flats to rent through either cash allowances or vouchers, and a total of 17,000 places in reception centres.

In the **United Kingdom**, many asylum seekers are housed in sub-standard private accommodation, which is prejudicial to their health, in a poor state of repair, or lacking adequate amenities²⁰.

¹⁸ In practice, families outside of the reception centres are housed in emergency accommodations (hostels, hotels) paid for by the government. Yet, single asylum seekers face much greater problems as they are often not eligible for emergency accommodations and thus have to find solutions by themselves with the limited cash allowance available to them.

¹⁹ However, the 'Projet de loi de finance 2006' contains direct references to the possibility of extending the payment of benefits to asylum seekers outside of the reception centres to the full length of the asylum procedure.

²⁰ See Anneliese Baldaccini, *Asylum Support- A practitioners' guide to the EU Reception Directive*, JUSTICE, 2005, p. 47.

Food

It has been observed that eight Member States, except **Finland**, for which we received information through the questionnaire give food ‘in kind’, but this is only to asylum seekers in certain reception centres.²¹ A good practice has been observed in **Austria** and the **Netherlands**, where the policy of reception centres is increasingly to let asylum seekers buy and cook their own food as much as possible. Those who do not enjoy self-catering facilities or who are not housed in reception centres receive either food in kind or a specific amount of cash to pay for their food expenses. This is not the case in **France**, **Greece** and **Lithuania**, where asylum seekers do not receive any specific cash allowance for their food expenses. Instead, in **France** and **Lithuania**, asylum seekers are supposed to pay for their food from the general cash allowances they receive. **Greece** does not seem to provide asylum seekers who live outside of reception centres with any additional cash allowances for any of their expenses.

Health Care

Most of the nine Member States for which we received information through the questionnaire provide free of charge access to health services similar to nationals for asylum seekers throughout the asylum procedure. However, two states apply restrictions to this provision. **Lithuania** only provides for necessary medical assistance, i.e. emergency assistance, and otherwise gives cash allowances/vouchers for minor medical expenses. **Luxembourg** provides for free medical treatment during the first three months of the asylum application, but after this period asylum seekers have to pay for their medical visits, though they are able to claim back up to 80% of the total cost encountered.

Additional allowances

In addition to the above provisions, the **Netherlands** provides an additional cash allowance for travel expenses, care products, recreational activities etc., but the amount has not been adjusted since 1997 to reflect current basic living costs. Likewise, **Austria**, **France**, **Finland**, **Lithuania** and **Spain** provide additional cash allowances for personal belongings and refund public transport costs. However, social benefit allowances in the remaining 9 Member States included in this report do not take into account these costs and cover only an absolute minimum of basic maintenance costs. The situation is generally worse for asylum seekers not living in reception centres: their allowances are very limited and hardly cover even basic needs. For example, in the **United Kingdom** the support provided by the National Asylum Support Service (NASS) is at approximately 70% of income support level. Elderly or disabled asylum seekers receive an even lower level of support proportionate to their counterparts on mainstream benefits because premiums for age and disability are not included.²²

²¹ These are Austria, France, Greece, Lithuania, Luxembourg, the Netherlands, Spain and the United Kingdom

²² See Anneliese Baldaccini, *Asylum Support- A practitioners' guide to the EU Reception Directive*, JUSTICE publication, 2005, p.49. The Information and Cooperation Forum reports similar figures about social benefits to asylum seekers in Germany. See Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English), p.46.

Financial contribution of asylum seekers towards material reception conditions

In Article 13(4) the Reception Directive allows Member States to require applicants to cover, contribute to or refund costs of the material reception conditions and of the health care provided for.

Out of the nine Member States for which we received information through the questionnaire, four do not ask asylum seekers to cover, contribute to or refund the costs of their reception provisions. These countries are *France, Greece, Luxembourg* and *Spain*. The remaining five countries (*Austria, Finland, Lithuania, the Netherlands, and the United Kingdom*) ask asylum seekers to cover, contribute to or refund costs if they

- a) work;
- b) prove they have sufficient funds; or
- c) own more property than someone on social assistance is allowed to under the law.²³

The example in *Finland* is worth highlighting since as part of the transposition, national standards for asylum seekers contribution are being established, that will be proportionate to the costs incurred, and take into consideration the income of the asylum seeker, while not intending to endanger the living conditions of the asylum seeker or his/her family.

General trends

So far all 15 Member States covered in this report are in compliance with Article 13 of the Reception Directive, in terms of providing material reception conditions to asylum seekers in reception centres. But for those not placed in reception centres the situation concerning the granting of provisions is more varied. Yet, in both cases the concern emerged whether the cash allowances/vouchers offered to asylum seekers to cover provisions not received 'in kind' and their personal expenses, are enough to provide them with a 'adequate standard of living capable of ensuring their subsistence', as envisaged in Article 13 (2).

With regards to the specific provisions, providing access to adequate housing seems to be the biggest problem for most Member States, since they are neither managing to accommodate all asylum seekers in reception centres nor in other kinds of state-sponsored accommodation.²⁴ Those not accommodated in this way are then not given enough financial support to rent independent accommodation.

²³ For Austria, points b) prove they have sufficient funds and c) own more property than someone under the law on social assistance are not applicable. For Lithuania, points a) work and c) own more property than someone under the law on social assistance are not applicable

²⁴ ECRE recommends that independent housing and community development should be the basis of any reception system for asylum applicants. Any obligation to stay in a State-sponsored reception centre should not extend beyond six months following the submission of the application for asylum, and asylum seekers should be able to obtain alternative forms of accommodation to reception centres if they so wish. See ECRE's *Information Note on the Council Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the reception of Asylum Seekers*, June 2003. UNHCR also consider alternative accommodation preferable to reception centres (see UNHCR, *Reception of asylum seekers, including standards of treatment, in the context of individual asylum systems*, September 2001, EC/GC/01/17, p.7).

It is still too early to assess accurately whether the provisions in the Reception Directive are leading to an improvement in existing material reception standards in Member States or on the contrary to a lowering of standards. However, a positive change has been observed in *Spain* where, since transposition, the reception conditions are made available when asylum seekers first make their application. Before transposition, the reception conditions were only provided after having completed the admissibility procedure.

Concerning financial contributions, four out of the nine Member States (*France, Greece, Luxembourg* and *Spain*) on which information was received through the questionnaire do not ask asylum seekers to cover, contribute to or refund the costs of their reception conditions. All other countries request a part or full contribution if one or all of the following are applicable: asylum seekers work, have funds or own property.

Article 16 – Reduction and Withdrawal of Material Reception Conditions

Article 16 allows material reception conditions to be reduced or withdrawn under certain circumstances. These are:

- Abandonment of residence as determined by the competent authority, without informing them or without permission (Article 16 (1) (a));
- Failure to comply with reporting duties, with requests for information, or to appear for personal interviews concerning the asylum procedure (Article 16 (1) (a));
- Previous application in the same Member State (Article 16 (1) a));
- Sufficient personal financial resources (Article 16 (1) (b));
- Failure to claim asylum ‘as soon as reasonably practicable after arrival’ (Article 16 (2))
- Serious breach in accommodation rules and/or serious-violent behaviour (Article 16 (3))

Additionally, the Article stipulates that decisions to reduce or withdraw material reception conditions should be taken individually, objectively, impartially, and proportionally, and reasons shall be given (Article 16 (4)). However, Article 16 (4) places an absolute requirement on Member States to provide emergency health care under any circumstances and that reductions or withdrawals do not take place before a negative decision has been taken (Article 16 (5)).

Reduction and withdrawal of reception conditions

Regarding Member States’ practice to reduce or withdraw material reception conditions, so far only *Greece* has not made use of this provision out of the nine Member States for which information was received through the questionnaire. This might be due to the fact that it has not yet transposed the Reception Directive. According to information gathered about *France*, it is unclear whether individual reception centres have the authority to reduce or withdraw reception conditions or whether it is state law.²⁵

None of the nine Member States for which information was received through the questionnaire have practically made use of or implemented Article 16 (2) - regarding the reduction and withdrawal of reception conditions if asylum claims have not been made ‘as soon as reasonably practicable after arrival’. However, in the *United Kingdom* the *Nationality, Immigration and Asylum Act 2002* states that if the ‘Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person’s arrival in the United Kingdom’ support might be reduced or withdrawn.²⁶ Although it is not defined what constitutes ‘reasonably practicable’, the policy has been to consider an application that is made within three days of arrival as being made ‘as soon as practicable’. However, even where asylum seekers have applied within the three days,

²⁵ The ‘Projet de loi de finance 2006’ contains direct reference to the possibility of withdrawing payments of benefits if the asylum seeker refuses a place in a reception centre.

²⁶ See Section 55 1 (b) of the *Nationality, Immigration and Asylum Act 2002*.

support used to be withheld on the grounds that the Home Office did not believe they had applied within this period. This policy was withdrawn in July 2004, however, following a court ruling that stated that it ran contrary to Article 3 of the European Convention on Human Rights.²⁷ The House of Lords unanimously upheld this decision on 3 November 2005.²⁸

With regards to the circumstances that might lead to states reducing or withdrawing conditions from asylum seekers, most countries for which information was received through the questionnaire use all of the conditions as stipulated in Articles 16 (1) and (3). However, *Finland*, *Germany*²⁹ and the *Netherlands* reduce and/or withdraw conditions for other reasons. For example in *Finland*, if asylum seekers refuse to undertake compulsory work or study activities in the reception centres, they can face reduction (not withdrawal) of material reception conditions. Similarly, in the *Netherlands* asylum seekers can have their reception conditions reduced or withdrawn if they refuse to follow the programme on information about return, and if they refuse to do cleaning tasks in or around their designated living areas.³⁰ Under the *German* asylum seekers' benefits act,³¹ an asylum seeker who refuses to take charitable 'job opportunities' at 1.05 Euro/hour, might have his/her benefits reduced or withdrawn.³²

Concerning the way decisions about reduction and withdrawal are being taken, it seems that all Member States for which information was received through the questionnaire respect the fact that they have to be taken 'individually, objectively, impartially, and proportionally, and reasons shall be given', as stipulated in Article 16 (4). Moreover, all provide asylum seekers with the right to appeal any decisions to reduce or withdraw provisions.

²⁷ See *R (Q) v Secretary of State for the Home Department* [2004] QB 36.

²⁸ See Opinion of the Lords of Appeal for Judgment in the case *Regina v Secretary of State for the Home Department* [2005] UKHL 66.

²⁹ Information taken from the Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English), p.55.

³⁰ The Central Agency for the Reception of Asylum Seekers (COA) has guidelines in which it explains to staff in centres the conditions under which sanctions are allowed. The procedure starts with a small reduction of the financial allowance for two weeks (for small violations) and ends with six months of withdrawal of all reception facilities (for very severe cases). Yet, this is in practice hardly ever used. However, the withdrawal of all facilities for two weeks or a month is more usual.

³¹ *Asylbewerberleistungsgesetz (AsylbLG)*.

³² A similar provision exists in the United Kingdom in the *Asylum and Immigration (Treatment of Claimants etc.) Act 2004, Section 10 (1) (6) (a)*, where the government could require asylum seekers whose applications have been rejected to perform 'community activities' in return for their accommodation support. However, voluntary sector organisations were so appalled by this provision that they refused to participate in the scheme.

General trend

Austria, Finland, Lithuania, Luxembourg, the Netherlands, Spain and *United Kingdom* have references to the possible reduction or withdrawal of reception conditions in their legislation, while the law in *France* is still unclear about it. Within these countries, *Austria* and *Lithuania* have incorporated this provision as a result of transposition.

All other Member States examined here make use of the derogations from the obligation to provide reception conditions, mostly on the basis of conditions as stipulated in Articles 16 (1) and (3) of the Reception Directive. However, *Finland, Germany* and the *Netherlands* are making use of additional criteria to reduce or withdraw reception conditions – ones which go beyond the circumstances under which material reception conditions may be reduced or withdrawn according to Articles 16 (1), (2) and (3). Article 4 of the Reception Directive allows Member States to provide more favourable conditions but not less favourable ones, these practices may therefore constitute breaches of the Reception Directive.

Article 11 – Employment

The Reception Directive states that Member States shall determine a period of time during which an asylum seeker shall not have access to the labour market, thereby indirectly stipulating their right to work (Article 11 (1)). It further specifies that if a decision at first instance has not been taken within one year from the date on which the asylum application was lodged, Member States shall decide the conditions for granting access to the labour market for asylum seekers (Article 11(2)). However, Member States may still give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals (Article 11 (4)). Finally, the Article states that access to the labour market should not be withdrawn during the appeals procedures (Article 11 (3)).

Access to the labour market and conditions for granting access

Article 11(1) clearly states that Member States shall determine at what point in time asylum seekers are allowed to have access to the labour market, thereby guaranteeing that asylum seekers do have a right to work during their asylum application. The maximum period of time in which an asylum seeker is not allowed to work has been set to be twelve months (Article 11 (2)).

It seems that most countries covered in this report legally stand in conformity with the employment provision of the Reception Directive, except for *France*³³, *Lithuania*, and *Luxembourg*³⁴ who indefinitely deny access to the labour market for asylum seekers, thereby breaching the Reception Directive. In the case of *Lithuania*, while the law does not explicitly mention that asylum seekers have a right to access the labour market, in practice, first instance decisions are usually issued within three months. In exceptional cases they can take longer, but this is usually up to 6 months.

Poland and the *United Kingdom* remain in strict accordance with the Reception Directive, allowing access to the labour market only after twelve months. *Austria*, *Greece*, and *Finland* allow asylum seekers to take employment after a period of three months, while the *Netherlands* and *Spain* allow it after six months. In this matter, they have maintained or introduced standards higher than the minimum standards prescribed for in the Reception Directive.

³³ Since 1991, France does not grant asylum seekers access to the labour market. However, in some regions the permission to work may be granted based on either the employment situation in the region or the sector concerned.

³⁴ Once Luxembourg has transposed the Reception Directive at the beginning of 2006, it is expected that asylum seekers will have the right to access the labour market 9 months after their initial asylum claim has been made.

Some countries covered in this report impose additional conditions or procedures, which may make it difficult for asylum seekers to access the right to work in practice.³⁵ In *Greece* for example, asylum seekers are only entitled to temporary employment, if they are holders of a valid ‘asylum seeker card’.³⁶ As mentioned before, according to the asylum law, applicants are examined within three months and are then issued with such a card. However, in practice there are a large number of applications that are not examined within this timeframe. Practice also shows that access to the labour market is allowed only on the grounds that material reception conditions are not sufficient enough for the asylum seeker to survive.

Other countries covered in this report that grant access to work have additional conditions for granting access to the labour market for asylum seekers. Both *Austria* and *Luxembourg* (once it has transposed the Reception Directive) make the granting of work permits subject to the perceived performance of the overall national labour market situation, and *Austria* only allows for asylum seekers to be involved in seasonal work.³⁷ In *Luxembourg* (once it has transposed the Reception Directive) asylum seekers will be issued renewable six-month temporary work permits that are restricted to one specific profession. In the *United Kingdom* asylum seekers have to apply for permission to work from the Home Office, but these requests are not routinely acknowledged and there is no time limit on when a decision needs to be taken. In *Austria*, the *Netherlands* and in *Poland*³⁸ it is the responsibility of the employer to ask for a permit allowing them to employ asylum seekers. In addition, in the *Netherlands* asylum seekers are only allowed to work for a period of 12 weeks each year, though it is no longer limited to seasonal work. Similarly, in *Slovenia* asylum seekers are only allowed to work up to eight hours per week.³⁹

Spain improved its procedure after transposition. Asylum seekers are now given access automatically after a six months period by adding a stamp to their identification documents. Before transposition, asylum seekers were allowed to apply for a work permit only if they had an employment offer.

Priority access to the labour market for other groups over asylum seekers

Austria, *Germany*⁴⁰, *Greece* and *Luxembourg* (once it has transposed the Reception Directive) are making use of Article 11 (4), allowing Member States to grant priority

³⁵ For example, the Czech Republic, Slovakia and Hungary have lengthy and complicated procedures, while Slovenia does not provide employment contracts or accident insurance, which makes access to employment almost impossible in practice. See Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English), p.13, 119).

³⁶ This card also gives asylum seekers access to all other reception provisions.

³⁷ Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English), p.13.

³⁸ Information provided by the Helsinska Fundacja Praw Czlowieka (Helsinki Foundation for Human Rights).

³⁹ Final Report by the Information and Cooperation Forum (ICF), published by Pro Asyl, 26 February 2005, (English), p.188.

⁴⁰ Ibid p.14.

access to the labour market to other categories of people over asylum seekers. Other Member States, such as *Finland*, *Spain* and the *United Kingdom* grant asylum seekers access to the labour market in the same way as to their own nationals. The *Netherlands* also do not grant priority access to the labour market to other groups but, as mentioned before, it is the responsibility of the employer to ask for a work permit allowing them to employ asylum seekers.

General trends

Encouragingly 12 of the 15 Member States covered are in compliance with Article 11 by granting access to the labour market to asylum seekers within 12 months. In the case of *Germany*, *Austria*, *Luxembourg* (once it has transposed the Reception Directive) and the *United Kingdom*⁴¹ this represents a rise in standards as prior to transposition all asylum seekers were denied access to the labour market. *France*, *Lithuania* and *Luxembourg* are not complying.⁴² *Austria*, *Finland*, the *Netherlands*, and *Spain* are complying with Article 4 allowing for higher standards to be maintained by granting asylum seekers access to employment sooner than the maximum delay period of one year allowed by the Reception Directive.

However, most countries have imposed additional conditions, procedures or even limitations for granting asylum seekers access to the labour market to those mentioned in the Reception Directive, which seriously prevent asylum seekers from actually gaining access to the labour market in practice. This is the case for the limitations and procedures in *Greece*, *the Netherlands*, *Poland*, *Slovenia*, and the *United Kingdom*. Similarly, the use of the provision in Article 11(4) by *Austria*, *Germany*, *Greece* and *Luxembourg* (once it has transposed the Reception Directive) allowing Member States to grant priority access to the labour market to categories of people other than asylum seekers, again restrict and delay access to work in practice. All restrictions and delaying tactics on the right to work of asylum seekers negatively affects their ability to be self-sufficient and integrate into their host society.⁴³

⁴¹ Through transposition, the United Kingdom has (re-) introduced the permission to work for asylum seekers, since prior to July 2002 asylum seekers were allowed to work after 6 months, but this concession was withdrawn and since then they were denied access to the labour market until transposition.

⁴² The Reception Directive explicitly requires states 'law to determine the period of time after which asylum seekers can access the labour market.'

⁴³ See ECRE's *The Way Forward: European's Role in the Global Refugee Protection System – 'Towards the Integration of Refugees in Europe'*, July 2005 and ECRE's *Updated ECRE Position on the Integration of Refugees*, December 2002

Concluding Remarks

Material reception conditions in EU Member States are, amongst other factors, the basis for asylum seekers' dignified survival and an adequate standard of living from their first day of arrival. Access to the labour market is crucial for the development of self-sufficiency and reducing dependence on state provisions. In addition, being able to work helps asylum seekers with their self-esteem and improves mental health, and it facilitates both integration in the host society and reintegration upon return. Consequently, ECRE considers Articles 11, 13 and 16 of the Reception Directive as crucial for implementing these rights and provisions to provide for the well-being of asylum seekers.

The Reception Directive sets out general minimum standards for the reception of asylum seekers and while it emphasises the improvement of existing standards and not the reduction of already higher standards, it also allows scope for variation and interpretation of its provisions. In practice, it is hoped that in Member States with under-resourced reception facilities, the transposition of the Reception Directive will have the effect of improving reception conditions, as well as strengthening the legal framework of reception practices.

Purely based on the limited information ECRE was able to collect and analyse from 15 Member States, we can observe the following trends:

- 1) The 'new' Member States that joined the EU in May 2004 are generally in a process of raising their standards as required by the Reception Directive;
- 2) The 'old' Member States are mostly not observing Article 4 of the Reception Directive allowing them to have higher standards. Rather there is an indication that they are restrictively interpreting the provisions and making use of the derogations in the Reception Directive.⁴⁴

On the whole the application of clauses without clearly defined meanings allow for these restrictive practices. On the basis of the three articles chosen (Articles 11, 13 and 16) for this monitoring exercise and the information obtained, it can be said that overall compliance is being hampered due to the alarming level of non-transposition and partial transposition. Moreover, this report clearly brings to light specific shortcomings within the legal frameworks Member States are operating in, and of practices that evidently fall below the minimum standards as stipulated in the Reception Directive.

With regards to **Article 13 on general rules on material reception conditions and health care**, it has been observed that many Member States covered in this report are not providing adequate minimum standards of living for asylum seekers as stipulated by the Reception Directive, especially in terms of acceptable housing conditions and sufficient

⁴⁴ This trend has been observed before: 'The implementation of many Directives are not completed on time [and] Member States will use transposition processes to justify lowering their standards towards the minimum ones agreed at EU level. In this way, standards which have been presented as a minimum would instead become the norm'. See Schibel, Y., Migration Policy Group, *Monitoring and influencing the transposition of EU immigration law- The family reunion and long-term residents Directives*, Issue Paper prepared for the European Migration Dialogue, September 2005, p.2, 4 & 5

financial allowances to cover asylum seekers' basic needs.⁴⁵ The Reception Directive allows for wide and ambiguous interpretation of what the minimum material conditions are. As a result, most Member States were and still are after transposition in compliance with the provisions on material reception conditions, but ECRE would argue that the conditions offered are too low to say that Member States are providing asylum seekers with an adequate standard of living. In general, most material reception conditions are only assured for asylum seekers living in reception centres, while asylum seekers housed in independent accommodation are left to their own fate, with often not enough financial resources to support themselves, let alone their accompanying family.

Given that the financial support offered to asylum seekers in some Member States is below or the minimum amount needed for subsistence, it would appear that some national provisions do not guarantee asylum seekers a standard of living 'capable of ensuring their subsistence'. It is vital that all asylum seekers have equal access to all material reception conditions whether they are housed in reception centres or not. ECRE recommends that independent housing and community developments should be the basis of any reception system for asylum applicants. Any obligation to stay in state-sponsored reception centres should be kept to a minimum and Member States should be aiming to provide asylum seekers with sufficient cash allowances to obtain alternative forms of accommodation to reception centres.

With regards to Member States' practice in asking for financial contributions from asylum seekers towards material reception conditions, ECRE advises that certain national standards are set that will be proportionate to the costs incurred and take into consideration the income of the asylum seeker. ECRE believes that without setting standards or defining what constitutes 'sufficient resources or sufficient means' in Article 13 (4) of the Reception Directive, requests for contributions could seriously undermine living standards of the asylum seeker and his/her family.

Concerning **Article 16 on reduction or withdrawal of reception conditions**, those countries who have included some additional conditions for reducing or withdrawing reception conditions, ECRE argues, are in risk of being in breach of the Reception Directive. Article 16 does not lay down the possibility to add conditions to those already mentioned in the provisions but some states appear to be doing so. It is also questionable whether not performing certain 'household' tasks or not participating in compulsory work or study activities as demanded and organised by the reception centres, can be considered 'serious' breaches of the rules of the reception centres that could give effect to reducing or withdrawing reception conditions, as stated in Article 16 (3).

⁴⁵ Like all other persons, asylum seekers are entitled to an adequate standard of living, including adequate food, clothing and housing, as well as physical and mental health, and to the continuous improvement of these living conditions (see Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights and Articles 21 and 24 of the 1951 Refugee Convention). With regards to housing, the UN Committee on Economic, Social and Cultural Rights has stated that 'the human right to adequate housing... is of central importance for the enjoyment of all economic, social and cultural rights... and should be seen as the right to live somewhere in security, peace and dignity'. See Committee on Economic, Social and Cultural Rights, *General Comments No 4 - The right to adequate housing (Article 11)*, 1991, para.1 and 7

States seem to be complying with the obligation that a decision to reduce or withdraw reception conditions should be taken individually, objectively and impartially, subject to proportionality and reasons given.

Regarding **Article 11 on employment**, ECRE is concerned about Member States' practice towards employment. Not all Member States appear to be granting asylum seekers access to their labour markets at the latest within 12 months in accordance with the Reception Directive. Even Member States who are legally in compliance with the Reception Directive need to ensure that they effectively give access to the labour market in practice. There are certain countries covered in this report (Austria, Greece, Finland, the Netherlands and Spain) that are above the minimum reception standard as stipulated in the Reception Directive and provide access within six months. ECRE believes these represent good practice that should be replicated throughout the EU.

ECRE considers that the possibility given by the Reception Directive for Member States to set restricting conditions for access to the labour market seriously undermines the aim to harmonise standards and effectively delays access to employment for asylum seekers. In addition, our findings suggest that practical and administrative obstacles prevent asylum seekers from realising their right to work after 12 months. Imposing unnecessary administrative procedures and conditions before asylum seekers are able to access the labour market, seriously restricts asylum seekers' ability to receive a work permit within a reasonable time, let alone find a job. Taken together, these limitations result in a significant departure from the goal as stipulated in Article 11 of giving asylum seekers access to the labour market. The provisions in the Article are interpreted by some Member States to restrict the right to employment of asylum seekers to such an extent that it undermines the right. Indications therefore suggest that Article 11 is being complied with on a technical level but not in reality.

Recommendations

Based on the information gathered and analysis above, ECRE can make the following recommendations to Member States and the European Commission:

General

EU Member States:

- should continuously aim to provide the highest possible standards of reception conditions;
- with higher reception standards than those stipulated in the Reception Directive should maintain them;
- that have not yet transposed the Reception Directive, should do so without further delay;
- should not make use of the provisions in Articles 11, 13 and 16 that can limit or deny the important rights accorded to asylum seekers;

The European Commission should ensure the long-term monitoring of Member States' implementation of the Reception Directive, and, if necessary, place political pressure on or initiate legal proceedings against Member States that either drop their existing standards to the minimum provisions as stipulated in the Reception Directive or who do not seem to progress towards the realisation of higher standards.

Material reception conditions (Articles 13 and 16)

EU Member States should:

- ensure that all asylum seekers, especially those not based in reception centres, have equal access to all material reception conditions;
- ensure that no asylum seeker has to survive with a level of resources below those granted to their own nationals. It is crucial that asylum seekers are provided with the same or comparable level of minimum social welfare provisions as nationals, in the form of cash allowances;
- aim to provide asylum seekers as early as possible with sufficient cash allowances to obtain alternative forms of accommodation to reception centres;
- ensure that all asylum seekers are given sufficient cash allowances to cover any extra costs that might be incurred if not accommodated in and provided by the reception centres, especially with regards to clothes, food, transport costs, rent, and private needs;
- ensure that, if asylum seekers are asked to cover or contribute to their material reception conditions, a fair and transparent system is in place to properly establish that they have sufficient means to do so;
- not ask asylum seekers to refund costs incurred once their status determination process has been determined;
- continue to ensure that any reduction or withdrawal of material reception conditions is not based on Article 16 (2), which allows Member States to take asylum claims that have not been made 'as soon as reasonably practicable after arrival' as enough reason to reduce or withdraw reception conditions;
- ensure that if implementing Article 16 (3), which allows the reduction or withdrawal of material reception conditions when serious breaches of the rules of the reception centres have occurred or when serious violent behaviour has been exposed, do so with due caution. Such a decision should always be based on the provisions stipulated in Article 16 (4), which calls for individual, objective and impartial decisions;
- ensure that they do not include reasons for reducing or withdrawing material reception conditions in their national legislation, which are additional to those provided for in the Reception Directive.

The European Commission should consider whether, in view of their forthcoming monitoring report in February 2006 on the implementation of and suggestions for amendments to the Reception Directive, it should:

- define what an ‘adequate standard of living’ is in Article 13 (2) to ensure that Member States do not provide standards, which are too low to asylum seekers;
- establish whether in practice the material reception conditions given to asylum seekers amount to an ‘adequate standard of living’;
- encourage the removal of the possibility of providing material reception provisions in vouchers from the Reception Directive, since they encourage stigmatisation and discriminatory behaviour towards asylum seekers;
- define ‘sufficient resources’ and ‘sufficient means’ in Article 13 (4), so as not to undermine the living standard of asylum seekers and their family;
- propose the removal of Article 16 (2) or at least the inclusion of a definition or benchmarks, in order to safeguard traumatised and vulnerable asylum seekers from facing reduction or withdrawal of reception conditions;
- clearly state the conditions that might constitute a ‘serious breach’ in Article 16 (3).

Access to the labour market (Article 11)

EU Member States should:

- urgently comply with the obligation of the Reception Directive to grant access to the labour market to asylum seekers;
- ensure that access to the labour market for asylum seekers is granted, preferably immediately or a short period after an application is lodged, which does not exceed six months. This would prevent unduly long exclusion from the host society, promote self-sufficiency, integration, and reintegration upon return;
- ensure that access to the labour market is granted on a long-term basis and that no additional restrictions are placed on asylum seekers, such as only allowing them to undertake temporary or seasonal work or limiting the hours of work;
- preferably grant an automatic right to work. If not, Member States should ensure that any administrative procedures for asylum seekers and employers are as fast, clear and transparent as possible in order to not unduly delay access to the labour market in practice;
- ensure that the limitations they place on asylum seekers’ access to the labour market do not go against the meaning and aim of Article 11, since this could result in breaches of the Reception Directive;

The European Commission should monitor additional conditions imposed by Member States and hold Member States accountable by initiating legal proceedings to establish whether these conflict with or breach Article 11 (1), aimed at granting access to the labour market for asylum seekers within 12 months.

ANNEX 1

Abstracts of Articles 11, 13 and 16 of the Reception Directive

Article 11: Employment

1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.
2. If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant.
3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.
4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.

Article 13: General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.
2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.
3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.
4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.
If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.
5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.

Article 16: Reduction or withdrawal of reception conditions

1. Member States may reduce or withdraw reception conditions in the following cases:

(a) where an asylum seeker:

- abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or
- does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or
- has already lodged an application in the same Member State.

When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the reception conditions;

(b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.

2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.
3. Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.
4. Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 17, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to emergency health care.
5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.

ANNEX 2 (A)
Country Information in relation to Article 13 of the Reception Directive

Forms of provision of reception conditions

| Country | Provision - CLOTHING (In kind; cash allowances (CA); Vouchers (V)) |
|-----------------------------|--|
| Austria | Depends on province |
| Finland⁴⁶ | CA |
| France | CA |
| Greece | In kind, but only in reception centres |
| Lithuania | CA/V: 25 Litass/month (approx. 7 Euro/month) |
| Luxembourg | V: second-hand clothes, but no shoes |
| The Netherlands | CA/V: one-off allowance of 36,30 Euro |
| Spain⁴⁷ | In kind in some reception centres. Otherwise: 62 Euro/season and 162 Euro/new born |
| United Kingdom | CA |

⁴⁶ **Finland:** Asylum seekers receive cash allowances that cover all necessary living costs, including food, clothes, travel, language classes etc. The amount is 15% less than what nationals would get. Single asylum seekers who live in a reception centre or who live with other persons in a flat receive 273 Euro/month, while single asylum seekers living by him/herself receive 321 Euro/month.

⁴⁷ **Spain:** Before and after transposition, public transport costs were refunded according to the price of a monthly travel card. Asylum seekers will, additionally, get the following CA for personal costs: 46 Euro/month for adults; 78 Euro/month for couples; 17 Euro/month for children under 18; 30 Euro/month for children older than 18 or other family members.

| Country | Provision - HOUSING (In kind; cash allowances (CA); Vouchers (V)) |
|-------------------------------------|---|
| Austria | ♦ 5000-10,000 available places in reception centres * 17,000 available places in reception centres & CA/V for additional 10,000 flats |
| Finland | In kind |
| France⁴⁸ | 15,470 available places in reception centres that will be brought to 17,470 by December 1 2005. There are also 245 places in 'transit centres' and 1023 places in 'integration centres' for recognised refugees |
| Greece⁴⁹ | In kind, but only in reception centres |
| Lithuania | In kind |
| Luxembourg | In kind |
| The Netherlands⁵⁰ | In kind, but only in reception centres |
| Spain⁵¹ | In kind, but only in reception centres |
| United Kingdom⁵² | In kind |

♦ Before transposition.

* After transposition.

⁴⁸ **France:** Asylum seekers in reception centres receive a general cash allowance to cover for their personal costs, including food and clothes. A single person receives 205 Euro/month; a two-person household 311 Euro/month; a three-person household 384 Euro/month; a four-person household 493 Euro/month; a five-person household 508 Euro/month; a six-person household 717 Euro/month. Asylum seekers not based in reception centres receive 300 Euro/month to cover for all of their costs, including housing.

⁴⁹ **Greece:** All asylum seekers need to be issued with an 'asylum seekers card', which allows them access to employment, housing and health care. These cards are expected to be issued within three months. However, there are a large number of applications that are not examined by the authorities within this time frame and which do not appear in any official statistics. These asylum applicants do not, thus, enjoy their social rights for a significant period of time.

⁵⁰ **The Netherlands:** 400 asylum seekers live outside of reception centres and get CA and an extra 45 Euro/week for their rent. However, since 2002 it is no longer possible for new asylum seekers to live outside of reception centres. In 2004 the capacity of the reception system was reduced from 60,000 to 40,000 places.

⁵¹ In **Spain**, there is the possibility for asylum seekers living outside of reception centres to receive a cash allowance to cover all of their costs, amounting to the level of the official minimum wage, which is currently around 560 Euro per month. However, this is rarely put into practice, since most asylum seekers seem to be accommodated in reception centres.

| Country | Provision - FOOD (In kind; cash allowances (CA); Vouchers (V)) |
|-------------------------------|--|
| Austria ⁵³ | Asylum seekers are either supplied with prepared food, a weekly food supply so they can prepare their meals by themselves, or they get a CA of 35 Euro/week |
| Finland | CA |
| France ⁵⁴ | In kind, but only in some reception centres. Asylum seekers not based in reception centres are supposed to pay for their food from the general CA they receive |
| Greece | In kind, but only in reception centres. There are no specific CA/V allowances envisaged for asylum seekers who are not based in reception centres |
| Lithuania ⁵⁵ | In kind, but only in reception centres |
| Luxembourg | Depends on reception centre whether in kind or V |
| The Netherlands ⁵⁶ | Almost no reception centre left that provides all food in kind |
| Spain | In kind, but only in certain reception centres. Otherwise, CA |
| United Kingdom | In kind, but only in certain reception centres. Otherwise, CA |

⁵² In the *United Kingdom*, many asylum seekers are housed by private sector landlords in sub-standard accommodation where they suffer harassment or which is prejudicial to their health, in a poor state of repair, or lacking adequate amenities.

⁵³ *Austria*: Asylum seekers in reception centres receive 40 Euro/month of CA for personal expenses ('pocket money'). Asylum seekers who are not based in reception centres receive 180 Euro/month in cash for food expenses and personal expenses.

⁵⁴ *France*: Asylum seekers based in reception centres where they receive food 'in kind' have the costs for it retained from the overall CA they receive. Asylum seekers not based in reception centres often do not have enough money to buy food and depend on charitable organisations for food.

⁵⁵ *Lithuania*: All asylum seekers receive a CA for all their minor expenses of 25Litas/month (approx. 7 Euro/month).

⁵⁶ *The Netherlands*: The Central Agency for the Reception of asylum seekers (COA) has the policy to let asylum seekers buy and cook their own food as much as possible. Those reception centres that only offer dinner provide asylum seekers with a CA of 11,39 Euro/week/adult; 2,76 Euro/week/child aged 0-11 years; 4,58 Euro/week/child aged 12-17 years. Asylum seekers living in reception centres or outside but who have to provide for their own food receive 23,15 Euro/week/adult; 3,63 Euro/week/child aged 0-11; 5.89 Euro/week/child aged 12-17.

Apart from food allowances, asylum seekers also get cash allowance for travel expenses/care products/recreation activities etc. The current amounts, which have not been amended since 1997 are: 15,88 Euro/week/adult; 3,63 Euro/week/child aged 0-11 years; 5,45 Euro/week/child aged 12-17 years.

| Country | Provision – HEALTH CARE (In kind; cash allowances (CA); Vouchers (V)) |
|----------------------------|--|
| Austria | In kind, at the same basic level as Austrian citizens |
| Finland | In kind, consisting of necessary medical assistance only |
| France⁵⁷ | In kind |
| Greece | In kind |
| Lithuania | In kind, but only for necessary medical assistance. Otherwise, CA/V: 25 Litass/month (approx. 7 Euro/month) |
| Luxembourg | In kind for the first 3 months of the asylum application. Thereafter, paying for visits, but can claim back expenses (up to 80%) |
| The Netherlands | In kind, at the same level as for Dutch citizens |
| Spain | In kind, at the same level as for Spanish citizens |
| United Kingdom | In kind, at the same level as for British citizens |

⁵⁷ **France:** Asylum applicants have access to one form of the French Social Security System called the ‘Couverture Maladie Universelle’, which covers basic medical expenses. There is also the ‘CMU complémentaire’ (CMUC), which reimburses some or all of the medical expenses that cannot be met by the CMU. Previously, admission to the CMUC was immediate and automatic but since January 2004 applicants will have to wait 1 month after the initial examination of their requests. This means that the majority of asylum seekers do not have total social security cover during this month. However, emergency health care is still covered.

Conditions for cover, contribution or refund by asylum seekers

| Country/Yes-No | YES | NO |
|------------------------|--|-----------|
| Austria | X If asylum seeker is working a contribution (up to 100%) or a refund is requested | |
| Finland | X If asylum seeker is working or otherwise has sufficient resources. The decision to request asylum seekers to pay will be made by the director of the reception centre. Equal standards for payment will be set up on a national level and the payment should be reasonable | |
| France | | X |
| Greece | | X |
| Lithuania | X Asylum seekers might be requested to pay for part or entire costs if their income is sufficient | |
| Luxembourg | | X |
| The Netherlands | X If an asylum seeker has more property than someone under the law on social assistance is allowed to have, then they should contribute to the costs of reception. If an asylum seeker works he/she has to give part of his/her income to the reception centre as contribution for the reception facilities | |
| Spain | | X |
| UK | X If an asylum seeker has their own funds they are expected to contribute to the costs of their support | |

ANNEX 2 (B)
Country Information in relation to Article 16 of the Reception Directive

Bodies in charge of reduction or withdrawal and appeal procedures for asylum seekers in such cases

| Countries/Body and Appeal | Body in charge of reduction or withdrawal | Appeal procedure |
|----------------------------------|---|--|
| Austria | Depends on Province | Appeal to Independent Administrative Senate |
| Finland | The reception centre | Appeal to Administrative court |
| Lithuania | Not specified in the Aliens Law | Appeal within 7 days to Vilnius District Administrative Court |
| Luxembourg | Family Ministry, section <i>Commissariat du Gouvernement aux Etrangers</i> (Unit of the Government for Foreigners) | Nothing provided for by the law |
| The Netherlands | The Central Agency for the reception of asylum seekers (COA) | Firstly, review by the COA, then appeal to the court and then High appeal at the <i>Raad van State</i> (the highest appeal court) |
| Spain | The decision rests with the NGO or the asylum office assigned to run the reception centre. Afterwards everything will be communicated to the General Body for the Integration of the Immigrants | Appeal to the Secretary of State of Immigration and Emigration of the Ministry of Labour and Social Affairs within one month after the formal notification |
| United Kingdom | The National Asylum Support Service (NASS), which is part of the Immigration and Nationality Directorate (IND), which is part of the Home Office | Appeal to the Asylum Support Adjudicator (ASA) within two weeks |

ANNEX 2 (C)

Country Information in relation to Article 11 of the Reception Directive

Access to the labour market

| Country/Time period | Before transposition | After transposition |
|------------------------|-------------------------------|--|
| Austria ##### | Access denied | Partial transposition allows access after <i>3 months</i> |
| Finland | After <i>3 months</i> | After <i>3 months</i> |
| France # | Access denied | Not applicable |
| Greece ## | After maximum <i>3 months</i> | Not applicable |
| Lithuania ### | Access denied | Access denied |
| Luxembourg | Access denied | Once the reception Directive has been transposed, access is expected to be allowed after <i>9 months</i> |
| The Netherlands | After 6 months | After <i>6 months</i> |
| Poland ##### | Access denied | After <i>12 months</i> |
| Spain ##### | After 6 months | After <i>6 months</i> |
| UK ##### | Access denied | After <i>12 months</i> |

France: Since 1991, France does not grant asylum seekers access to the labour market. However, in some regions the permission to work may be granted based on either the employment situation in the region or the sector concerned.

Greece: Applicants are entitled to temporary employment provided that they are holders of a valid 'asylum seeker card'. The competent authorities provide this card following the first examination of the asylum application.

Lithuania: Lithuanian legislation does not address the issue of asylum seekers' right to access the labour market. They get access to the labour market only if they are granted refugee status or subsidiary protection, which normally does not exceed six months.

Austria & Poland: For Poland, new regulations came into force on 14 June 2005. So far there have not been any cases that would classify under this provision. However, it is predicted that the cases where an asylum seeker would actually get employed, both in Austria and Poland, will be extremely rare. In order to obtain a work permit the asylum seeker needs to find an employer who wishes to hire him/her and then the employer needs to apply to the labour office for granting the asylum seeker in question the work permit.

Spain: Though the period of time has remained the same, the procedure has changed in a way, which better facilitates asylum seeker's access to employment. Before transposition, asylum seekers were allowed to apply for a work permit only if they had an employment offer. After transposition, an authorisation to work will be automatically stamped into the identification documents of the asylum seekers after six months since the start of the asylum application procedure.

UK: Through transposition, the United Kingdom has (re-) introduced the permission to work for asylum seekers, since prior to July 2002 asylum seekers were allowed to work after 6 months, but this concession was withdrawn and since then till transposition they were denied access to the labour market.

Additional conditions to timeframe for granting access to the labour market

| Country/Conditions? | No | Yes | If yes, which? |
|--------------------------------|----|-----|--|
| Austria | | X | Work permits are subject to change in the overall national employment situation and are only granted if no Austrian or migrant with already existing work permit can fill the position |
| Finland | | X | After applying for international protection, resided in Finland for three months |
| Greece | | X | <ul style="list-style-type: none"> - Asylum seekers are entitled to temporary employment to meet life's needs - Applicants should be holders of a valid 'asylum seekers card', showing that they are not staying in a special temporary residence centre - After searching the labour market no interest for the post was expressed from either a national, a EU citizen, a recognised refugee, or a person of Greek decent |
| Luxembourg⁵⁸ | | X | <ul style="list-style-type: none"> - If no decision has been made after 9 months, renewable six month temporary work permits may be issued - Temporary work permits will be subject to change in the overall national employment situation - Temporary work permits issued for one specific profession at a time |
| The Netherlands | | X | <ul style="list-style-type: none"> - Only allowed to work for 12 weeks in one year - The employer needs to ask for a permit to have an asylum seeker work for him/her |
| Spain | X | | |
| UK | | X | <ul style="list-style-type: none"> - Must obtain written permission from the Home Office before taking employment |

⁵⁸ Once Luxembourg has transposed the Reception Directive at the beginning of 2006, it is expected that asylum seekers will have the right to access the labour market 9months after their initial asylum claim has been made.

ANNEX 3: List of contributing Member Agencies*

| | |
|------------------------|--|
| Austria | Caritas Österreich |
| Finland | Finnish Red Cross |
| France | France Terre d'Asile Forum Réfugiés |
| Greece | Greek Council for Refugees |
| Lithuania | Lithuanian Red Cross |
| Luxembourg | Fondation Caritas Luxembourg |
| The Netherlands | VluchtelingenWerk (Dutch Council for Refugees) |
| Norway | Norwegian Organisation for Asylum Seekers (NOAS) |
| Spain | Asociación Comisión Católica Española de Migración (ACCEM) |
| United Kingdom | British Refugee Council |

* All the agencies listed are members of ECRE with the exception of Caritas Österreich.