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DIRECTIVE 2003/09 ON RECEPTION CONDITIONS SYNTHESIS REPORT

by PHILIPPE DE BRUYCKER AND LAURENCE DE BAUCHE

STUDY ON THE "CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION" DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007(CONTRACT JLS/B4/2006/03)

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GENERAL INTRODUCTION TO THE STUDY

by

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1. PRESENTATION OF THE STUDY

The study contains different types of reports:

1. Two hundred seventy **National Reports** about the implementation of each of the 10 directives in each of the 27 Member States.

2. Ten **Synthesis Reports** for each of the 10 directives about their implementation in the 27 Member States. The abbreviated names used in the study for the 10 directives concerned by this report are:
- Family reunification
- Long-term residents
- Temporary protection
- Reception conditions
- Victims of trafficking
- Qualification
- Assistance for transit
- Carriers Liability
- Facilitation of unauthorised entry and stay
- Mutual recognition (of expulsion)

Those two kinds of reports are all accompanied by a summary.

Each National report is accompanied by a **National Summary Datasheet**. This Summary underlines the most serious problems related to the transposition of the concerned directive in the concerned Member State. Moreover, translations of the most problematic national provisions have been included in this National Summary Datasheet as requested by the Commission.

Each Synthesis Report is accompanied by a **Summary Datasheet** which underlines the most important conclusions and the main problems related to the transposition of the concerned Directive in the 27 Member States. It contains also some recommendations addressed to the Commission.

There are also 27 **Executive Summaries** about the implementation of the 10 directives in each of the Member States.

Apart of the reports, the **Tables of Correspondence** are very important tools to check the transposition of the directives by Member States. One table has been prepared about the implementation of each of the 10 directives in each of the 27 Member States. They have been included in each National Summary Datasheet. It gives a precise overview of the transposition of each provision (sometimes even of each sentence) of the concerned directive: the state of transposition (has actually the provision or not been transposed?), the legal situation (in case of transposition, is there or not a legal problem?) and a reference to the national provisions of transposition. Footnotes giving brief explanations have also been included in the tables. The reader who wants to have more information can easily find in column 2 of the tables a reference to the number of the question to consult the national report. Guidelines explain how the national rapporteurs were asked to complete the table and how they had to understand each mention proposed in the table.

The paper version of the reports is accompanied by a website. Apart from an electronic version of all the reports, the website gives also access to the full text of the national rules of transposition.

2. METHODOLOGY OF THE STUDY

The study has been done in the framework of the "*Odysseus" Academic Network for Legal Studies on Immigration and Asylum in Europe* by a very large team of persons organised as following:

1. The 120 national rapporteurs in charge of the national reports and tables in each Member State for one or several directives. A lot of the rapporteurs are members of the Odysseus Academic Network, but the Network has at this occasion been extended to other persons because of the very large scope of the study and the considerable amount of work to be done;

2. The 27 national coordinators in charge of ensuring progress of the work at national level and responsible for the drafting of the Executive Summary per Member State;

3. The six thematic coordination teams in charge of the synthesis reports per directive:
   - Prof. Kees Groenendijck assisted by Ricky Van Oers, Roel Fernhout and Dominique Van Dam in the Netherlands for Long-term residents as well as by Prof. Cristina Gortazar and Maria-José Castano from Madrid in Spain for certain aspects;
   - Prof. Kay Hailbronner assisted by Markus Peek, Simone Alt, Cordelia Carlitz and Georg Jochum in Germany for Assistance in cases of transit for removal, Mutual recognition of expulsion decisions, Carrier sanctions and Facilitation of unauthorised entry and residence;
   - Prof. Henri Labayle assisted by Yves Pascouau in France for Family reunification;
   - Prof. Gregor Noll assisted by Markus Gunneflo in Sweden for Temporary protection and Residence permits for victims of trafficking;

- Prof. Thomas Spijkerboer assisted by Hemme Battjes and Bram Van Melle in The Netherlands for the part on Qualification of refugees and subsidiary protection & Prof. Jens Vedsted-Hansen assisted by Jesper Lindholm in Denmark for the part on Rights of refugees and of persons under subsidiary protection.

4. The General Coordination team in charge of the overall coordination, methodology and contacts with the Commission as well as for the update of the synthesis report on reception conditions previously done by the Odysseus Academic Network in 2006. Prof. Philippe De Bruycker based in Belgium was therefore assisted by Laurence De Bauche (researcher), Elona Bokshi (manager of the website and also in charge of gathering national rules of transposition) and Nicole Bosmans (administrative and financial secretariat).

The authors are indicated at the beginning of each report with their email address in order to allow the Commission to contact them easily in case of need. The General Coordinator wants to thank warmly all the persons who were involved in this enormous study for their work and in particular their patience because of the many versions of the reports that we exchanged through thousands of emails.

Four meetings were organised: a kick-off and an intermediate meeting with the general and thematic coordination teams, a meeting with the general coordinator and all the researchers assisting the thematic coordinators and a final plenary meeting including almost all national rapporteurs were drafts for the synthesis reports have been discussed.

NGOs were asked to contribute on a voluntary basis by completing the questionnaires or at least part of it. The Member States were given the possibility to comment about the draft national reports (without the table of correspondence). We got only a limited number of contributions and reactions.

The Commission has been closely associated to the study. It was in particular consulted at the beginning on the projects for questionnaires and for tables of correspondence.

All member States are covered by the study, including those not bound by several directives upon the request of the Commission which asked to be informed about the developments in those Member States in comparison with Community law. The reports and tables of correspondence have been completed as if those States were bound by the concerned directives.

3. EVALUATION OF THE RESPECT OF COMMUNITY LAW

The study is about the transposition of 10 directives by Member States. More precisely, it covers extensively the legal measures adopted by the Member States to transpose those directives. As the process of transposition was not finished in some Member States, the authors decided to take into consideration the projects of national norms of transposition when they were accessible. It is important to note that those projects have been analysed like if they had been adopted as standing, which means that subsequent changes at national level are not covered by the study. The cut-off date for the national rapporteurs is in general 1st October; later developments have only been taken into consideration whenever possible.

The practical implementation of the directives is covered as much as it has been possible to do so. The study came indeed early as the directives have just or even not yet been transposed, so that implementation by Member States is just starting and in particular that the jurisprudence available was very limited. The fact that no practical problems are mentioned does not mean that there are none, but that the rapporteurs have not been informed of their existence.

Explanations are given in the 10 synthesis reports about the transposition of the concerned directive. Fore the mandatory provisions which have not been transposed or pose a problem, the explanations are followed by boxes listing the Member States in order to help the Commission to draw clear conclusions and make the report easy to read. They have been built upon the basis of the tables of correspondence included in the national summary datasheets for each directive and Member State. The guidelines given to national rapporteurs to assess the situation in their Member State are reproduced with the tables to help the reader to understand the methodology.

Some important remarks about the way the transposition of directives was assessed have to be made. The research team had to find a way between different priorities: firstly and obviously, the jurisprudence of the Court of Justice which has strict requirements regarding legal certainty and is even quite rigid on some points. Secondly, pragmatism which leads to check if the directives are effectively applied in practice with less attention given to certain aspects of pure legal transposition. The coordinators tried to find a reasonable middle way between these two approaches and agreed together with DG JLS upon the following elements:

- Administrative circulars of Member States have been considered as formal means of transposition. As much as they are binding for the administrative agents in charge of individual cases, they indeed ensure that the directive is implemented in practice despite they might not be considered sufficient to fulfil the requirements of the Court of Justice regarding an adequate legal transposition. They are nevertheless mentioned in the tables of correspondence separately from laws and regulations.

- Pre-existing norms of transposition meaning laws, regulations and circulars which were adopted before the concerned directive and so obviously not to ensure its formal transposition, have been considered as a mean of transposition. Their content may indeed reflect the provisions of the directives in internal law. This is not in line with the jurisprudence of the Court which has considered that "legislation in force cannot in any way be regarded as ensuring transposition of the directive, which, in article 23(1), second subparagraph, expressly requires the Member States to adopt provisions containing a reference to that directive or accompanied by such a reference" (Commission v. Germany, Case C-137/96 of 27 November 1997). All the ten directives covered by the study contain such an inter-connexion clause. A rigid application of this jurisprudence to our study would have led us to conclude that there is no transposition even when pre-existing rules ensure the implementation of the directive. In line with the approach of DG JLS to assess not only the formal transposition but also the application in practice of the directives, we have not done so and considered pre-existing national rules as a mean of transposition. They are nevertheless mentioned in the table of correspondence as pre-existing law, regulation or circular not under the item "Yes formally" but "Yes otherwise" together with general principles of internal law which the Court has accepted to consider under

certain condition as a mean of transposition (Commission v. Germany, Case C-29/84 of 23 may 1985).

Despite the fact that we agreed with the Commission about these choices, the authors of this study considered necessary to make them explicit as they might seem inadequate from a purely legal point of view. Moreover, they have also decided to present in the tables of correspondence these possibilities separately from the classical ones. The Commission will so be perfectly informed about the situation regarding the transposition of the directives in the Member States. The transparency of the information given in the tables will allow it to take a final position which could depart from the choices done at the beginning of this study.

Finally, the provisions about human rights appearing here and there in the ten directives require some explanations. The obligation for Member States to formally transpose provisions like for instance article 20 §4 of the Qualification directive[i], article 15 §4 of the directive on temporary protection[ii] or article 3, §2 of the directive on mutual recognition of expulsion decisions[iii], gave raise to long discussions between all the rapporteurs involved in the study. It has been impossible to convince the group of 130 lawyers involved in this study to take a common position about the necessity to transpose or not that kind of provisions. The General Coordinator of this study decided in this context to leave the national rapporteurs free to express their own opinion in their report and table. This means that divergent views might be expressed on the same point by the national rapporteurs. This situation reflects the fact that the lawyers involved in the study face obviously very different situations and react sometimes in relation with the context of their Member State by considering that reminding human rights is either superfluous because they are generally respected, either necessary because they care about possible violations.

From a strictly legal point of view, it appears that all the provisions cannot be considered in the same way. Some articles have an added value and are more than repetitions of human rights provisions, like article 10 of the directive on permits for victims of trafficking which after a first clause on the best interests of the child requires specifically an adaptation of the procedure and of the reflection period to the child, or article 17 of the directive on family reunification which refers to the jurisprudence of the European Court of Human Rights on the right to family life and specifies its scope. Others may be considered as redundant with international treaties like article 20 §4 of the Qualification directive or article 15 §4 of the directive on temporary protection. One may consider superfluous to transpose such a provision in the case of Member States which have ratified the Convention on the right of the child and ensure its implementation, for instance by recognising it a direct effect. More in general it appears that references to human rights in secondary legislation require more attention and that their legal value needs to be clarified (see recommendation on this point below).

[i] « *The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this chapter that involve minors* ».
[ii] « *When applying this article, the Member States shall take into consideration the best interests of the child* ».
[iii] « *Member States shall apply this directive with due respect for human rights and fundamental freedoms*».

4. RECOMMENDATIONS ABOUT THE EVALUATION OF THE IMPLEMENTATION OF DIRECTIVES

This part contains some general recommendations to the Commission about the way of checking transposition of directives by Member States (specific recommendations about the 10 directives are included in the Summary Datasheet of each synthesis report per directive). The following three recommendations are based on the experience acquired during this study covering 10 directives in 27 Member States.

- **Oblige the EU institutions to include tables of correspondence in the final provisions of any directive adopted**

It is clear that the method of checking the implementation of directives still needs to be improved. The increase of the number of Member States and of working languages makes it more and more difficult to check seriously the way they are legally transposed.

There is an absolute need to request the Member States to prepare a table of correspondence (also called concordance or correlation tables) indicating the national norms of transposition for each provision of a directive. The Member States which have prepared the transposition are the best authority to identify precisely these norms of transposition. Leaving it to the Commission or asking external experts to do this part of the job can be considered to large extend as a waste of time and resources. The Member States should be asked only to indicate the rules of transposition and of course not to evaluate its correctness. Even the NIF electronic database of the Commission used by the Member States to notify the rules of transposition is therefore not sufficient. It does not indicate precisely the national norm of transposition for each provision of the directives which might remain difficult to identify in very long national rules. Moreover, Member States send sometimes not only the norms of transposition as some directives require them to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the directive. If such a more or less standard provision has been included to allow the Commission to understand the general context of the transposition, it makes the search of the precise norm of transposition more difficult as some Member States transmit a lot of texts.

Remarkably, only one of the 10 directives under analysis contains a provision obliging the Member States to prepare a table of correspondence: following article 4 §2 of the directive on the facilitation of unauthorised entry, transit and residence, *"The Member States shall communicate to the Commission the text of the main provisions of their national law which they adopt in the field covered by this directive****, together with a table showing how the provisions of this directive correspond to the national provisions adopted****. The Commission shall inform the other Member States thereof"*. The reasons explaining why only this directive contains such a requirement are not clear. This directive is the result of a State initiative, namely France. The other instruments proposed during the same period by France regarding carrier sanctions and mutual recognition of expulsion decisions do not contain such a clause. The same is true for the Commission's proposals at the origin of the other directives analysed.

There is a strong and urgent need to request such a table from Member States when they transpose a directive. The Commission should intensify its efforts undertaken since five years

so that the European institutions are obliged to include such a clause in any directive adopted as envisaged in its Communication on “A Europe for results: applying Community law”[i].

- **Have a more in-depth debate about the choice of the right instrument instead of favouring directives**

A reflection on the type of instruments of secondary law to be used could also be fruitful. For instance, it seems that a Council decision would have been more appropriate than a directive to regulate the issue of assistance in cases of transit for the purposes of removal by air.

More important, directives should not be automatically chosen for reasons of subsidiarity or proportionality. One may wonder if they are not good reasons for choosing in certain cases a regulation instead of a directive, for example for the qualification of refugees and persons under subsidiary protection in order to ensure a more consistent implementation of the definitions of persons to be protected in the EU by the Member States.

- **Clarify the sense of including human rights references in secondary legislation in view of the future binding effect of the EU Charter on human rights**

As underlined above, many references to human rights have been included in directives adopted in the field of immigration and asylum. Their legal value is doubtful when they only repeat or refer to International or European provisions on human rights. As they may create long discussions during the transposition process by Member States about their need to be transposed and can even create confusion about the precise origin of the concerned human right, they could be omitted and included if relevant in the preamble of the instrument. The need to clarify this point will increase with the entry into force of the new Lisbon Treaty transforming the EU Charter of human rights into a legally binding instrument.

[i] COM(2007)502 of 5 Septembre 2007.

III. SUMMARY DATASHEET AND RECOMMENDATIONS

1. "HORIZONTAL" CONCERNS ABOUT RECEPTIONS CONDITIONS THROUGHOUT THE EUROPEAN UNION

This section serves to present the main[i] concerns regarding the legal transposition and practical implementation of the Directive throughout the Member States.
They are presented following the approach traditionally used by lawyers to apprehend the scope of a legal instrument in its four dimensions.

Ratione personae

- The biggest problem regarding the personal scope of the application of the directive certainly concerns asylum seekers with special needs: there is a deficiency of medical and other assistance for these persons in several Member States (Q 30 D).
- The same observation can be made regarding access of minors to mental health care and qualified counselling (Q 31 F).
- There is a problem with access to education for minor asylum seekers and even in the Member States where a legal problem is posed if the directive is interpreted as applicable to cases of detained asylum seekers (Q 31 B).
- There are serious concerns for unaccompanied minors in particular about the tracing of their family (Q 31 G, H and I).
- A few Member States refused to extend the reception conditions provided for in the Directive to persons applying specifically for subsidiary protection. This problem is of a political rather than legal nature as article 3, § 4 is an option clause but it is linked to a violation of the directive by Cyprus and Bulgaria who do not presume an asylum application to be an application for refugee status (Q 13 A and B).
- It is interesting to note that Member States sometimes leave the implementation of certain aspects of the Directive to NGOs, for instance the provision of clothing to asylum seekers or adequate reception conditions for asylum seekers with special needs. This has been considered as an infringement of the directive where it is not organised or financed by the Member States because of the lack of legal certainty regarding the implementation of these provisions (Q12 B).

Ratione materiae

- The number of places for asylum seekers is currently (also due to the decrease in applications in many Member States) sufficient, except in 4 Member which is a serious concern because financial allocations given to asylum seekers in those member States are also insufficient (Q 24 C).
- Material reception conditions as defined by article 2, (j) of the directive which are generally provided in kind to asylum seekers (with a significant minority of Member States providing money instead for clothing) are adequate with the exception of open centres in 4 Member States and clothing in 5 Member States (Q 12 B).

[i] The reader is kindly asked to consult the synthesis report for a more comprehensive analysis by question and the National Summary Datasheet including the Table of Correspondence (NSD+TOC) for a detailed overview by Member State.

- On the contrary, reception conditions are problematic in 15 Member States where they are partially or entirely provided "in money". One has to bear this conclusion in mind when UNHCR and NGOs suggest, for various reasons, to accommodate asylum seekers outside collective accommodation centres in individual housing, which normally implies providing all the rest of material reception conditions in money; this should be limited to asylum seekers having access to the labour market and could be linked to progress in the asylum procedure as in Belgium (see below).
- This assessment is corroborated by the list of 15 Member States that do not allocate the necessary resources to implement the Directive (see 40 E) especially for some of them with regard to Q 12 B.
- Even if it does not seem *per se* to be contrary to the Directive, one can be concerned about the fact that 6 Member States (Q 20 C) restrict or refuse access to reception conditions in cases where asylum seekers refuse to stay in collective reception centres because they have the possibility to accommodate themselves, as this undermines the autonomy of the individuals concerned.
- There are problems regarding access to health care in only 4 Member States (Q 27 B). It is important to note that this conclusion is from a legal point of view based on the minimum standards of the Directive and can therefore lead to misunderstandings with NGOs who often complain about access to health care on the basis of their own standards, in particular regarding mental health care.
- Regarding the information to be given to asylum seekers, there are more problems regarding information on organisations or groups defending the rights of asylum seekers (Q 18) than about information on reception conditions in general (Q 17 A).
- There are problems with the right of asylum seekers to appeal against problematic decisions about their reception conditions in 10 Member States (Q 22 A).
- There are also problems with legal assistance linked to the right of appeal (Q 22 B).
- There are mainly 3 Member State where access to the labour market is problematic, one where access is denied but two thirds of Member States still impose work permits to asylum seekers which can more or less undermine in practice the right of asylum seekers to work (Q 28 A).
- There are slight problems with the right of asylum seekers to leave their assigned place of residence in 6 Member States (Q 20 E).

Ratione loci

- There are problems with reception conditions when asylum seekers are detained however Member States diverge about the applicability of the Directive to closed centres (a group of 9 Member States consider that the Directive is not applicable, in 3 Member States the situation is unclear). Our opinion is that the directive is applicable to closed centres (Q 33 I).
- The biggest problem in detention centres concerns access to education which is problematic in more than 10 Member States if minor asylum seekers are detained more than 3 months (maximum period during which Member States can delay access to education according to article 10, §2 of the directive) but also often hard conditions of living.
- Reception conditions are legally not provided by the State but ensured by an NGO at Vienna airport in Austria (Q 32 D).

- Germany restricts the free movement of asylum seekers to the district where they were assigned during the asylum procedure, without however violating the directive (Q 20 A).
- The Netherlands have an extremely sophisticated system of reception conditions based on 4 different types of centres (temporary reception, registration, orientation and integration as well as return) corresponding to the different possible stages of the asylum procedure.

Ratione temporis

- There is a problem with the non-implementation of the Directive at the very beginning of the asylum procedure by 8 Member States (Q 14).
- The concerns regarding non-implementation of the Directive to "Dublin II cases" appear to be limited to 3 Member States as far as we have been informed about the practice (Q 11).
- There are problems in 5 Member States regarding the respect of the deadline of 3 days for the delivery of documents to asylum seeker foreseen by article 6 §1 of the directive (Q 19 D).

2. "VERTICAL" CONCERNS ABOUT RECEPTION CONDITIONS IN SOME MEMBER STATES

This section serves to present the main[i] concerns linked to the legal transposition and practical implementation of the directive in particular Member States.
The most important problems concern 3 Member States (Bulgaria, Malta and Cyprus).
At different levels the situation is clearly problematic and worrying in Malta and Bulgaria.
By contrast, there are clearly very few problems with the directive in 5 Member States (Luxembourg, Finland, Sweden, the Czech Republic as well as Portugal which, however, receives one of the lowest number of asylum seekers in the EU).
There are some complications in Austria due to the division of competences between the federal authorities and the Länder in this federal Member State.

3. THE UNEXPECTED POSITIVE IMPACTS OF THE DIRECTIVE DESPITE THE ABSENCE OF HARMONISATION

- The Directive had only a minor impact in around one third of the Member States and its transposition led to a political debate outside the circle of specialists only in Luxembourg and Slovenia.
- By contrast the transposition of the Directive led to the adoption of more favourable provisions at national level than the ones applicable before its adoption in 11 Member States.
- One will note with great interest that the Directive did not have 'perverse effects' of a lowering of higher national standards as would have been possible in the absence of a standstill clause.

[i] The reader is kindly asked to consult the synthesis report for a more comprehensive analysis by question and the NSD+TOC for a detailed overview by Member State.

- Even the famously difficult political compromise enshrined in article 11 of the Directive on access to the labour market led to an expansion of the rights of asylum seekers in no less than 10 Member States.
- The positive effects of the Directive are more noticeable in the new than in the old Member States, although the sole case of a lowering of standards does concerns a new Member State (Slovenia).
- Although it is obvious that the Directive did not harmonise reception conditions for asylum seekers throughout the EU but only approximated the domestic laws of the Member States in this field to a certain extent, the progress accomplished at national level is due to the action of the European Community, which has contributed positively to International Refugee Law with the Directive on reception conditions complementary to the Geneva Convention.
- This positive evaluation contradicts the simplistic criticism often levelled at the Directive regarding its level of standards without bearing in mind the extremely diverse situation across the Member States.

4. RECOMMENDATIONS FOR THE IMPROVEMENT OF RECEPTION CONDITIONS

We propose below two specific and concrete ways of improving reception conditions in the European Union firstly at practical level and secondly at legislative level:

a. Practical cooperation between Member States

The first method is about the possible development of practical cooperation between the Member States in the field of reception conditions for asylum seekers.

Concretely, the following points could be addressed:

- Identification of asylum seekers with special needs, which is a crucial point.
- Translation into different languages of written information to be given to asylum seekers through pooling of capacities between Member States.
- Exchange of experiences about the imposition of work permits on asylum seekers between the Member States not requiring this obligation and the Member States requiring this obligation.
- Involvement of UNHCR in the guidance, monitoring and control system for the implementation of the Directive, as is the case in many of the new Member States.

The following best practices have been identified:

- Transition from material reception conditions "in kind" to "in money" after a certain period of time in Belgium (this could be linked to the phases of the asylum procedure in order to gain capacity in reception centres in case of shortage of places or more generally to improve the life and autonomy of asylum seekers after a certain time has passed in the asylum procedure).
- Definition of quality standards for material reception conditions in the Czech Republic.
- Representation of NGOs within an advisory board for reception conditions in Germany and Italy.

- Possibility for asylum seekers to refuse accommodation in collective centres without loosing their rights to the other material reception conditions in the Netherlands.
- Involvement of asylum seekers in the management of reception centres in France.
- Free access of asylum seekers to public transportation in Luxembourg.
- Information about reception conditions provided to asylum seekers through a DVD in the United Kingdom and a video in Hungary.

b. Legislative amendments of the provisions of the Directive

We limited ourselves to formulate proposals either absolutely necessary because of the importance of the problem, either in principle not too difficult to be adopted without entering in the whole political debate about the level of the standards of the directive:

- Identification of asylum seekers with special needs, which should be considered as a top priority because of its crucial importance and the weakness of article 17, §2 of the Directive, through a clear allocation of responsibilities between the different actors entering into contact with asylum seekers on that precise point or through the definition of a specific procedure for the identification of asylum seekers with special needs.
- Privileged access of UNHCR to reception centres.
- Extension of reception conditions to applicants for subsidiary protection by turning the optional clause of article 3 §4 of the Directive into a mandatory one, in order to complement the single procedure.
- Better interlinkage of the Directive on reception conditions with the Directive on asylum procedure regarding the initial stages of asylum procedures as suggested in answer to Q 11 as well as with the Dublin II Regulation.
- Oblige the Member States to deliver to the asylum seekers an updated and comprehensive list of NGOs or organisations providing assistance to asylum seekers, including information about the way to contact them (amendment of article 5, §1, 2nd indent).
- Clarification of Article 14.

IV. EUROPEAN SYNTHESIS OF THE NATIONALS REPORTS

Update of the 2006 Synthesis report by Philippe De Bruycker and Laurence De Bauche

Foreword

The European synthesis report 2007 is an update of the European synthesis report 2006.
It includes Bulgaria and Romania. Both of these Members States are bound by the directive but have not been covered by the synthesis report 2006.
It takes into account some adjustments made to the national reports which have been previously covered by the synthesis report 2006.
We would particularly like to draw your attention to Malta. Malta has been asked to start afresh its national report and a new report has been issued.
To make it easier for the Commission the most significant adjustments and added items have been highlighted in blue like this.
Regarding Ireland and Denmark - both of them are not bound to the directive - the relevant documents are the National Reports and the National Summary datasheets including the table of correspondence (as mentioned below NSD + TOC).

The summary tables relating to the most important provisions of the directive are inserted in the synthesis report and give prominence to the States which have not transposed the provision at issue - "NOT" in column 3 of the TOC - and to the States where a legal and/or a practical problem has been noticed and notified in the NSD + TOC .
The written indication "NO TRANSPOSITION" does not necessarily imply that the provision is not implemented. Sometimes the provision is put into practice even if not transposed.
The written indication "PROBLEM" applies to either a legal problem - written indication "PROBLEM" in column 4 of the TOC - or to a practical problem - written indication "IN ORDER" in column 4 of the TOC with a mention at the foot of the page briefly clarifying the problem.

Last, one must be aware that the written indication "PROBLEM" in the synthesis report does not inform the reader of the seriousness of the problem. The information which allows to determine the degree of seriousness are to be found in the detailed explanations inside the synthesis report itself and/or in the national documents (NSD + TOC especially).

To grasp a comprehensive and precise understanding of each case the reader can refer to the synthesis report but to these national reports and NSD+TOC as well.

1. NORMS OF TRANSPOSITION

Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the Directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the Directive.

With the exception of **Greece**, the Netherlands, Spain, the Directive was transposed by all Member States into the domestic legal order by one or several laws. In the Netherlands it was transposed by a ministerial decree: in accordance with article 12 of the Law on the Central Agency for the Reception of Asylum Seekers, the Minister for Aliens and Integration is responsible for the adoption of any regulatory measures relating to reception conditions for asylum seekers. The aforementioned law contains no specific provisions on reception conditions. The law thus gives the Minister wide discretionary powers. In Spain the Directive was transposed by a royal regulation and in **Greece** by a Presidential Decree.

The norms of transposition are generally not limited to reception conditions for asylum seekers but cover other aspects of refugee law (procedure or status), or wider immigration policy. It is commonplace for the transposition norm to concern not only the Directive on reception conditions but also other Directives adopted under EU asylum and immigration policy.

Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the Directive and of the transposition norms like regulations, administrative circulars, special instructions,…)

For the answers to this question, which are obviously impossible to synthesise, the reader is asked to consult the various national reports listing all the norms of transposition. Let us simply state that in a large majority of Member States, regulations and administrative circulars complement the main transposition norm(s).

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

&

Q.4. Explain the legal technical choices done to transpose the Directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the Directive which is interesting for the implementation of Community law.

In Member States that are unitary states, the central authority is clearly competent to adopt the norms relative to reception conditions for asylum seekers. In Portugal, nevertheless, the legislative assemblies of the two autonomous regions (the Azores and Madeira) can adopt implementation measures in the domain, notwithstanding the central authority's prerogative. In practice, the national assembly has not insisted on its prerogative and it is likely that the central government will likewise refrain. In federal or regional states, the legal competence in the domain of reception conditions pertains, apart from some exceptions, to the federal authorities, except in the case of Austria:

- In Germany, the federal authority is competent with regard to reception conditions because it has decided to legislate instead of the Länder, the latter nevertheless retaining competence for the implementation of the legislation, and thus of the Directive, in practice.
- In Belgium, the reception of asylum seekers is a federal issue but certain measures contained in the Directive nevertheless touch upon the competence of the federated entities (the Regions for professional training and the Communities for youth welfare and education);
- In Italy, the central authorities have exclusive competence in asylum matters, but the regions and municipalities are responsible for some reception conditions such as accommodation or certain welfare services, in respect of the minimum standards of social protection set by the central authority which must be guaranteed throughout the territory ;
- In Austria, the Constitution does not clearly determine whether reception conditions for asylum seekers pertain to asylum policy, which is a federal matter, or social welfare policy, which is a matter for the Länder. After some back and forth, the federal government and the Länder concluded an agreement according to which the former is responsible for reception during the admissibility procedure and the latter are responsible once an asylum request is deemed admissible. The agreement defines the reception conditions that must be offered to asylum seekers in an identical manner across the federal territory, although without granting individual rights. Thus the central authority and the Länder are both competent, depending on the different stages of the asylum procedure, for adopting the necessary norms to transpose the Directive. Clearly the Austrian case makes the verification of compliance with the Directive an extremely complex affair, given that laws and practice must be analysed not only at the federal level but also within each of the nine Länder.

Q.5. Mention if there is a general tendency to just copy the provisions of the Directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

The Directive was generally transposed in a way that takes account of national circumstances and existing legal frameworks, which is not surprising given that the laws of many Member States already contained provisions relating to reception conditions and that in some cases only minor modifications to the existing laws were necessary in order to conform to the Directive.

Nevertheless there have been some cases of transposition by literal copying of the provisions of the Directive:

- In the United Kingdom, Greece Estonia, **Bulgaria** and **Romania** there is a general

tendency to literally reproduce the text of the Directive. The British report underlines resulting difficulties of implementation of certain provisions such as article 17 of the Directive which risk to not be applied in the absence of a clear obligation to identify asylum seekers with special needs and of a definition of special needs This risk of non-implementation of certain provisions is also underlined in the Greek report which notes nevertheless that more favourable practices than the minimum standards of the Directive have been included in the presidential decree. The **Estonian** report concludes that it is difficult to say whether or not the method of reproducing the Directive created problems given that the new provisions only entered into force on 1 July 2006 and that there is not enough practice to assess the difficulties of the implementation.

- In **Malta** the vast majority of the provisions of the Directive were simply copied into national legislation; in a few instances, changes were made to adapt the provisions of the Directive to national circumstances.
- In Slovenia, while the trend to copy the text of the Directive is less general, it nevertheless exists and risks leaving certain provisions unapplied such as article 17 related to asylum seekers with special needs. Thus, the law states that persons with special needs must benefit from special reception conditions after evaluation of their special needs during a personal interview, but the law defines neither the means to evaluate special needs nor the type of support to be offered.
- In Luxembourg, the regulation setting the conditions and modalities for the granting of welfare benefits mostly reproduces the terms of certain provisions of the Directive, without always containing elements necessary to its implementation in practice;
- In Poland, the provision on asylum seekers' access to the labour market is largely identical to Article 11 of the Directive;
- In Cyprus, those provisions of the Directive for which there were no particular policies in place were copied literally.

The examples above relating to article 17 of the Directive point to a wider problem with the implementation of that provision that also concerns other Member States (see below the answers to questions 30 onwards).

Two reports consider that a literal transposition can also have some advantages. In **Austria**, the law of the Land of Lower Austria largely reproduces the terms of the Directive by copying the precise guarantees foreseen therein –e. g. the list of vulnerable persons whose interests have to be taken into account, Sect. 6 § 4- even where these are not contained in the agreement concluded between the Länder and the federal government (see above the answer to question 3). In the Netherlands, the few cases of literal reproduction pointed out have also been favourable to asylum seekers in that they concern measures of the Directive that grant them individual rights.

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

In 22 Member States (**Austria**, **Bulgaria**, Cyprus, Czech Republic, **Estonia**, Finland, Germany, **Greece**, **Hungary**, Italy, **Latvia**, **Lithuania**, Luxembourg, Malta, **The Netherlands**, Poland, Portugal, **Romania**, Slovakia, **Spain**, Sweden and the **United**

Kingdom), all or almost all texts necessary for the effective implementation of the Directive into the domestic legal order have been adopted.
This is not the case for France, Slovenia and **Belgium,** where the regulations implementing the legislative norm of transposition have not yet all be adopted; In Belgium, moreover, the question of the access of asylum seekers to the labour market is also not solved in the project for law as it pertains to the competences of the federal Minister for work and the draft law has been prepared by the federal minister in charge of reception conditions
.

Austria poses a specific problem linked to its federal system of government: the laws in force are somewhat imprecise and leave much margin of interpretation to the authorities responsible for providing reception conditions. These texts largely reproduce the content of the agreement concluded with the federal government, whose object is to clarify the division of responsibilities for reception conditions between the federal government and the Länder and therefore logically confers no rights to individuals.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the Directive in the public administration).

Seven Member States carried out preparatory work for the transposition of the Directive (Austria, Belgium, Finland, Czech Republic, United Kingdom, Slovenia and Sweden):

- In Slovenia and the Czech Republic, in addition to a reflection group being set up within the competent ministries, the transposition of the Directive was the object of a consultation involving NGOs and UNHCR throughout the procedure leading to the adoption of the transposition law by Parliament;
- In the United Kingdom a public consultation was launched by the Home Office (Ministry of the Interior);
- In Belgium, Finland and Austria a study was carried out within the competent public institutions
- In Sweden, the official report analysing the regulation on reception conditions for asylum seekers was complemented by a practical study. These investigations underlined the fact that positive law largely conformed to the Directive and that only some modifications to the existing legislation were necessary.

In some Member States, one can further point to consultations, debates and opinions from various bodies, accompanying the process of the transposition of the Directive. This was especially the case in Luxembourg where many institutions were involved or involved themselves with the draft transposition law, which led to sometimes very comprehensive opinions finding their way into parliamentary documents.

No such in-depth preparatory study was carried out in **Bulgaria** and **Romania**.

Q.8. Quote any recent scientific book or article published about the Directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

The reader is referred to the bibliographical references contained, where applicable, in the different national reports.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the Directive (indicate references of publication if any)?

There is extremely little jurisprudence given the very recent nature of the Directive and of the national transposition measures, some of which have not even been adopted yet. Nevertheless, some German, British and Dutch judgements have shown that two issues will stir much controversy. Some cases on two issues should already be mentioned:

There is firstly the question of the application of the Directive *ratione temporis*:

- In the United Kingdom, a national measure predating the Directive whose terms were identical to the latter's article 16§2 allows the denial of reception conditions to asylum seekers who are unable to prove that they introduced their asylum application as soon as possible after arriving on the territory. The House of Lords confirmed in a ruling of 2005 in the case Regina *v.* Home Department that reception conditions must be guaranteed to an asylum seeker verging on destitution even if he or she fails to lodge his asylum request as soon as possible after entering the territory of the United Kingdom as there would otherwise be a violation of Article 3 of the European Convention on Human Rights;
- In the Netherlands, the following two decisions are particularly noteworthy:
  - in its ruling of 4 May 2006, the Council of State held that the Directive does not apply to asylum seekers on whose application a final decision has already been taken;
  - in its ruling of 20 January 2006, the Haarlem Court held that the refusal by the Minister for Alien Affairs and Integration, based on Article 4(2) of the transposition decree, to grant reception conditions to an asylum applicant who had introduced a second asylum request is not contrary to Articles 16 §1, a), 16 §4 and article 17 of the Directive and that Article 16§5 does not oblige the Minister to grant reception conditions until a final decision is taken on the new asylum request.
- In Germany, a ruling mentioned concerns a measure foreseeing the possibility to limit welfare benefits when an asylum applicant prolongs his stay on German territory through "illicit use of rights" derived from the laws on asylum procedure. The Bavarian social appeal court tasked with the interpretation of the terms "illicit use of rights" referred to Article 16 of the Directive and specified that an illicit use may, in the context of the measure concerned, consist of one of the behaviours mentioned in §§1 and 2 of that Article.

The problem of the temporal application of the Directive is a wider one, notably regarding the start of the provision of reception conditions. The Netherlands fail to provide these to asylum seekers while they are in temporary reception centres (infra).

Secondly, other rulings concern the question of the legality of the detention of asylum seekers and of rejected asylum seekers awaiting their expulsion:

- In Austria the independent administrative tribunal for Upper Austria found in its ruling of 13 March 2006 that an asylum applicant whose application has been rejected in the first instance may only be kept in detention if an individual assessment shows that this measure is necessary to guarantee his expulsion. The tribunal argues that detention is only justified if there are reasons to presume that the applicant has the intention of going underground. Where an asylum seeker is granted reception conditions and his behaviour does not justify security measures, the tribunal found that the authorities should use more lenient measures.

- In Slovenia two important decisions of the Constitutional Court should be mentioned: in two rulings on 7 July 2006, the Court extended certain reception conditions - accommodation and food - to asylum seekers even though a final decision to refuse their asylum application had been taken. Both cases involved families with children whose asylum applications were definitively refused by the Supreme Court, after which they were transferred to and detained in a deportation centre. The Supreme Court suspended the execution of the definitive decision and ordered the Minister of the Interior to re-house the families in the House of Asylum (an open centre) while they await his final decision. The Court bases its decision on Article 3 of the International Convention on the Rights of the Child, arguing that it is not in the better interest of the child to be placed in a detention centre, while this interest can be met by the more favourable treatment of placement in the House of Asylum. The Court also refers to Article 8 of the European Convention on Human Rights in order to justify the transfer of the parents together with their children from the detention centre to the open centre.

A reading of these decisions also shows a close link between reception conditions and the asylum procedure in the sense of Article 3 of the Directive which specifies that it applies to third country nationals "as long as they are authorised to remain on the territory as asylum seekers". Any restriction of the procedure regarding its beginning or its end also defines the temporal scope of the reception conditions.

We may also mention two Swedish judgements which precede the adoption of the Directive but nevertheless shed light on the meaning of Article 13 §2 asking Member States to "make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence":
- a ruling of 1996 by the Stockholm Administrative Appeal Court gave right to a request for an amount of €103, 44 for repairs to a pair of glasses.
- a ruling of 1995 of the Appeals Court of Jönköping rejected a demand for the purchasing of maternity wear which the Court ruled to be unnecessary.

In **Romania** there is no relevant jurisprudence yet. In **Bulgaria** there have been appeals in court against the inaction of the State Agency for Refugees with regard to registering asylum applications and with regard to the provision of reception conditions to asylum seekers in open centres. However, no definitive judgement has been issued (see national report Q. 22. C).

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

Q.10. Describe which are the main actors in charge of reception conditions?

The Member States are divided into two groups when it comes to the ministry in charge of reception conditions:
- on the one hand, those where reception conditions are essentially the responsibility of the Ministry of the Interior (Germany, Cyprus, Italy, Latvia, Poland, Czech Republic, United Kingdom, Slovenia, Slovakia);
- on the other hand, those where they are essentially the responsibility of the Ministry of Social Affairs, Family Affairs or Employment (Estonia, Finland, Luxembourg, Belgium, Malta, Portugal) with the exception of reception conditions in closed centres which pertains to the Ministry of Interior or Justice.

Beyond these two approaches, there are the cases of:

- The **Netherlands** where reception conditions are mainly the responsibility of the State Secretary of Justice under the responsibility of the Minster of Justice since February 2007;
- **France** where they are the responsibility of the Minister for Immigration, Integration, National Identity and Co-development;
- **Poland** where it is the Head of Office for Foreigners;
- Hungary where it is the Ministry of Justice and Law enforcement.

In **Lithuania** there are two main bodies responsible for reception conditions of asylum seekers: the Ministry of Social Security and Labour and the Ministry of Interior and in **Greece** both the Ministry of Interior and Public Order and the Ministry of Health and Social Solidarity.

In **Bulgaria**, the main actor in charge of reception conditions is the State Agency for Refugees, which is responsible to the Council of Ministers. Currently the agency does not pertain to any specific ministry of the government. The Migration Directorate at the Ministry of the Interior, in charge of the immigration detention centre, may also be regarded as a competent body in this regard since asylum seekers who have entered Bulgaria illegally are detained throughout the determination procedure of the responsible Member State on the basis of the Dublin II regulation and the accelerated procedure for examining their application.
In **Romania** the competent authority for asylum procedures is the Romanian Office for Immigration. This is a public body depending on the Ministry of Internal Affaires and Administrative Reform.

Q.11.A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum

request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid

Reception conditions for asylum seekers may vary according to the asylum procedure.

The Netherlands and Spain are the only Member State foreseeing in their legislation different reception conditions depending on the stage of the asylum procedure.

In the Netherlands, before asylum seekers are officially admitted to the asylum procedure they stay at a temporary reception centre where accommodation and reception conditions are very basic. Their stay in this centre can last for 2-3 weeks (the time it takes to be officially admitted to the asylum procedure). During this period, the Directive is considered not to be applicable. When asylum seekers are officially admitted to the asylum procedure and their asylum claim is being processed through the accelerated 48-hour asylum determination procedure (AC-procedure) they are also only entitled to basic facilities, like accommodation in so-called Application Centres (ACs) and emergency health care. The same applies to asylum seekers with respect to whom the Netherlands have made a Dublin claim to another Member State. Asylum seekers whose claim is not rejected within 48 hours under the accelerated procedure (e.g. because more research is needed) are referred to regular reception centres, where the Directive is applied.

The Netherlands currently disposes of a sophisticated reception system where there is a further distinction between two other types of centres. Orientation and integration centres hold asylum seekers as long as no substantive negative decision has been taken. During the orientation phase, information and activities take account of the temporary nature of the stay. The interviews carried out with new arrivals provide a realistic perspective of the future and emphasise the fact that most of them will see their asylum application rejected and will have to leave the Netherlands. The Dutch language courses provided are limited to a basic knowledge of the language that is strictly necessary for a short stay. Those who are granted refugee status are entitled to private housing in a municipality. However, this process may take several months (on average 6 months). In the meantime these people stay in the centres for orientation and integration (integration stage). The applicants who are given a negative decision in the first instance are transferred to a return centre where the idea of voluntary return is promoted.

In Spain, the legislation foresees that reception conditions can be limited during the admissibility phase but it appears that in practice asylum seekers actually have no access to reception conditions.

Regarding the non-application of the Directive by The Netherlands and Spain, one wonders if the cases mentioned above could be regularised by setting exceptional modalities of reception conditions on the basis of article 14 § 8. The problem is that none of the hypotheses envisaged by this provision correspond to this case, even if the precise meaning of the first indent *"an initial assessment of the specific needs of the applicant is required"* remains somewhat ambiguous to say the least.

One will also note regarding **Portugal** that reception conditions are in principle provided mainly in kind during the admissibility phase – a 60-day period that can be prolonged for a further 30 days-, while during the substantive examination of their application asylum seekers receive an amount of money supposed to cover all their needs. During the determination of the responsible Member State on the basis of the Dublin II regulation reception conditions of asylum seekers match those offered to asylum seekers during the admissibility stage. Moreover, as the judicial appeal of inadmissibility decisions does not entail a suspensive effect, asylum seekers usually remain in Portugal irregularly for long periods of time. During this stay in the country, asylum seekers benefit from little or no social support, with the exception of the limited and *ad hoc* support provided by NGOs.

A particularity needs also to be mentioned in the **Czech Republic**. In this Member State, during the admissibility phase lasting around 3 weeks during which the person is identified and submitted to a medical check as well as the asylum procedure being formally launched, the applicants are systematically placed in a closed reception centre. Apart this restriction to freedom of movement, the reception conditions offered in these closed centres - which are not the same as the detention centres - are similar to those in open accommodation centres. The same happens with asylum seekers subject to a Dublin II procedure. Those arriving at Prague International Airport can under certain conditions be required to stay in the closed centre until the end of the procedure (ie more then 3 weeks).

Reception conditions may also depend on whether the asylum seeker falls under the scope of the Dublin II regulation

In "Dublin cases", it is important to distinguish between the different scenarioss which can arise and that are not sufficiently taken into account by ECRE in its Report on the application of the Dublin II regulation in Europe[i] and even by UNHCR in its report on The Dublin II regulation[ii].

There is firstly the case of determination of the responsible Member State when an asylum application is introduced for the first time.

- In France, those persons do not have the right to social aid (called "allocation temporaire d'attente") and will only be admitted to accommodation centres if places are available. This means that they actually can have any no reception conditions at all.
- The situation is similar in Spain.
- In **Austria**, reception conditions are not granted when by virtue of the Dublin II regulation, it can be presumed that Austria is not the responsible Member State, in which case the asylum seeker will be detained and only entitled to the guarantees provided by penitentiary legislation. Moreover NGOs complain that when asylum seekers are released from detention for the purpose of application of more lenient measures, or when someone applies for asylum during detention pending deportation, they are often not, or at least not immediately, covered by the reception conditions system.

As there is no legal basis in those cases to refuse or diminish reception conditions, neither in the requesting Member State nor in the Member State to take charge of the applicant, those

[i] Published in March 2006, p.8.
[ii] See also about this the UNHCR discussion paper on the Dublin II Regulation (2006), pp.51-52.

Member States violate the Directive on reception conditions by reducing its scope of application.

There is secondly the case where an asylum seeker has already lodged an asylum application in a first Member State and has moved to a second Member State during the procedure or after his or her application is rejected.

- Asylum seekers taken back by Slovenia upon the request of another Member State are directed to deportation centres where material conditions are inferior and access to medical care and to NGOs is limited.

In those cases, it appears that the Member State requested to take back the applicant may justify reducing reception conditions on the basis of article 16, §1, (a) of the Directive.

PROBLEM ABOUT RECEPTION CONDITIONS FOR DUBLIN CASES	Austria, France, Spain

Reception conditions vary finally depending on the type of asylum procedure applicants are subject to, in particular in the case of border procedures

Reception conditions for persons whose asylum application is processed at the border or in airports are sometimes different from reception conditions on the territory. They are generally inferior and do not fall under the Directive as is explicitly authorised by its Article 14, §8 as long as this is done "for a reasonable period" which must be "as short as possible". This is the case in Austria where the federal legislation related to reception conditions is not applicable to transit areas. However, a care facility provided by an NGO (Caritas) is organised (see also on this point the answer to question 32.D)

In addition, in Italy, persons whose application is treated in an accelerated procedure are excluded from the general reception system managed by local authorities and are instead placed in half-closed or closed centres where they do not receive the pocket money foreseen by the Directive.

In two further Member States, reception conditions do not directly depend on the asylum procedure but change depending on the length of stay of the asylum seeker on the territory:

- in Belgium, the reception of asylum seekers in reception centres, which implies communal living, must not exceed a certain period that is yet to be set by a decree, after an evaluation of the asylum procedure. After this period, the asylum seeker is granted reception conditions no longer in kind but in cash, in the form of welfare benefits allowing him or her to live in individual housing. Moreover, asylum seekers who entered Belgian territory legally or lodged their asylum application while they were still legally on the territory can have direct access to welfare benefits in cash. Moreover, in the absence of available places, the law authorises, for a maximum period of ten days, temporary accommodation in emergency reception structures where social support is limited compared to that offered in the normal reception structures.
- in **Germany**, asylum seekers are obliged to remain in a reception centre during the first few weeks of their stay. This obligation comes to an end after three months or earlier if the Federal Office has ruled on the asylum application or if another form of

accommodation is allocated to the applicant. After this initial period, the accommodation modalities vary. Moreover, in principle, asylum seekers become eligible to regular social benefits after four years of receiving benefits under the Asylum Seekers Benefits Act.

Finally it should be pointed out that in the **United Kingdom** the National Asylum Support Service (NASS) no longer formally exists and support issues are instead be dealt with by New Asylum Model (NAM) caseworkers. For those within the NAM, all decisions on eligibility, payment and cessation of asylum support are now made by a single dedicated case owner. From 5th March 2007 all new asylum applicants have come within the NAM. Any case not formally within the NAM by that date is dealt with by a separate Legacy Directorate. The asylum process is now divided in five segments, with different processing times. Under the NAM programme, people who need accommodation and support stay overnight for 1 night in accommodation near the Asylum Screening Unit (where people claim asylum). They are taken, usually the following day, to Initial Accommodation in one of six NAM areas, after which they are usually dispersed to more long term accommodation within the same region. The timescales have increased – people now tend to spend between 1 week and 3 months in initial accommodation and are then moved to dispersal accommodation.

While the link between reception conditions and asylum procedures is obvious in that the opening and closure of the procedure automatically entails the beginning and the end of the provision of reception conditions, it should be stressed that the two Directives dealing with reception conditions and the asylum procedures did not articulate this in a sufficiently explicit manner. Although Article 14, §8 authorises Member States to exceptionally set different reception conditions for asylum seekers held at the border, the Directive is subject to interpretation as far as its applicability to the initial phases of the asylum procedures is concerned; the controversial question regarding the applicability of the Directive to closed centres in which asylum seekers are detained is not explicitly addressed either (infra). These ambiguities are perhaps due to the fact that the two Directives were adopted at an interval of almost three years. It would be wise to remedy this situation on the occasion of a possible review of the Directive on reception conditions. Finally we note the good practice of Member States, such as Belgium, who gradually improve reception conditions for asylum seekers, whether it be the transition from reception conditions in kind to those in the form of a sum of money or the transfer from a collective reception centre to individual housing, especially where Member States fail to complete the examination of asylum applications with a reasonable period, despite their best efforts and attempts to speed up the asylum procedure.

In **Bulgaria**, the Law on Asylum and Refugees (LAR) does not provide explicitly for different levels of reception conditions regarding the different stages of the asylum procedure. However, differences are implied by the law and exist in practice. Asylum seekers in "closed" centers do not enjoy the rights that asylum seekers in "open" centers have. In fact, the Directive does not apply to closed centers – see this specific question below Q. 33 I-. Under Bulgarian law asylum seekers who are in a procedure for determining the state responsible for examining the application for asylum and those who have entered the country illegally and are in an accelerated asylum procedure – when their applications are considered as manifestly unfounded - are detained and have no freedom of movement. Leaving aside the question of non-application of the Directive to closed centres, the fact that different material reception conditions are provided in closed centres does not as such violate the Directive, as long as this

is done in conformity with article 14 § 8, in particular the requirement of as short a duration duration as possible, which is not always the case **–see below Q 33 E-.**

In **Romania** there are, in principle, no different reception conditions depending of the stage of the procedure.

In **Malta** the rights of asylum seekers remain unchanged, on paper, throughout the asylum procedure, however, in practice, there are significant variations in the treatment received by different categories of asylum seekers. One determining factor is whether or not an asylum seeker is detained for breaching the Immigration Act. Another is whether or not an asylum seeker falls within current government policy on entitlement to accommodation in an Open Centre, as many benefits, including financial assistance, are only available to asylum seekers who are residing in such a centre. In fact, nearly all asylum seekers in an irregular situation are placed in closed centres for up to 12 months –see Q 33 A : essentially those who apply after they are apprehended for illegal entry or stay are detained – those who apply before they are apprehended (not very many in practice) are usually not detained. The only exceptions to this policy are those persons considered to be in a particularly vulnerable situation. They are released from detention in accordance with government policy, once their vulnerability is established, medical clearance is obtained and accommodation in the community is found. Those who are detained for the maximum period of 12 months are, in principle, all placed in open centres subsequently and provided with reception conditions in money and kind – except those who work, in which case they do not benefit from any monetary aid but only accommodation. The problem is that under the current policy, as a rule, only immigrants released from detention are entitled to accommodation in Open Centres and this is usually for a four-month period, which may be (and usually is) extended for up to one year and, in some cases, even beyond that date.
In practice this means that asylum seekers who were never detained (actually a relatively small number of people) are effectively provided with very little by way of material reception conditions.

4. GENERAL RULES ON RECEPTION CONDITIONS

Q.12 A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, and pocket money). If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases. Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

In most Member States, material reception conditions in the meaning of Article 2, j) of the Directive are generally provided in kind as opposed to in the equivalent in monetary terms, except for clothing where both forms are used.

1. **In almost all Member States accommodation is, as a general rule, provided in kind.**

There is an exception to this rule in France, Italy, Spain and in Slovenia when no places are available in the reception facilities. In this case, asylum seekers receive financial support designed to cover not only their accommodation costs but also all of their material needs. In Belgium and in Portugal, accommodation, as well as other material reception conditions, is provided either in kind or in an equivalent manner through the provision of financial welfare benefits as indicated in the answer to question 11 (supra).

It is the opposite in Cyprus due to a lack of structural facilities in the only reception centre located in Kofinou to which only a few families and single women have access. In this Member State, asylum seekers are in principle allocated a financial contribution with which they must cover all their living costs. It sometimes occurs that this contribution is complemented by the partial or full payment of the rental deposit requested by landlords.

In **Malta**, where accommodation is provided, it is provided in kind in closed (detention) or open centres (collective housing), however not all asylum seekers are provided with accommodation. Asylum seekers who are never detained are not provided with accommodation, either in kind or otherwise. Asylum seekers whose term of stay at an Open Centre expires (usually a maximum of 1 year) do not receive any assistance with accommodation.

2. **In the majority of Member States, food is also as a general rule provided in kind, insofar as prepared meals are served to asylum seekers.**

Depending on the circumstances, a financial contribution or vouchers replace and/or complement this system (Germany, Austria, Italy, the Netherlands, the Czech Republic, Luxembourg and occasionally in Poland for the benefit of persons who must follow a particular dietary regime for medical purposes). In Lithuania and Belgium, foodstuffs which the asylum seekers can cook for themselves may also be distributed. In Hungary, where the

general rule is the provision of prepared meals, all reception centres are nevertheless equipped with a kitchen with a view to allow asylum seekers to prepare meals for themselves when they have the financial means to buy foodstuffs. It is only in a minority of countries (Estonia, Latvia, the United Kingdom, Finland, Sweden and **Malta**) that food is usually covered by the payment of a financial aid, although this principle is not an absolute one.

In **Malta**, asylum seekers living in Open Centres receive an allowance for food and transport. As a rule, those who are not resident in such centres do not receive any assistance for food.

3. **On the other hand, a more important number of Member States remaining nevertheless a minority within the EU, provide for the clothing of asylum seekers as financial allowances.**

In eight Member States (Austria, Finland, Luxembourg, The Netherlands, Poland, United Kingdom, Spain Sweden), asylum seekers are able to purchase their own clothes thanks to welfare benefits. Portugal and Cyprus must be added to this group. In Portugal, from the admissibility stage, all material reception conditions are in principle covered by financial aid. The situation is similar in Cyprus.

In Belgium, when accommodation is provided in the reception facility, the situation can differ from one reception centre to another: some arrange a distribution of clothes; others allocate a sum of money to asylum seekers while others conclude contracts with second-hand shops where asylum seekers can go to get clothes twice a year in general. Also in Austria, diversity prevails, not only between the different Länder but also between the federal reception facilities.

In **Malta**, asylum seekers are not, as a rule, provided with clothes by the State – whether in kind or otherwise. NGOs usually distribute clothes, but the service is often not consistent or insufficient to meet the needs on the ground.

4. **In addition to material reception conditions in kind, the vast majority of Member States allocate a daily expenses allowance**

The Member States respect this provision, with one exception and one reservation. In Slovenia where reception conditions are entirely provided in kind, no expenses allowance at all is paid to asylum seekers. The preparatory study carried out on the transposition of the Directive in Slovenia states that the financial support was cancelled due to the reasons of rationalisation of the asylum procedure and the fact that the reception conditions in kind suffice for all the needs asylum seekers should have in the course of the asylum procedure. Despite complaints from NGOs, the view that Slovenia should not spend too much money for asylum seekers prevailed.

In two Member States (Belgium and the Czech Republic), asylum seekers have the possibility of increasing their allowances by providing various paid services for the Community within the reception centres. However, in the **Czech Republic** an applicant who receives contribution to catering is not entitled to pocket money and also not to the supplementary pocket money for extra work in the asylum centre.

Clearly, it is almost impossible to verify if a daily expenses allowance is actually paid in those cases where Member States provide all or part of the reception conditions in the form of

financial allowances, because it is difficult to asses which precise expenses the money paid is supposed to cover.

Article 2, j): daily expenses allowance	
NO TRANSPOSITION AT ALL	**Slovenia**

In **Bulgaria** the maximum scope of material reception conditions includes three elements:
1) Housing is provided in kind: it takes the form of accommodation at the reception center of the State Agency for Refugees.
2) Asylum seekers receive health insurance.
3) For the rest of the material reception conditions asylum seekers receive 55 levs (which equal approximately 27 euro) per month.
Those receptions conditions are provided only to asylum seekers who have been admitted to the common asylum procedure and therefore are not detained.

In **Romania** there are two main material reception conditions: money and the provision of accommodation in a centre.
The ordinary situation is the granting of money in cash.
In cases where asylum seekers do not have possibilities for housing, they shall be granted accommodation in accommodation centres. These accommodation centres must provide conditions for living and preparing food, as well as sanitary conditions for the persons and their belongings.

Q.12 B **Can the reception conditions in kind, money or vouchers be considered as sufficient "to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" as requested by article 13, §2 of the Directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.**

Two different conclusions can be drawn on whether reception conditions "ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence" following the terms of Article 14, §2 of the Directive, depending on whether these are provided in kind or as financial allowances.

1. **Firstly, material reception conditions provided exclusively or mostly in kind and mostly within a collective reception centre are generally deemed adequate. Howe ver, three reservations must be made.**

- Firstly regarding clothing for asylum seekers in a small group of Member States (Slovenia, Slovakia, Lithuania, Poland, Czech Republic, Cyprus and Malta), it is the NGOs that generally provide asylum seekers with clothing, sometimes in an insufficient manner. This is clearly the case in Slovakia where it even appears that the legal rules on reception conditions ignore the question of clothing. In Slovenia, there is a lack of clear rules on the distribution of clothes which seems to be carried out in an arbitrary manner. While asylum seekers in Poland are provided with a single payment

for clothes, this is however insufficient following the opinions of NGOs, especially for children. In Lithuania, while reception centres must in principle provide clothes to asylum seekers, they are not able to do it in practice and NGOs provide them instead, but their resources are extremely limited. Moreover, in Latvia and Cyprus as far as adults are concerned, clothing for asylum seekers living in reception structures is also provided by NGOs without visible problems. Such practices do however not appear to be in conformity with the Directive; if only an intervention by NGOs ensures that the state's obligation is met, legal certainty is not ensured for the implementation of the Directive. In this regard, there is a problem in Slovakia, Slovenia, Cyprus and Latvia.

The situation in the **Czech Republic** is very particular: clothing is usually provided by an NGO (Caritas) that maintains storerooms of old clothes in most asylum facilities and also provides clothing to the Refugee Facilities Administration (RFA) on an individual request basis. In case of a shortage of certain types of clothes (e.g. baby outfits) or of a particular size of shoes (i.e. they are not available at Caritas), these are provided directly by the RFA (on the basis of Art. 42 § 2). This system of 'residuary intervention' of the RFA has been working efficiently in practice, but strictly legally speaking, it is problematic because of the lack of certainty regarding the implementation of the Directive.

- Secondly, reception conditions in closed centres are judged problematic in relation to Article 13§2 in Lithuania, Slovenia, Greece, Belgium (see the different reports mentioned in the TOC, footnote 6), Italy, where a ministerial committee is investigating the differences between centres, as well as in **Malta**, where the national rapporteur underlines that the material reception conditions provided in detention are very poor and fail to guarantee an adequate standard of living.

- Thirdly, reception conditions in kind are problematic in open accommodation centres in Lithuania, Greece and **Malta**.
  In Lithuania where there are only two centres, reception conditions are in practice inferior in the aliens' registration centre than in the centre for refugees. While the registration centre was initially used only for the detention of illegal aliens, it is now divided in two sections where different rules apply: a closed section for illegal immigrants but also asylum seekers whose application has been rejected or whose detention has been ordered by a judge, and an open section for asylum seekers whose application is undergoing a substantial examination. The authorities concede that neither of the two sections and certainly not the closed one is adapted to receiving asylum seekers, especially where they have special needs (women and children among others). The shortcomings concern material reception conditions, namely accommodation, as well as access to psychologists, lack of social infrastructure or staff qualified to take care of applicants with special needs a multi-annual programme approved by the Ministry for Social Security and Work foresees to resolve the problem by reorganising this centre.
  In Greece, it is frequent that asylum seekers will not have access to any reception conditions in the normal asylum procedure for a long period which can exceed one year (see below answer to question 14). Moreover, reception conditions are not considered adequate in a number of centres.
  In **Malta** asylum seekers living in open centres, particularly the larger ones are provided with little more than the most basic necessities for daily living.

2. Secondly, where material reception conditions are provided as financial allowances, whether in principle or as a substitute in case places are missing in the reception centres, they generally appear inadequate to ensure the health and/or subsistence of asylum seekers

Insufficiencies were identified in nine Member States both in cases where welfare benefits are supposed to cover all material conditions and cases where they cover food only, accommodation being provided in kind:

- In Cyprus, the situation is particularly difficult in several respects. The insufficiency of the benefits intended to cover the asylum seeker's entire costs becomes apparent when after accommodation is paid, on average only 30% of the amount is left to cover all remaining needs. Benefits are in reality only paid to a small minority of asylum seekers (about 350 out of 10,000) given the lengthy granting procedure (in practice it takes three to four months of waiting until benefits are actually paid) and a lack of information on the existence of these benefits and how to claim them. As a result, most asylum applicants find themselves having to accept illegal work in the agricultural sector where they are generally exploited and subject to discrimination, while women and children who struggle to find work face enormous difficulties to ensure subsistence ;
- In **France**, asylum seekers who cannot be received in a centre due to lack of available places have the right to temporary welfare benefits which have recently replaced arrival benefits. The amount has been fixed at 10.04 euro per day, which is insufficient to guarantee an adequate standard of living and ensure the subsistence of asylum seekers.
- In Estonia, the benefits granted are deemed adequate to ensure the subsistence of asylum seekers, although not their health, even if its amount is identical to that of the social aid given to citizens;
- In Austria, the sums paid to asylum seekers living in independent accommodation, which vary from one Land to another, cannot be considered sufficient to guarantee a standard of living *adequate* for health. The Committee for Economic, Social and Cultural Rights of the United Nations has indeed underlined that social assistance benefits provided to asylum seekers are often considerably lower than those received by citizens of Austria[i].
- In Portugal, where reception conditions are provided in equivalent as soon as the asylum application is judged admissible, the amount of social welfare benefits is proving to be insufficient and must be adapted urgently, as it has not been reviewed since 1991.
- In Slovenia, the financial allowance seems insufficient to guarantee an adequate standard for the health of asylum seekers.
- In **Malta,** the food and transport allowance provided is very limited (equivalent to slightly less than the minimum wage for 1 hour).

Moreover, a specific problem occurs in the United Kingdom where delays may occur in providing the subsistence allowance to asylum seekers who have made their own accommodation arrangements (for instance with friends or family) or who make a new asylum claim.

The debate on the level of welfare benefits which must guarantee a standard of living

[i] http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4a217b5c9439b901c125711500571f80?Opendocument

adequate for the health of applicants and capable of ensuring their subsistence has lead to various reactions. This delicate question is subject to assessments that are not always free of political considerations. The notion of "subsistence" used in Article 13 §2 can be interpreted more or less stringently. We note that this provision only mentions health in relation to an adequate standard of living, without implying, what could possibly be thought, access to healthcare, which is regulated by Article 15 of the Directive and whose level is low as it deals only with "emergency care and essential treatment of illness", while the latter could also be subject to varying assessments.

Material reception conditions are deemed adequate or not, depending on the criteria. The insufficiency of welfare benefits given to asylum seekers was noted in the United Kingdom's case where material conditions are provided in money except for accommodation which is provided in kind. The amount is equivalent to about 70% of the social welfare benefits given to citizens, which is already considered the minimum to keep an individual just above poverty level. Some, however, argue that asylum seekers unlike nationals need not pay for water, gas or electricity while others maintain that there a further disparities between the two groups in that nationals benefits from other welfare benefits (such as child support). The Estonian and Belgian rapporteurs add that unlike nationals, asylum seekers generally lack a network of friends and family allowing them to cope with the insufficiency of the benefits provided.

The insufficiency of the benefits provided to asylum seekers often results from the attitude of the Member State itself. The need to review the amounts provided for food thus became a topical issue in the **Netherlands**. The level of these benefits, which vary according to family structure and age of the children, had at the time of the transposition of the Directive in 2005 only been increased by one euro since 1997. After several years of parliamentary debates, the Minister finally proceeded in November 2005 to revise the amounts and align them with minimum levels set by the National Institute for Information and Advice on Budgetary Matters (NIBUD) and the Dutch Centre for Nutrition. The Minister indicated that she intended to raise the level of the food allowances to the NIBUD standard with regard to all age-groups (including unaccompanied minors) in phases within a period of 4 years, because there was not enough money to raise all the allowances at once. However, after the adoption of another motion in parliament, the Minister indicated that she would assess the level of the food allowances to the NIBUD standard as from 1 January 2007. The new levels of the allowances are now officially laid down in a decision taken by the Minister of 23 January 2007. Finally, it is important to note that the whole discussion about the allowances of asylum seekers has been focused on the food allowance. The part of the allowance which is for other expenses (pocket money: €16, 38 for adults) and the one-off allowance for clothing (€36, 30) have only been raised marginally since 1997, although prices have gone up considerably.

It appears that asylum seekers generally do not have access to social welfare benefits in Member States, but to benefits that are lower - sometimes far lower - than those granted to nationals in Germany, Austria, United Kingdom, France, Lithuania, Luxembourg and Sweden, while the amount granted to asylum seekers can in practice or by law be identical to or very close to those granted to nationals in other Member States (Belgium, Cyprus, Estonia, Latvia and Slovenia). Given that social welfare is considered in some Member States as the minimum amount that must be granted to a person to allow him or her to live in human dignity, one can conclude that (in these cases only) the benefits paid to asylum seekers must be of the same level. This is clearly not the position of the legislator in **Germany**, and this position is largely shared by the administrative courts but widely criticised by several NGOs working with refugees. The disparity is explained in that Member State by the temporary

character of the asylum seekers' stay, whereas nationals permanently reside in the country and therefore have other needs. Welfare benefits for asylum seekers are about 60% of those granted to other persons in need and have not been raised since 1993, however, in practice this problem is at least mitigated by the fact that most benefits are granted in kind. In the UK, the British government also justifies the inferior level of welfare benefits for asylum seekers with the argument that reception conditions are designed only for the short duration of the asylum procedure, although in practice a large number of asylum seekers live in these conditions for a long period. To preserve the substance of Article 13 §2, the time factor should not be seen as limiting the Directive's requirement for reception conditions to be adequate for the duration of the asylum procedure, which by definition is limited in time.

Interestingly three reports conclude that the benefits granted to asylum applicants are insufficient (in Cyprus where financial aid is the rule, in Slovenia where by contrast it is in kind and in Estonia where food is supposed to be covered by 57 euros) while highlighting that the amount is identical to welfare benefits paid to nationals. On the contrary, the Latvian rapporteur maintained his opinion about the allocation of 64 euros supposed to cover food but also hygiene products that there is no problem with the Directive mainly on the basis that this amount is not far from what is paid to Latvian citizens in certain cases. The equality of the benefits paid does not necessarily mean that they meet the requirements of the Directive. The comparison of benefits received by asylum seekers with the welfare system for nationals is one criteria among others, its amount having to be carefully evaluated concretely in relation to the available elements (costs that asylum must or need not cover depending on what is provided to them in kind, date of the last revision of the benefits to take account of the cost of living, etc). We consider therefore in the synthesis report that there is a problem in Latvia contrary to what is stated in the table of transposition for that Member State.

Both in **Bulgaria** and **Romania** the reception conditions are not considered as sufficient as regards article 13 § 2.
In **Romania** the insufficiency concerns the amount of money which is lower than the national welfare benefits for poverty. Nevertheless the national rapporteur indicates in his TOC that in any case the Romanian law provides that if the beneficiary of the allocation cannot cover their living expenses, the asylum seeker shall be accommodated in an accommodation centre.
In **Bulgaria** the assessment concerns the overall scope of the reception conditions and moreover the situation in both open and closed centres.

Finally, it must be recalled that in **Malta** the structures, polices and practices currently in place fail to guarantee provision of material reception conditions to all asylum seekers: asylum seekers who were never detained or who move out of the Open Centres are provided with very little by way of material reception conditions (e.g. no provision of accommodation, food, transport or clothing, whether financially or in kind). This is a problem as current policy and practice fail to ensure that asylum seekers are able to live with dignity. Asylum seekers often lack the most basic requirements for daily living and may, at times, have to depend on charity to survive.

Regarding clothes provided by NGOs	PROBLEM	Slovenia, Slovakia, Latvia, Cyprus, **Malta**
Regarding closed detention centres	PROBLEM	Lithuania, Belgium, Italy, Slovenia, Greece, Malta **Bulgaria**[i]
Regarding material reception conditions in kind in open centres	PROBLEM	Greece, Lithuania **Bulgaria**[ii], **Malta**[iii]
Regarding financial allowances covering totally or partially material reception conditions	PROBLEM	Cyprus, France, Estonia, Austria, Portugal, Slovenia, United Kingdom, The Netherlands, Germany, Latvia[iv] **Bulgaria**[v]**, Romania, Malta**[vi]**, Greece, Italy**[vii]

[i] In practice material reception conditions are judged not sufficient. Moreover on a strict legally point of view Article 13 § 2, first and second indent is not transposed.
[ii]In practice material reception conditions are judged not sufficient. Moreover on a strict legally point of view Article 13 § 2, first and second indent is not transposed.
[iii] See comments in the text
[iv] Contrary to the opinion of the national rapporteur.
[v] In practice material reception conditions are judged not sufficient. Moreover on a strict legally point of view Article 13 § 2, first and second indent is not transposed.
[vi] See comments in the text
[vii] There could be some problems in case there is not the reception in a centre and the asylum is given a fixed amount of money not sufficient to support him/her for more than two months

5. PROCEDURAL ASPECTS

Q. 13 A **Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (See article 2, b which is a mandatory provision)**

An analysis of the country reports shows that the Geneva Convention constitutes the foundation of the protection afforded by most Member States. In one group of countries the primacy of the Geneva Convention is explicitly affirmed in national law (Austria, Belgium, Germany, Hungary, Poland, Portugal, Spain, Sweden, Greece, Czech Republic). In a further group of countries (Estonia, Finland, France, Latvia, Lithuania, Luxembourg, The Netherlands, **Malta**, **Slovakia**, **Romania**), the presumption contained in article 2 b) of the Directive is not clearly stated, nevertheless, the drafting of the national legislation tends to grant a primary importance to the Geneva Convention. In Lithuania, asylum applications are in practice firstly examined in accordance with the 1951 Geneva Convention and only then grounds for subsidiary protection may be examined.

4 Member States stand apart from the above two groups:

- Italy, where solely the Geneva Convention is applicable. There is no secondary law implementing article 10, paragraph 3, of the Constitution on the right of asylum, but a humanitarian residence permit is issued where there is a risk of violation of article 3 of the European Convention of Human Rights (ECHR). This Member State thus conforms to the Directive's article 2 b;
- The United Kingdom, whose single procedure covering all forms of protection available makes no distinction for asylum support purposes between claims made on the basis of the Geneva Convention or article 3 of the ECHR;
- Cyprus, where there is no specific measure relating to the presumption contained in the Directive.
- In **Bulgaria** no such provision exists.

NO TRANSPOSITION	**Bulgaria**
PROBLEM	Cyprus

Q. 13 B **Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the Directive are.**

The recognition of subsidiary forms of protection and the institutionalisation of the principle of single procedure has generally led the Member States to grant reception conditions for refugee candidates to all seekers of protection (Austria, Belgium, Czech Republic, Estonia, Finland, Germany, France, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, **Slovakia** and Greece). Wide use is made of the optional

clause provided by Article 3 §4 of the Directive, according to which Member States may decide to apply the Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention.

3 Member States however refused to extend the reception conditions provided for in the Directive to persons applying specifically for subsidiary protection (Cyprus, Italy, United Kingdom), whereas other have in contrary extended it to persons benefiting from temporary protection (Germany, Estonia, Luxembourg).

In conclusion, it appears possible to extend reception conditions to applicants for subsidiary protection by strengthening article 3 §4 of the Directive through a qualified vote in the Council that would render the measure compulsory.

In **Bulgaria** regarding the scope of application of reception conditions, the term used in law is "persons who seek protection". This means that the rules apply equally to three categories of persons: those who apply for refugee status, those who apply for subsidiary protection status and those who apply for asylum before the President of the Republic.

In **Romania** the scope also includes forms of subsidiary protection, not only that of refugee status.

Q. 13 C Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision) ?

The analysis of the country reports shows that applications for diplomatic or territorial asylum are only very rarely recognised in national law. Two reports mention the existence of such a procedure in domestic law (Austria, Poland). As far as reception conditions are concerned, the Austrian report specifies that there are no national measures extending them to this type of application, while the Polish report indicated that the people concerned are not eligible for welfare provision, except for unaccompanied minors.

Both in **Bulgaria** and **Romania** there are no such specific provision.

Q. 14 Are reception conditions available as from the moment an asylum application is introduced? How is article 13 §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

The vast majority of Member States transposed article 13 § 1 in such a way that the legislation provides access to reception conditions immediately (**Belgium**, Cyprus, **Czech Republic**, Estonia, Finland, Germany, **France** -in practice-, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Sweden, **Hungary,** except for the pocket money) or after a few hours (Slovenia) or one day (Slovakia), the time period needed for the transfer of the applicant to a reception centre or for reception conditions to be provided.

In **Romania** receptions conditions are available from the moment the asylum application is introduced.

Luxembourg has devised an interesting mechanism in order to minimise the impact of a delay in the issuance of administrative documents giving access to reception conditions. The law of this Member State foresees the issuance of a provisional document giving temporary access to welfare benefits for three days, in cases where the authorities cannot immediately certify the individual as an asylum seeker.
Procedural aspects pose legal problems in four Member States, whereas practical problems have been detected in three others. In **Austria** there is both a legal and a practical problem.

1. Legal problems

In the Netherlands, every individual must report to one of the country's two registration centres to make an appointment in order to be able to officially lodge an asylum application. This takes between 2 and 3 weeks during which time the asylum seeker is not considered to have entered the actual asylum procedure. Indeed, the applicant must wait in a temporary reception centre where reception conditions are very basic (bed, bath and bread). This situation does not seem to be in line with the Directive: firstly, the delay in the provision of reception conditions appears abnormally long compared to the vast majority of the other Member States; secondly, the criteria laid down by article 14, paragraph 8 of the Directive allowing Member States to exceptionally set different reception conditions do not include the situation described in the Dutch report.

In Spain, there is a procedure to determine access to the normal asylum procedure, during which access to reception conditions may be restricted. It is unclear from the legislation what extent of restriction is permitted, although restricted reception conditions must still cover basic needs. In practice, asylum seekers do not enjoy reception conditions during this procedure. They are beneficiaries of the reception conditions only when their applications are admitted to the normal refugee status determination procedure. The admissibility stage can last at least two months from the asylum application being lodged.

In Greece, asylum seekers are issued with a "white note" or "in-service note" when lodging their application, but this does not give them access to reception conditions. Reception conditions are only introduced from the moment the applicant goes through the first interview and receives his "pink card". This can sometimes take more than a year. However, vulnerable cases (elderly, unaccompanied minors, pregnant women, families with minors) are accommodated immediately (subject to availability of spaces) to reception centres, through the intervention of NGOs. Health coverage can be provided earlier than the first interview, because even though formally the applicant will only be entitled to medical and hospital services after he obtains his "pink card", the Ministry of Health has circulated a memo directing health service providers to accept patients who only possess an "in-service note". Art. 6.1 of the presidential decree only provides for a document attesting the status of the claimant, to be provided "immediately" after finger-printing, but there is no mention to the effect that this document confers reception rights and is different from the current "in-service note".

The situation in Bulgaria is more than problematic: reception conditions **are not available from the moment an asylum application is introduced**; they are available from the moment the asylum application *is registered* by the State Agency for Refugees. There is a lapse of

time between the introduction of the asylum application and its registration. The amendments to the Law on Asylum and Refugees of 29 June 2007 repealed Para 2 of Art.58 which said that the asylum procedure is initiated with the introduction of the asylum application. Art.58, Para.2 of the Law on Asylum and Refugees has not been followed in practice and the amendment has been made to adapt the law to the practice. Unfortunately this has tremendous negative consequences for asylum seekers and opens the door for corruption since the law does not state a period of time within which an asylum application shall be registered. Asylum seekers who are not detained have to go the Agency for Refugees and beg for "a date", because in the meantime they live in the street. Those who are detained for having entered Bulgaria illegally wait for months in the immigration detention center (pending deportation) until their application is registered (they send repeat applications in order to be paid attention; when lawyers send applications that asylum seekers have written together with a lawyer's authorization, they receive the response that these applications are inadmissible since they should have been introduced personally via the director of the detention center). **There are cases when the interviewing organ of the State Agency for Refugees goes to the detention center to register/interview or "free" the asylum seeker** (the latter means that the asylum application has been admitted to the common procedure), **but the person has already been deported to their country of origin as an illegal immigrant.**

2. Practical problems

At times, there are practical difficulties leading to delays in the provision of reception conditions. In the United Kingdom, for instance, delays may occur in practice because domestic provisions require an asylum claim to be *recorded* before entitlement to supports can start. Similar practical problems arise in Cyprus, where certain financial aids are given only after a complete examination of the application for access to the asylum procedure.

In **Malta** the manner in which article 13 § 1 was transposed creates a **practical** problem: by placing responsibility for ensuring that material reception conditions are available to asylum seekers upon the authorities responsible for the management of reception centres, the transposing norm effectively excludes asylum seekers who are not resident in such centres from the benefits of this Directive. In practice, such centres usually accommodate immigrants who are released from detention for a specific period of time; asylum seekers who enter regularly and are never detained are not accommodated in such centres as a rule. They therefore receive less by way of reception conditions than those asylum seekers who reside in an Open Centre, e.g. they are not provided with housing, food, or clothing whether in kind or otherwise. The same applies to asylum seekers who leave the Open Centres and move into independent accommodation in the community.

3. Legal and Practical Problem

In **Austria**, the right to reception conditions does not start when an application for international protection is first made before any official organ, but only when it has been « *recorded* » by the competent authority which is the Initial Reception Centre. In practice, there will be no time-lag for asylum seeker residing illegally on the territory, as they will be arrested, interrogated and taken to the Initial Reception Centre, where reception conditions start. A time-lag only remains for asylum seekers residing legally on the territory, who are obliged to travel to the reception centre themselves where they can lodge an application and be taken into federal care. Another group which is neglected in practise are aliens who are in

detention pending deportation and are released from detention either because they lodge an application for asylum or – especially in procedures under Dublin II – when the Administrative Court has declared the detention order illegitimate or they are being released because of health problems, or when their application has been declared admissible while in detention. Those persons are often not immediately taken up in the basic welfare support system. Equally deprived of welfare support are asylum seekers who have received a positive admissibility decision and are therefore dismissed from federal care (after 14 days at the latest), if a decision on assignment to one of the Laender has not yet been taken. Since the Laender refuse to take asylum seekers into care who have not been assigned to them, these persons remain without access to support.

NO TRANSPOSITION	**Bulgaria**, **France**[i]
PROBLEM	United Kingdom, Cyprus, Spain, Greece, The Netherlands, **Malta**, **Austria**

Q. 15 Explain when reception conditions end for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

According to article 3, « This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State *as long as they are allowed to remain on the territory as asylum seekers…* ». The crucial question is for how long persons are allowed to remain on the territory of a Member State as asylum seekers. In principle this is still the case for individuals whose applications were subject to a negative decision, but have appealed against this decision, provided that the appeal has a suspensive effect under domestic law. For the purpose of this report, we consider that a negative decision becomes definitive only from the point where it can no longer be the object of a suspensive appeal. It is well known that the delicate question of the suspensive effect of appeals was not harmonised by the asylum procedures Directive, which left this questions to Member States within the limits of their international obligations. As a result, the end of the reception conditions varies from other Member State to another depending in particular on the suspensive effect of appeals under domestic law.

Generally in Member States, reception conditions logically come to an end at the point where the applicant is granted the status he or she seeks, or after a definitive negative decision. This general framework nevertheless has some variations in that some Member States withdraw or reduce reception conditions ahead of a definitive negative decision or in contrary maintain them after a negative decision in certain cases or after a positive decision.

1. Withdrawal of reception conditions ahead of a definitive decision

In **Portugal** the law provides that "welfare support ceases with the final administrative decision on an asylum application, regardless of the introduction of a jurisdictional appeal". Nevertheless, the law also provides that the withdrawal of welfare support does not take place

[i] In practice, reception conditions are nevertheless available as from the lodging of the application.

if it is found, after evaluating the economic and social situation of the applicant that such support must continue.

2. The reduction of reception conditions ahead of a definitive decision

In the Czech Republic, during the period between a negative decision and the introduction of an action before the Regional Court, the applicant is entitled to material reception conditions with the exception of pocket money and financial contribution to self-catering. If he or she files the action within a specific time limit, he or she is entitled to the same material reception conditions as apply during proceedings before the Ministry of Interior; if the applicant fails to lodge his or her appeal within the time limit, reception conditions are withdrawn altogether. At a later stage, when the applicant appeals to the Supreme Administrative Court, he or she may no longer benefit from housing in a reception centre and must fund his/her own accommodation or, if lacking sufficient funds, be housed in cheap accommodation provided by the Ministry of Interior.

While the arrangements in Portugal and in the Czech Republic do not contradict the Directive, it must nevertheless be underlined that a drastic reduction of reception conditions and especially their full withdrawal may pose problems in respect of Article 3 of the European Convention for Human Rights.

3. Continued provision of reception conditions after a definitive decision

A number of Member States (Cyprus, Finland, Germany, Poland, United Kingdom, The Netherlands, Sweden and in practice also France) continue to provide reception conditions beyond the definitive negative decision as does Luxembourg with nevertheless the exception of the expenses allowance in cases of detention.

Either the national rules specifically foresee a number of days during which reception conditions continue to be granted (14 days in **Poland**[i], 21 days in the United Kingdom, 28 days in the Netherlands, 30 days in Cyprus; at most one month in **France** if the asylum seeker is housed in a reception centre, if he or she benefits from temporary benefits these are withdrawn at the end of the month that follows the notification of the definitive decision) or the system foresees a transition from the status of asylum seeker to that of rejected asylum seeker, the latter continuing to receive reception conditions during the period between the definitive negative decision and their expulsion from the territory (Finland, Germany, Sweden and Slovakia in practice and also **Luxembourg**). In the latter State, rejected asylum seekers who cannot be returned to their countries of origin due to factual circumstances can obtain a 'toleration' status. This status is temporary and renewable as long as the circumstances remain. It entitles to the same benefits that asylum seekers receive in terms of reception conditions. This status is however granted at the discretion of the Minster for Foreign Affairs and Immigration who rules on the existence or otherwise such factual circumstances. Likewise the Constitutional Court of Slovenia has requested the extension of the provision of reception conditions (housing and food) beyond the definitive decision on the asylum application.

[i] The draft law of 14 March 2007 –see national report Q 1- provides for a period of 2 months.

Belgium takes into account specific circumstances in which rejected asylum seekers continue to be granted reception conditions in four exceptional cases: medical reasons preventing a departure from the country, impossibility ascertained by the authorities of carrying out an expulsion (lack of documents, changed political circumstances in the country of origin), presence of family members or persons with custody or guardianship rights in Belgium, as well as cases of voluntary return where reception conditions are provided up until return has taken place. The Belgian approach appears to represent a good practice in the last two cases mentioned (the two first ones should rather be considered as a legal obligation deriving from article 3 of the Convention for Human Rights).

4. Continued provision of reception conditions after a positive decision

The United Kingdom and Austria continue to provide reception conditions to successful applicants, for 28 days and 4 months respectively, to facilitate their transition to recognised refugee status. This is welcomed in the context of additional integration measures which should be offered to beneficiaries of international protection.

5. The specific problem of Austria inherent to its federal structure

There is a specific problem in Austria linked to the federal structure of this Member State and the division of competences between the federal state and the Länder about reception conditions: after the admissibility procedure, the competence of the Federation to grant reception conditions ends; however, this happens often without a decision on assignment to a specific Land being taken and a number of asylum seekers "drop out" of the system at this point. This creates a problem with regard to article 3 of the Directive.

PROBLEM	Austria

In **Bulgaria**, reception conditions end after a *final* decision is reached, whether an administrative or a judicial one, whether granting status or one refusing it. An appeal against the refusal of status has suspensive effect.

In **Romania** the rights end after all possible appeals have been pursued; the decision to require the applicant to leave the territory shall be issued after all appeals are rejected.

In **Malta** the regulations state that reception conditions "shall apply to all third country nationals and stateless persons who make an application for asylum in Malta as long as they are allowed to remain in Malta as asylum seekers".
Although not explicitly stated it is therefore clear that, in terms of law, reception conditions, when granted, are guaranteed only until the final rejection of an asylum application. This provided they have not been withdrawn or reduced in terms of regulation 13(1). In practice however, there is very little difference between the reception conditions granted to asylum seekers upon release from detention and the conditions offered to other categories of migrants released from detention, including rejected asylum seekers. In terms of government policy, ~~they~~ the latter are housed in the same centres as asylum seekers released from detention, provided with a form of 'sheltered' accommodation for the same length of time, provided with medical care and provided with a slightly smaller daily allowance (Lm1.50 (€3.50) rather than Lm1.75 (€4) per day). By comparison, asylum seekers who are never detained are not provided with housing, food or a daily allowance.

Q. 16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

The third paragraph of Article 16, §1, (a) of the Directive authorises Member States to reduce or even withdraw reception conditions "where an asylum seeker has already lodged an application in the same Member State". Some Member States foresee a reduction of reception conditions in such a case (Slovakia, Slovenia), others a full withdrawal (Austria, Luxembourg, **France**, **Hungary and Spain** both but with some exceptions), or allow for both (Greece).
In **Latvia** according to the future Law on the Asylum in the Republic of Latvia, during examination of an application, the person shall be deemed an asylum seeker, with the exception of the case when the complaint of a person concerning the rejection of the repeated application is submitted. In case of such complaint a person shall not be deemed an asylum seeker and this complaint will not have a suspensive effect. The future law does not specify whether any asylum seeker's reception conditions will be provided to a rejected asylum seeker of he/she will be moved to the illegal migrants' reception centre. No practice exists yet.

While the above arrangements do not contradict the Directive, it must again be underlined that a drastic reduction of reception conditions and especially their full withdrawal may pose problems in respect of Article 3 of the European Convention for Human Rights.

In **Bulgaria** the rights to housing and food and the right to social assistance **shall not be granted** to persons who have made a successive asylum application. This is a general rule; there is no individual assessment within the meaning of Art.16, Para.4 of the Directive**.** Even before the drafting of this provision, this has been the practice. **This solution unquestionably poses problems in respect of Article 3 of the European Convention for Human Rights but also in respect of the Article 16 § 4 of the directive.**

In **Romania** there is a procedure for granting access to a new application for asylum. If a person is allowed to access a new procedure for asylum, he/she shall benefit from the corresponding rights. The material reception conditions shall be granted until the refoulement from Romanian territory, which implies a situation giving rise to a new application for asylum. There is a possibility of detention in the second procedure for asylum.

Q. 17 Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too a large extend a mandatory provision)

Q. 17 A. Are asylum seekers informed, and if yes about what precisely?

The overall tendency is that the provisions of the Directive are respected (including in **Romania**), except in:

- **Cyprus** has enshrined in its legislation the obligation to inform asylum seekers, but fails to fulfil this in practice as the relevant information may not be accessible or readily available to applicants
- in **Austria** the information provided to asylum seekers covers only the asylum procedure and not rights and obligations of asylum seekers. The obligation in the

Asylum Act to provide "general information" is not sufficient to ensure effective transposition of the Directive on this point; moreover the Länder should also foresee the same obligation in their rules, which is not currently the case in all of them. Moreover in Burgenland, Carinthia and Styria where it is transposed, the Acts oblige authorities only to inform about the asylum seekers' duties to cooperate in determining their being needy and about the legal consequences of providing false information.

- In **Malta**, although this provision is transposed into national legislation, there is a practical problem There is no mechanism/structure in place to ensure that all asylum seekers are provided with information about the rights and benefits to which they are entitled, information about their obligations or about the organisations who may provide assistance or information, either within 15 days or even after.
- In **Bulgaria**, according to the law the applicant shall be "guided" as to "the procedure for submitting the application, the procedure that will follow and his rights and obligations, as well as about organisations that provide legal and social aid to foreigners". The grammatical interpretation of this provision leads to the conclusion that "the rights and obligations" of which the applicant receives guidance refer to the asylum procedure and not the reception conditions.

In Germany, it must be pointed out that with the recent amendments to the asylum legislation the law now includes the obligation to hand out information about rights and duties under the Asylum Seekers Benefits Act. The federal states are currently preparing the necessary handouts.
In **Sweden** there is a practical problem of implementation: according to a recent internal investigation by the Swedish Migration Board there are problems with diverging practice between different reception centres concerning both the content of the information and the ways to inform asylum seekers.

PROBLEM	Austria, Cyprus, Malta, **Bulgaria**, **Sweden**

Q. 17 B Is the information provided in writing or, when appropriate orally?

Most Member States opt for a written format (including **Romania**), with the exception of some Länder in **Austria**, **Bulgaria** and **Malta**.
In Lithuania information is provided in writing in the form of informational leaflets. Also, asylum seekers are informed about their rights and obligations orally by the staff of reception centres.
In **Bulgaria** the legislation does not transpose the requirement for written information.
In **Malta** there is no written information, in different languages, on benefits and obligations in terms of these Regulations which is made available to asylum seekers. The only written information provided is a pamphlet handed out to detainees upon apprehension by the immigration authorities/placement in custody, published in English, French, Arabic and Maltese, however it is more geared towards their situation as detainees than as asylum seekers and the rules therein regarding entitlements apply even to people who do not apply for asylum. Information is provided orally in some cases, but this is not systematic.

The German report stresses the importance of providing information orally given the low level of education of some asylum seekers who would not be able to read or understand written information. An interesting third option that should be considered is the provision of audio-visual information. This is practised in the United Kingdom where respectively a DVD

and a video film providing information to asylum seekers are produced centrally and then distributed.

NO TRANSPOSITION	Several Länder in **Austria**
PROBLEM	Malta, **Bulgaria**

Q. 17 C Is the information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available?

In the absence of a written document due to a lack of translation into the language used by the asylum seekers, nearly all Member States foresee that in such cases information must be provided orally by an interpreter.

In **Bulgaria** the legislation provides that the guidance shall be made in a language which the asylum seeker understands. In practice all notices at the State Agency for Refugees, where asylum seekers make their first contact with the authorities, are written in Bulgarian *only*. The staff also speaks in Bulgarian.

In Romania the information must be provided in a language known by the asylum seeker or, as the case may be, a language which is supposed to be known by the asylum seeker. There is no list of those languages.

PROBLEM	**Bulgaria**, **Malta**[i]

For the rest, there is no general pattern: **Austria** (the Federation) makes written information available in 34 languages - in the Länder practice differs- while others Member States provide information only in a limited number of languages, with the exception of Slovakia. This is a point for which a practical cooperation between Member States could be imagined for pooling translation capacities.

MEMBER STATES	NUMBER OF LANGUAGES
Austria	34
Belgium	Around 10
Bulgaria	No precise data
Cyprus	11
Czech Republic	No precise data
Estonia	2
Finland	5
Greece	5
Germany	14[ii]
France	6
Italy	5
Hungary	No precise data
Latvia	4
Lithuania	7 in practice
Luxembourg	12
Malta	3

[i] See Q 17 B
[ii] May vary between the different Länder.

The Netherlands	13
Poland	5[i]
Portugal	5
Romania	No list of the languages
Slovakia	17
Slovenia	11
Sweden	7
United Kingdom	15

Q. 17 D Is the deadline of maximum 15 days respected?

When they provide the information in accordance with the requirements of the Directive as stated above, the deadline imposed by the Directive is adhered to by the Member States, either in that the information is given at the time of the lodging of the application or upon arrival of the asylum applicant in a reception centre. ;
In Greece and in the **Netherlands** the deadline is not always respected in practice. For **Malta** see Q 17 A.

Q. 18 Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extent a mandatory provision)

What emerges from most national reports is that information relating to legal aid and medical services is generally provided at the same time as general information regarding reception conditions.

As regards the drawing up of a list of organisations active in this area and their availability to asylum seekers, two situations are encountered in Member States for which we received the relevant information:

- there is no list (Slovenia, Germany, Sweden, **Greece**[ii]) and such information is part of the general information made available (in **Sweden**, unlike in the other three Member States, there is a regulation stipulating that foreigners should have information about NGOs; nevertheless informants from Swedish NGOs advise that information to the Asylum seekers on different organisations working with asylum seekers, giving legal advice can be improved.)
- Member States provide lists of all organisations providing legal advice and health care (**Cyprus**, Czech Republic, the Netherlands and Slovakia where the list is limited to organisations providing legal advice and not health care, **Belgium** where the list concerns mainly organisations providing legal advice.

[i] This list is nevertheless flexible, it depend on the needs at the given moment.

[ii] There are presently no official lists regarding legal assistance dressed by the authorities, although in several local police authorities such information on organizations promoting refugee rights, albeit not exhaustive, is provided orally and some times in writing. The MPO has informed the authors of this report that in the detention areas there are posted information notices, in various languages, which describe asylum seekers' rights and there is also information (it is not mentioned if this is in writing) about the organizations that cater to refugee matters.

In **Poland** the list provided is very complete and contains information related to medical, legal, educational organisations and other NGO's. It is provided in a traditional way and moreover recently the Office has put the list of NGO-s on its web site with their phone numbers and addresses

In **Estonia**, there is no express provision in the law that information about organisations, groups or persons that provide legal assistance be provided.

In **Germany** the new amendment to the Asylum Procedures Act includes the obligation to hand out information about possibilities to get legal assistance and about organisations which may counsel the asylum seeker with regard to accommodation and health care.

In **Italy** in the electronic version of the leaflet handed out to asylum seekers, there is not the list of NGOs and it seems that it is not always given to applicants

In **Slovakia** in the Instructions on rights and obligations, there is just general information on NGOs; none of them is mentioned explicitly with any contact details. The informations on notice boards in the camps are not updated

In **Bulgaria** and **Romania** there is no list of organisations.
But while in **Romania** asylum seekers are given information about their right to be assisted by non-governmental organisations, in **Bulgaria** no information is given. Sometimes in practice the authorities give advice orally and refer the person to the Bulgarian Helsinki Committee (for free legal aid), the Red Cross and Caritas (for social assistance). In **Malta** too there is no list and information about organisations is not made available to asylum seekers by the authorities concerned.

Awaiting reinforcement of the legal obligation foreseen in article 5, §1, second indent, to oblige that Member States provide a list of competent organisations as comprehensive as possible and regularly updated, the good practices shown in this area by the Czech Republic and the Netherlands would be worth following in other Member States. The use of new means of communication like the internet could also be envisaged, provided that access to information technology is offered to asylum seekers and that they are in a position to consult the information themselves or, where necessary, with the help of a third person.

NO TRANSPOSITION	**Latvia**[i], In several Länder in **Austria**
PROBLEM	Malta, Slovenia, Sweden, **Bulgaria**, **Estonia**, **Malta**, **Greece**, **Slovakia**, **Italy**

[i] For the moment there are no NGOs or similar organisations or groups promoting interests of the asylum seekers and defending their rights in Latvia. The booklet, which is provided to each asylum seeker upon his/her arrival to the reception centre provides for the contact information of 2 institutions – Latvian Red Cross and the International Organisation for Migration (the nearest UNHCR Regional Office is in Stockholm), but these institutions are not state designated. Information is available in Russian, English and Arabic.

Q. 19 Documentation of asylum seekers

Q. 19 A What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove the identity)

The national reports show that all Member States issue documents certifying the status of asylum seeker.

Some Member States issue two successive documents, one when the asylum application is lodged and another when the examination of the application begins. This method ensures a certain supervision of the procedure in that the first document is only valid for a short period during which the individual must submit his or her application to the authorities responsible for status determination (France) or during which the application undergoes a preliminary examination as to its admissibility (Portugal, The Netherlands, Spain). The use of two separate documents can also have other purposes. Thus, Cyprus issues an initial attestation to the asylum applicant, whereas an asylum applicant's card is only issued after the compulsory medical examination. The first is a confirmation letter granting access to reception conditions, the second is effectively an identity document.
In **Finland** the provision for the issuing of a card for the application process is in place. Yet, it is not implemented in practice in the spirit of the law. However, asylum seekers receive an informal resident's card from the reception centre.

Italy and the Czech Republic are two special cases: the first Member State issues an initial document within three days and then, within twenty days, a residence permit valid until the asylum procedure ends; the second issues simultaneously an attestation to the asylum seeker and a visa for the purpose of international protection.

The value of the documents issued to asylum applicants varies enormously. In some Member States, the document issued serves to identify the applicant, while this option was rejected in other Member States. This question is worth addressing further because of the practical consequences in that the lack of a document certifying the applicant's identity can lead to practical difficulties in his or her daily life and even regarding the asylum procedure itself. As stressed by the Estonian rapporteur, collecting a delivery at the post office or opening a bank account may be impossible without a piece of identification. Given its practical consequences, an amendment of the optional clause in Article 6, §3 of the Directive should therefore be considered, in order to avoid the aforementioned problems.

In **Bulgaria** asylum seekers receive a "registration card". It is explicitly stated that this registration card does not certify the identity of the person. The registration card is a certification of the status as asylum seeker.

In **Romania** the document provided proves the status of asylum seeker and the person's identity.

PROBLEM	Finland

Q. 19 B Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an

exception for "procedures to decide on the right of the applicant legally to enter the territory" as made possible by §2 of article 6)

All Member States with the exception of Cyprus and the Netherlands, foresee on the basis of article 6, §2 that no document is issued to asylum seekers placed in detention or asylum seekers whose right of entry is being examined. Italy, however, issues a document showing the name of the asylum applicant and specifying that the person is detained. In **Belgium**, asylum seekers who are not authorised to enter Belgian territory and apply for asylum at the border are issued with a specific document. In Hungary, a certificate of temporary stay is attached to the asylum applicant's file without being issued to him or her. Luxembourg also does not issue the required documents for repeated asylum applicants, which is understandable given that they are excluded from reception conditions under Article 16, §1, a), third section, even though this scenario is not foreseen by article 6, §2.

One situation is problematic in the light of the Directive: France issues no document if the applicant is subject to a procedure identifying the Member State responsible. Without documentation there is no access to reception conditions which constitutes a violation of the Directive, the latter being applicable as from the point an application is lodged, independently of the Dublin II regulation (see above answer to question n°11).

PROBLEM	France

Q. 19 C For how long is this document in principle valid and is it necessary to renew it after a certain period?

In general the documents (that is, the second document in those Member States where two documents are successively issued as explained above) remain valid throughout the period of the examination of the asylum application up until the definitive decision.

Some Member States have nevertheless introduced limits which necessitate the renewal of the documents. Validity generally varies between three months (**Belgium**, Hungary, where the validity is variable in practice) to six months, except for Cyprus and the Netherlands where the document is valid for one year and Slovenia which foresees shortening the validity period to two months.

The renewal mechanism drew no particular comments except in the Netherlands where asylum seekers who are lawfully resident pending a decision on an asylum application or pending a decision on appeal are issued with a document evidencing their legal residence for one year. The rapporteur states, however, that when renewing this document the asylum applicant may be deprived of all documents or attestations of status for a period of 6 to 8 weeks. This practice, not foreseen by Article 6, §2 of the Directive does not conform with Article 6, paragraph 4 requiring Member States to provide asylum seekers with documents valid for as long as they are authorised to remain in the territory of the Member State concerned.

It is worth noting that there are great variations in the domestic law of Member States as regards the validity period of the documents, which suggests that harmonisation of this aspect would prove difficult.

In **Bulgaria** the law only states that the document's validity *may* be extended; there is no legal obligation for the state organ to do so.

In **Slovakia**, nowhere in the law is mentioned, for how long the identification document is valid. In practice, it is issued for three months, and always renewed for other three months. According to Article 23b (1) of the Asylum Act, it is possible to have an invalid identification document while the asylum procedure is still pending.

NO TRANSPOSITION	**Luxembourg**[i]
PROBLEM	The Netherlands, **Bulgaria**, **Finland: see Q 19 A**, **Slovakia**

Q. 19 D What is the deadline for the delivery of that document? Is the mandatory deadline of three days set by article 6 § 1 respected?

Several Member States fully respect the 3-day deadline enshrined in their legislation as provided for by the Directive (Austria, Belgium, Czech Republic, Finland, **Hungary**, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Sweden, **Romania**). A number of rapporteurs do however point to problems in the practical application (Italy, Sweden). On the other hand **in Finland** the deadline of three days is respected in practice for issuance of the residence card of the reception centre. However, this is an unofficial card without clear legal basis, whereas the cards in accordance with the Aliens Act are not issued in practice. In **Germany** the amended law provides for a deadline of three days after the application is lodged.

In other Member States, the three-day deadline is not foreseen by law (Germany, Netherlands, Spain, **Bulgaria**) and administrative practice clearly fails to meet the requirements of the Directive (Netherlands, **Bulgaria**). There is a problem in France where two documents are issued and the first one only within 15 days.

In **Greece** the law provides for a deadline of 3 days following submission of an application and immediately after the finger-printing results become available. It is not clarified however whether the moment "an application is submitted" is considered the first contact of the applicant with the authorities or the date of the first interview.

NO TRANSPOSITION	The Netherlands[ii], Spain[iii], **Bulgaria**
PROBLEM	**Finland**, France, **Greece**, Italy

Q. 19 E Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see § 5 of article 6 which is an optional provision)

This provision was implemented only in some Member States (Belgium, Finland, Germany, Greece, The Netherlands, Portugal, Slovenia, Sweden, Malta). The national reports suggest that its practical use may prove particularly rare. Generally, this procedure is launched where

[i] But practice in line
[ii] However practice seems to be in line
[iii] But practice in line

there are health, family, professional or cultural reasons and no travel documents can be obtained from the country of origin. Without being considered a transposition of Article 6, §5 of the Directive, Portugal foresees the possibility of granting a travel document to foreigners, including asylum seekers, for humanitarian reason. In Lithuania, such a possibility exists as part of the Dublin procedure.

Q. 20 Residence of asylum seekers

Q. 20 A Is in principle an asylum seeker free to move on the entire territory of your member State or only to a limited part of it in case, which part? (See art. 7 § 1 which is a mandatory provision)

Leaving aside cases of detention, the national reports do not show problems regarding the freedom of movement of asylum seekers. While it is true that the Directive gives ample scope to limit this freedom and Member States have much room for manoeuvre, in case freedom of movement is limited, whether by law or in practice, to an area surrounding the reception centre, the requirements of the Directive would still be met in that reception conditions are essentially provided at reception centres. Nevertheless, some interesting lessons can be drawn from the national reports.

Whereas the majority of Member States allow free movement on their entire territory (**Belgium**, Cyprus, Finland, France, Latvia, Luxembourg, Malta, Poland, Portugal, Spain, Slovenia, Sweden, United Kingdom), several have imposed legal or practical limits on the principle of free movement, without however breaching the provisions of the Directive.

1. Restricting free movement for reasons of public order

Reasons of public order are mentioned by three Member States, allowing them the possibility of restricting the movement of the asylum seekers to a specific area (Lithuania and also Czech Republic and Austria; this possibility is not very often used in practice in the latter Member State and not used at all in practice in the **Czech Republic**: In fact, the Ministry of the Interior is seriously thinking of repealing this provision as redundant.

2. *De facto* restriction of free movement

A certain restriction on the freedom to move within the whole territory is contained in the national measures imposing the compulsory presence of asylum seekers in a specific place, generally a reception centre, at specific times. The latter are generally night times (Slovakia, Slovenia, Hungary, Lithuania, Estonia, Czech Republic) or exceptionally during the day (in the Netherlands in asylum application centres). In **Lithuania**, asylum seekers have to report back every 24 hours which means in practice that they cannot leave the centre for more than 24 hours. This system obliges the applicants to remain within a specific area in practice, notwithstanding the principle of free movement. In these cases, the applicant may leave a reception centre only with prior permission (Hungary, Slovenia, Slovakia) or to notify authorities (Czech Republic). In **Belgium** asylum seekers' free movement is limited notably by the lack of financial means, given that they benefit from benefits in kind in a reception centre. In **Italy** while the general provision on free movement of asylum applicants, there are

so many cases in which a detention or a sort of « constriction » to stay in an area is required, that the general affirmation is in practice the exception. **In Estonia** the reception centre is an open centre and during daytime asylum seekers can move freely in the country. There is nevertheless a practical obstacle to free movement, which it the location of the Centre. Bus connections are limited as the bus does not run every day. In the **United Kingdom** there is no rule explicitly restricting freedom of movement but reporting requirements may restrict this freedom in practice

This type of restriction is not contrary to the Directive as long as the benefits provided to asylum seekers are indeed effectively available in the designated area, in particular access to healthcare.

3. Official restriction of free movement on the entire territory

Only two national reports mention a restriction of the free movement of asylum seekers to a particular territory. One restriction is a temporary one in that Austria foresees that during the admissibility procedure, and for a period not exceeding 20 days, the asylum applicant must not leave the district wherein he or she lives. Germany, on the other hand, restricts the freedom of movement to the district throughout the examination of the asylum request. It is only in exceptional circumstances and emergencies that the applicant is allowed to leave the district. In Greece, the presidential decree mentions the possibility to limit the movement within a certain area designated by the Aliens Department.

Interestingly, Luxembourg sees means of transport as an integral part of reception conditions and therefore provides free public transport to asylum seekers, allowing them to make full use of their freedom of movement.

In **Romania**, the Romanian Office for Immigration designates a locality of residence for the asylum seeker who cannot leave it. If such a locality is small, the conditions set forth by art. 7 par. 1 of the directive are not met. However, the national rapporteur does not believe that there will be problems in practice, because the locality of residence is usually a major town.

In the Czech Republic the law adopted in December 2007 amending the Asylum Act contains a highly controversial provision that under certain circumstances allows the Ministry of the Interior to confine the applicant for international protection in the reception centre at the international airport until their deportation (i.e. even after initial medical screening). This decision on confinement can be appealed against before the administrative courts and is supposed to be subject to regular review of the necessity of confinement.

Q. 20 B About the place of residence (see article 7 § 2) explain to which extent the person is free to choose her residence and if this depends on the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of the application, attribution of reception conditions, ...)

According to Article 7, § 2, of the Directive, Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift

processing and effective monitoring of his or her application. This measure, which definitely leaves Member States much discretion, is applied differently in the various national systems.

1. Official allocation of the place of residence

Several Member States (The Netherlands, Luxembourg, Germany, Austria) decide on the place of residence of the asylum seeker who is thus not free to choose it. This system may be particularly appropriate in those Member States where a specific number of places are available for asylum seekers in reception centres. It also follows logic of distributing asylum seekers across the country in order to share responsibility among local and regional authorities (in particular between the Länder in Austria and Germany). There is nevertheless some flexibility in the allocation of a place of residence, provided that an asylum seeker's request matches the availabilities in the host state and is in line with the objective of the Directive (Luxembourg).

2. Hybrid allocation of the place of residence

In these cases, specific factors affect an asylum seeker's possible choice of residence.

- In the United Kingdom, housing to asylum seekers who do not make their own accommodation arrangements with friends and family, is provided on a no-choice basis. This approach notably stems from this state's objective of dispersing asylum seekers across the whole country.
- Slovakia limits the freedom to choose in that an asylum seeker can only choose his or her place of residence after the results of his or her medical examination are known.
- Several Member States allow the asylum seekers to live outside accommodation centres provided that they have sufficient means to cover their own accommodation costs (Slovakia, Estonia, Finland, Poland and in practice also in Luxembourg). Such a measure is often accompanied by a reduction or loss of reception conditions as foreseen by Article 7 §4 of the Directive.
- The choice of a place of residence may also depend on the possibility of the applicant being hosted by a third person (Sweden, France, Slovakia, Estonia) or a family member or relatives already staying in the country (Sweden and Spain). In general, asylum seekers may be hosted by a citizen of the Member State or a third country national with a residence permit. This is also allowed in practice in Luxembourg. This is generally permitted provided that the host proves that he or she will house the applicant and cover his or her expenses.
- The stage of the procedure can also have an impact of the asylum applicant's freedom of choice. Thus, in the **Czech Republic**, an asylum applicant who lodges an appeal before the Supreme Administrative Court can no longer benefit from housing in a reception centre and must find his or her own accommodation, unless his or her situation is so precarious that the Ministry of the Interior must allocate housing. In practice, the applicant is usually provided with budget accommodation in a hostel designated for that purpose. Those hostels are run by NGOs or private owners in cooperation with the Refugee Facilities Administration (RFA). Most recently, the NGOs reported problems with the access to funding from the RFA for running these hostels (i.e. the funding has been reduced).
- Lithuania and Spain let the choice depend on the asylum applicant's legal status in the Member State. If the applicant arrived or resided legally in the State he may be allowed to reside in the place of his choice. If, on the other hand, the applicant entered

the state or stays in it illegally, a compulsory place of residence is assigned by the authorities.

3. Free choice of the place of residence

The other Member States do not officially assign a place of residence to asylum seekers but they are nevertheless subject to the restraints of a reception system, especially accommodation capacity and fluctuations in the number of asylum seekers. This is clearly the case in Greece and in Slovenia where in this latter State there is only one accommodation centre. The lack of available spaces in reception centres may also lead Member States to allow asylum seekers to choose their place of residence freely, the authorities thus shift the difficulty of finding accommodation into the individuals concerned (Cyprus and France).

While such a practice is not contrary to the Directive, which imposes no particular type of accommodation, it must nevertheless be ensured that the State provides financial compensation to the asylum seeker, allowing him or her to find adequate accommodation, in conformity with Article 13, §5 of the Directive, which is not the case in Cyprus and only to some extent in France (see above the answer given to question 12 B).

Q. 20 C **About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (article 7 § 4) : explain which are the general rules about the determination of this place (to which extend the decisions are taken individually and do they take into account the personal situation of the asylum seeker) and to which extent the person is free to choose it and if it depends on the stage of the asylum procedure (for instance before and after admissibility) if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application, ...)**

The allocation of asylum seekers is sometimes carried out purely on a geographical basis depending on the place where the asylum application was introduced (Slovakia) which could lead to problems in certain cases.

In mixed accommodation systems (combining state-provided housing with a possibility for asylum seekers to find housing elsewhere), the fact that an asylum seeker opts for the latter option often leads the Member State to deprive him or her from some or all of the reception conditions:

- In Poland, an asylum seeker's freedom to choose is subject to him or her giving up social welfare benefits.
- In Finland, the applicant must cover the entirety of the costs of his or her stay in such a case.
- In Lithuania, an asylum seeker may live in private accommodation, but is then excluded from the social benefits issued in reception centres.
- The same situation applies in to Estonia.
- **In the Czech Republic** the law restricts access to several reception conditions in cases where asylum seekers refuse to stay in collective reception centres because they have the possibility to accommodate themselves: this practice undermines the autonomy of the individuals concerned

- In **France** those housed in reception centres, as well as those who refuse such accommodation, may not benefit from temporary benefits.

While it seems logical to ask asylum seekers to contribute to the cost of their housing when they have sufficient means to do so, it is questionable, even if it does not seem to be contrary to the Directive, whether asylum seekers capable of housing themselves should be denied access to all other reception conditions. Interestingly, the Netherlands ensure that where reception conditions are limited due to another form of housing being chosen, the asylum seeker is nevertheless guaranteed access to healthcare, legal advice and schooling for children. Choose another form of housing is nevertheless only possible if the spouse or partner of the asylum seekers legally resides in the Netherlands.

Q. 20 D **If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how are the persons distributed between accommodation centres and other accommodation facilities (which authority takes the decision, on the basis of which elements, can that decision be appealed by the asylum seeker,...)**

The national reports show that the housing of asylum seekers in national facilities actually poses very few problems in purely quantitative terms (see below the answer to question 24 C). The majority of Member States currently have sufficient places to provide housing for all asylum seekers, this situation resulting either from a (very) low number of asylum seekers, or a relatively significant reduction in their number which has even led to the closure of some reception centres, namely in the Netherlands. Moreover, alternative solutions pose no practical problems, whether it is a rapid rise in the number of available places in reception centres (for example in the Czech Republic or in Slovenia) or the provision of accommodation outside reception centres (hostels in Portugal). Germany has designed a specific authority to react to any possible problems relating to the housing of asylum seekers.

The housing of asylum seekers poses more or less acute problems only in a small number of Member States (Cyprus, France, Italy). If more space is available in the reception structures, it is then up to asylum seekers themselves to look for housing in most cases with the help of financial aid that is however (largely) insufficient (Cyprus, Italy, France). In **France** the situation of overcrowding of reception centres has however improved in the last three years since between 2004 and 2006 the number of available places in reception centres increased from 15 470 to 19 470, a target of 20 410 places having been fixed for the end of 2007.

Q. 20 E **How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision insured? (See article 7 § 5 which is a mandatory provision)**

The Member States can be divided into three categories on this point.

1. Liberalism in principle

One group of Member States has adopted no particular regulations on this point and thereby grants asylum seekers the right to temporarily leave their place of residence without prior

permission (Cyprus, France, Luxembourg[i], Malta, Poland[ii], Sweden and **Portugal,** where this principle is restricted during the admissibility stage where an authorisation to leave must be requested from the director of the centre). This freedom is obviously limited somewhat in that reception conditions (food in particular) are only available to asylum seekers in the reception centres where they live.

2. Formal authorisation system

Another group of Member States has put in place a system of formal authorisation for asylum seekers to leave their place of residence. The management of the reception centre, which is in principle the competent authority, generally responds positively to leave requests (Belgium, Estonia, Italy). In **Hungary,** according to the law, during the preliminary assessment procedure the applicant can only leave the centre with the express consent of the refugee authority in specifically justified cases. Thereafter temporary (daily) leave is free.

3. Strict system of control

A third group consists of Member States who have put in place a strict authorisation system where prior authorisation of absences is required or a control mechanism may lead to loss of reception conditions where rules are breached. There are variations on this system in the different Member States.

- Procedural and/or time limit system

Two Member States limit authorised leave of absence from the place of residence to not more than 7 days (Slovakia), or more than 10 days per month but this period can be extended and the authorities generally respond positively (Czech Republic). Slovenia makes absence from the centre for one night conditional upon permission and any request for such must be supported by information concerning the grounds for absence and the place of destination. In **Italy**, the asylum seeker cannot leave the reception centre in order to benefit of the reception conditions in the standard procedure supposed to last six months, unless he is authorised to leave by the director of the centre and except for health or family reasons or reasons relating to the asylum procedure itself. It must be underlined that there is not any element to affirm that it is an impartial decision except that it must be reasoned and communicated to the applicant.

- System based on a procedure of control

Two Member States complement the authorisation to leave the place of residence with an obligation to report to the competent authorities. In Lithuania, temporary absences are authorised but must be short and the applicant must report every 24 hours. In the Netherlands,

[i] The legislation does however foresee the restriction or withdrawal of benefits if the applicant leaves his or her place of residence without informing the authorities.

[ii] There is not a provision on temporal leaving of the place of leaving but some provisions of the Act on Protection indicate that there is such a possibility. First, it is obvious in case of asylum seekers leaving outside centres. Secondly, Art. 65 sec. 2 (2) states that the social assistance is suspended if an alien leaves the centre for 3 days without giving reasons of hi/her behaviour. It should be understood that he/she may is allowed to leave the centre if he/she gives reasonable reasons for his/her leaving.

asylum seekers are allowed to leave a reception centre as long as they fulfil their duty to report weekly to the Aliens Police and the Agency in charge of reception conditions. If an asylum seeker fails to report to the Aliens Police for two consecutive weeks, he or she will automatically lose the right to reception conditions. If the asylum seeker fails to comply with his duty to report to the Agency, reception conditions do not automatically end, but the Agency can in that case end reception conditions (for a period of time) by virtue of a sanction.

- Systems based on severe restrictions on leaving the place of residence or of reception

Austria specifies that asylum seekers may not leave their assigned administrative district during the first 20 days of the admissibility procedure, unless the procedure itself or medical reasons require it. After this period, a restriction of the freedom of movement to an administrative district may be taken on a case-by-case basis for reasons of public order; in this case any absence from the assigned area is considered a contravention, except when the asylum seeker can show it was necessary, especially if there were medical reasons or legal obligations to be fulfilled. Moreover, the asylum seeker may not leave his or her accommodation for more than 24 hours of unjustified absence, as he or she will otherwise be expelled, unless he or she can present reasons for his or her absence.

Germany allows asylum seekers to leave their assigned area only upon permission. As long as the applicant is required to live in a reception centre, which is limited to 3 months but may also be shorter, permission is only granted if the absence is strictly necessary (visit to a lawyer, the UNHCR or an NGO or another urgent need). After that period, less strict rules apply; however, the asylum seeker is still obliged to ask permission to leave the assigned district. This permission may be granted temporarily or generally, but only for serious reasons.

The systems applied by the three last Member States are problematic in light of the Directive in that they appear too strict in relation to Article 7, §5, first section, asking Member States to provide for the possibility of granting applicants temporary permission to leave the place of residence in addition to visits required by the asylum procedure itself. Moreover, these systems must respect the unalienable sphere of private life protected by §1 of Article 7. This would include the possibility that an asylum seeker may wish to enter a neighbouring district in order to visit a family member or to take part in a religious ceremony if this is not possible in his or her own district of assigned residence.

In Slovakia, the decisions are not issued in writing which can lead to problems about their motivation.

In **Bulgaria**, the issue is not regulated by law. In practice there is an “evening hour” before which asylum seekers should be at the reception centre as they are otherwise not let in. In order for an asylum seeker to spend a night outside the centre without sanctions, permission must be obtained.

In **Romania**, the asylum seeker requests the authorisation of the Romanian Office for Immigration, which is obliged to make an individual, objective and impartial assessment and to motivate any refusals.

In **Malta**, asylum seekers confined to a particular place under article 7(3) may be authorised to leave temporarily the place of detention. In practice they are nevertheless not informed that they can apply to the Principal Immigration Officer for temporary permission to leave the assigned area and to date the legislation has never been used. This practice **does not pose problem** with respect to Article 7 § 5 which refers to Article 7 §§ **2 and 4 and not to § 3** but it poses a practical problem with regard to the Maltese legislation itself.

Finally it must be added that in the **Czech Republic** if a visa granted to the applicant, it is restricted to a part of the territory (for description of this system see national report Q. 19A, 19C), a temporary permission to leave the assigned part of the territory of the Czech Republic is not explicitly laid down in the law and thus *de facto* non-existent. However, in practice these visas have not been issued

NO TRANSPOSITION	**Bulgaria, Czech Republic, Luxembourg[i], United Kingdom[ii], Austria[iii]**
PROBLEM	Austria, Germany[iv],Slovakia, **Italy** **Poland**, **Slovenia**

Q. 21 A **Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16 § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16 § 4 last sentence**

The possibility to reduce or withdraw reception conditions exists in all national legislations except those of **Romania** and Spain, which do not foresee this.

A number of Member States chose to conform more or less exactly with article 16 of the Directive and in particular the conditions for reduction or withdrawal as formulated in Article 16, §1, point a) and §3 (Austria, United Kingdom, Cyprus, Italy, Luxembourg, The Netherlands, Slovakia, Greece, Malta). These Member States base their criteria on those set out by the Directive, namely the behaviour of the applicant is seriously violent or otherwise breaches the rules of the accommodation centre as mentioned in Article 16, §3 (Austria, Hungary, Slovenia for example, where the latter legally only foresees withdrawal of reception conditions, while reductions also take place in practice), or the applicant disposes of sufficient resources (Austria, Estonia) and is therefore ask to refund the expenses incurred during the examination of the request, or the applicant fails to cooperation with the asylum procedure (Austria, Sweden).

[i] Luxembourg's legislation does not foresee an asylum seeker's obligation to request an authorisation to leave temporarily their place of residence. There are therefore no criteria or procedure to this effect. In principle there is therefore free movement for the asylum seeker throughout the territory of Luxembourg.
[ii] Requirements on notifying the authorities of any temporary absences are set out in the agreement under which accommodation is provided
[iii] See details in the national TOC
[iv] As practice is very restrictive

Meanwhile some other Member States chose to use criteria other than those foreseen by article 16 of the Directive for the reduction or withdrawal of reception conditions. Thus, for example, use of money for other purposes than provided for by legislation, refusal to work foreseen by some **Austrian** Länder or refusal to participate in activities organised in the reception centre (Finland, Germany, Netherlands) which brings the question whether this is really a serious breaching of the rules of the reception centres in the meaning of Article 16, paragraph 3 of the Directive.

Some systems have particular characteristics in that the reduction of reception conditions must not jeopardise an adequate standard of living (Finland) or that a complete withdrawal of reception conditions is not possible (Germany). Access to emergency care is assured in all cases, in conformity with §4 of Article 16.

PROBLEM	Austria, Finland, Germany, Netherlands

Q 21 B Has article 16, § 2, dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?

It appears that this provision was included in the Directive because some Member States insisted on it, in order to enshrine in Community legislation what their domestic legislation already allows.

The British rapporteur stresses that Article 16, § 2 is very similar to a national measure and adds that crucially the national judiciary has condemned the use of this practice and set certain conditions. Henceforth, the British authorities are only allowed to refuse reception conditions for late asylum applicants if the applicants have sufficient means to fund their own accommodation and living expenses.

Cyprus and Greece appear to be the two only Member States to have transposed this measure into their domestic law. They should take account of British jurisprudence relating to the transposition of this measure because the UK judge's reasoning based on the article 3 of the European Convention of Human Rights may be applicable to Cyprus.

In **Malta** the legislation provides that applications made two months after the asylum seeker's arrival in Malta are invalid. However the legislation allows the Refugee Commissioner to consider such applications valid, for "special and exceptional reasons" to be stated in his decision.
In practice, according to the Organization for the Integration and Welfare of Asylum Seekers – OIWAS: the authority responsible for the management of the open centres- there has never been any cases where asylum seekers were refused reception conditions on this ground.
It should be noted however that, as a rule, applications made more than 2 months after arrival are either made by asylum seekers living in the community, who would be granted very little by way of reception conditions anyway –see Q 11- or by immigrants apprehended by authorities for illegally staying in Malta who would normally remain in detention until their application is finally determined.

Q 21 C How is it ensured that decisions of reduction or withdrawal are taken individually, objectively and impartially (see article 16, §4 which is mandatory provision)?

The conditions set out in the Directive seek to ensure the objectivity and impartiality of any decision to withdraw, reduce or refuse reception conditions. This measure was not formally transposed by Member States apart from two exceptions, because in most Member States the decision is taken by the administrative authority responsible for reception conditions and is therefore framed by national administrative procedure and the more or less generous guarantees this offers. The need for impartiality should not pose a problem if one interprets it as a fundamental obligation of public service, except in cases where the competent authority is directly involved in a conflictual situation with an asylum seeker (let us imagine for example a director of a reception centre who becomes the victim of violent behaviour by an asylum seeker and then wishes to reprimand this) and likewise if one were to interpret the notion of impartiality in the rigorous sense accorded to it in Article 6 of the ECHR. Jurisprudence will ultimately have to specify what exact requirements the notion entails.

It is therefore unsurprising that the national reports make little mention of this question. However the Italian rapporteur does challenge the impartiality of the decisions taken by the representative of the state acting at the local level because the latter is not obliged to hear the asylum seeker, which reveals a contradictory aspect of a procedure that was not foreseen by the Directive.

Further difficulties occur at the practical level. Actors on the ground in the **Netherlands** point out the weak justifications for decisions leading to the withdrawal or reduction of reception conditions. Moreover there is a practical problem for applicants whose reception conditions are withdrawn permanently by way of a sanction and for asylum seekers whose application has been rejected in an application centre. In this state, in principle all aliens, whether legally or illegally staying, have access to emergency health care. However, in practice access to emergency health care for migrants without health care insurance can be difficult. It also appeared that in Slovenia only written decisions can be appealed against. However, in practice, decisions to reduce reception conditions, which are not foreseen by national legislation, are formulated orally and therefore not subject to any set procedure. This practice is hardly compatible with the obligation to provide justifications as provided by Article 16, § 4 of the Directive. This case should be treated with vigilance as the Member State in questions foresees no criteria whatsoever for the reduction of reception conditions but proceeds to carry them out in practice in the absence of any defined legal framework. In **Sweden** according to a recent internal investigation the reduction or withdrawal of the daily allowance was one of the areas pointed out as a problem since there are divergences in practice between the different reception centres on when to withdraw or reduce the daily allowance. In **Slovakia** problem regarding impartiality arises, there are no assurances in law with this regard. In **Italy** the competent body (Prefettura) is the local office of the Government and can not be intended as an independent body. Moreover, the concerned person is not heard before the adoption of the measure

In **Bulgaria** this issue is not regulated by law.
In **Malta** the regulation does not guarantee access to emergency healthcare under all circumstances in cases of withdrawal, refusal or reduction of reception conditions, however such access has never been withdrawn in practice. Also, the said regulation mentions only unaccompanied minors, rather than all vulnerable persons. In addition, on a practical level,

there is no mechanism in place to ensure that decisions are taken individually, objectively and impartially. Moreover decisions regarding withdrawal, refusal or reduction of reception conditions are not always given in writing

Finally, two cases of "good practice" deserve special mention. In France, decisions to withdraw reception conditions in accommodation centres are framed by internal regulations formulated by a social council including notably representatives of the asylum seekers. In Luxembourg, the minister is required to inform the applicant of his intention to reduce or withdraw benefits and the applicant can object within 8 days of the minister's letter being sent.

NO TRANSPOSITION	Slovenia, **Bulgaria, Czech Republic**[i]
PROBLEM	Malta, **The Netherlands**, **Slovakia**, **Italy**, **Sweden**

Q. 21 D. Is statement 14/03 adopted by the Council at the same moment as the Directive respected?

Not enough precise information in practice could be gathered to evaluate this particular point.

Q. 21 E Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?

The Directive has triggered only very little jurisprudence so far, as it was transposed only very recently. The Dutch jurisprudence is nevertheless interesting in that it touches upon the Directive's measures relating to reception conditions for repeated asylum applications. The district court of Harlem considered on 20 January 2006[ii] that the Minister's refusal to grant reception conditions in such a case is not contrary to articles 16 §1, a), 16 §4 and 17 of the Directive and that article 16 §5 of the Directive does not oblige the minister to grant reception conditions up until the final decision on a repeated application.

Q. 22 A Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

In the great majority of Member States, the administrative decisions taken by the competent authorities are subject to general administrative or judicial procedure, including appeals. Thus decisions to reduce or limit reception conditions may be subject to an appeal process. Therefore the obligations derived from article 21 of the Directive are largely respected. There

[i] Since the Czech Republic has not implemented Art. 16 (1) and (2) of the Directive, this question is of no relevance

[ii] Awb 05/57129 and 5797.

are nevertheless problems in a number of Member States where there is no possibility to appeal:

- No appeals are possible in Spain, except when article 7, §3 of the directive is concerned.
- In Slovenia and Slovakia, while decisions to withdraw reception conditions are foreseen by law, this is not the case for decisions to reduce reception conditions, which are only communicated orally to asylum seekers and as a consequence cannot be appealed against in Slovenia and the same applies in **Slovakia** regarding decisions under article 7.
- In the **United Kingdom**, domestic appeals provisions fall short of the standards required by the Directive (eg no appeal as to the nature or standard of support, no appeal against the decision in respect of the assigned dispersal accommodation)
- In Austria, the decision on allocation of places in a Land cannot be appealed by the asylum seeker since it is only orally communicated. The asylum seeker equally does not have a legal remedy if the coordination office fails to take an allocation decision.
- In **Hungary** there is no separate appeal against an order withdrawing or denying reception conditions. That order may only be challenged in the judicial review request against a decision not to start the eligibility procedure, the substantive decision on recognition or the decision on terminating the procedure
- In **Malta** the law allows for an appeal, however in practice to date this remedy has never been used as there are a number of practical problems, including the fact that decisions are not always given in writing, the time limit imposed is very short (3 days), and asylum seekers are not informed of their right to appeal.
- In **Austria** there is generally access either to an appeals procedure before an Independent Administrative Tribunal or there is access to the jurisdiction of the ordinary courts. However, when an authority refuses to act under the Administrative Procedures Act, a legal remedy is only possible after a six-month waiting period. Moreover, there is a gap in the provision of benefits in some cases where the competence of the Federation to provide benefits ends, but asylum seekers are not taken over from the Federation by the Länder. In such cases no legal remedy is granted.
- In **Bulgaria** Article 21 is not transposed. The situation is problematic as the lack of an explicit provision in the Law on Asylum and Refugees stipulating the right to appeal administrative acts relating to reception conditions leads to legal uncertainty in this regard. Acts of the Head of the State Agency for Refugees can be appealed only before a judicial instance and not an administrative one. According to rules of general administrative law, individual administrative acts must include a statement as to whether they can be appealed, within what period of time and before which body. However, this is not always followed in practice by the State Agency for Refugees.
- In the **Netherlands** in general, appeal against a decision to reduce or withdraw the reception facilities can be introduced. An important exception to this rule is the following situation: the rejected asylum seeker cannot lodge an appeal against the ending of the reception facilities, for Dutch law indicates that if the negative decision on the asylum application is a definite one, the legal consequence that the facilities end, exists ex jure.

NO TRANSPOSITION	Spain, **Bulgaria**
PROBLEM	Slovenia, United Kingdom, Austria, Slovakia, Malta, **Austria, Hungary**, **The Netherlands**

Q. 22 B Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21 § 2 which is a mandatory provision but leaves space to the Member States)

Article 21, § 2, of the Directive obliges Member States to grant asylum seekers access to legal assistance when they introduce an appeal against negative decisions relative to reception conditions or the free movement on a Member State's territory. The obligation on Member States is however limited in that the measure gives them full freedom as to how it is implemented. In general, Member States provide effective legal assistance to asylum seekers. This can be foreseen by specific measures applicable to asylum seekers or as part of a general legal aid system, with some variations from one Member State to another. For instance, only lawyers can provide the full range of legal assistance in Germany while Lithuania has designated an NGO with lawyers in its staff for this purpose.

As is customary and logical, state-funded legal assistance is only open to those asylum applicants who do not dispose of sufficient funds to cover the costs incurred. Legal assistance poses some problems in two Member States:

- in Greece, the presidential decree does not mention any explicit provision on legal aid which is in practice provided by the Greek Council for refugees;
- in the **United Kingdom**, limited assistance is provided *pro bono* by voluntary sector organisations. Legal assistance for asylum support appeals is not provided for in national law

In addition to the situations involving legal problems, there are cases that are potentially problematic from a practical point of view. This is the case in Austria where only legal counselling is provided, which may also lead to a legal representation of the asylum seeker before the authority, but this must be financed on the basis of other than public resources. In Estonia, there used to be NGOs who provided legal counselling for asylum seekers but currently this is not the case. The system of a state lawyer does not work effectively. Most lawyers lack special training to deal with asylum claims and they do not even now what refugee status is.

It must be pointed out about Slovenia that the transposition of the Directive has brought about a reduction in the scope of legal assistance as it was previously available even before the appeal stage. This is one of the rare examples where the implementation of the Directive has led to a slight regression in reception conditions which however does not pose any problem with regard to the Directive itself.

In **Cyprus** where the provision is not transposed for practical purposes, and through ERF funding mechanisms there is a joint NGO/Governmental initiative to cover provision of legal assistance.

In **Malta**, Article 21(2) is not transposed into national legislation and the regulations on reception do not contain any provision ensuring access to legal assistance. Moreover whether or not they are in fact entitled to legal aid is open to question.

NO TRANSPOSITION	Austria[i], Cyprus, Greece, Hungary, United Kingdom, **Malta**
PROBLEM	Estonia

Q. 22 C Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

The Swedish courts have ruled on the subject of benefits given to asylum seekers even before the Directive was transposed. An appeal court rejected an appeal in relation to benefits for the purchasing of maternity wear, arguing that this is not required to maintain a tolerable standard of living. Likewise, the purchasing of winter clothes does not necessitate the payment of additional benefits, as the financial aids of the previous 6 months should allow the asylum seeker to save up money for this purpose. Finally, a decision by the Stockholm administrative court awarded benefits of 103.44 euro for the repair of a pair of glasses. Furthermore, there are cases pending before the Polish and Austrian courts.

Q. 22 D Is a mechanism of <u>complaint for asylum seekers about the quality of reception conditions</u> in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

While the organisation of a complaints system on reception conditions for asylum seekers is not a requirement formulated by the Directive, this topic was deemed of sufficient interest to warrant the question being put to the national rapporteurs.

What emerges from the entirety of the responses received is that no such complaints system was formalised in the majority of Member States. Only a small number have organised a complaints procedure allowing asylum seekers to complain about the material reception conditions granted to them (Belgium) and/or about the behaviour of the staff in charge of providing these reception conditions (The Netherlands, United Kingdom). In Belgium, the applicant can complain about the reception conditions or the application of the internal regulations vis-à-vis the director or the supervisor of the reception centre. If the complaint is not addressed within 7 days, the applicant may write to the Director-General of the federal agency in charge of reception conditions who must reply within 30 days. Complaints systems are also in place in some German and Austrian Länder. **In Finland,** asylum seekers may in principle launch complaints about reception conditions to the Employment and Economic Development Centres, which makes contracts with reception centres on behalf of the State. Also, complaints to the Ombudsman for Minorities are available to asylum-seekers, as well as the general system for complaints to the Ombudsman of the Parliament.

Several reports mention the existence, in practice, of informal means of addressing misgivings about reception conditions, whether it be soliciting the authorities in charge of reception, their representative (Estonia) or even soliciting a mediator.

[i] In nearly all Länder there is no access to legal assistance free of charge (in administrative procedures), only before the civil courts (i.e. in Vienna) a legal representative can be provided upon application according to the Civil Procedures Act

As the majority of Member States have not institutionalised a complaints system, it would be particularly useful to analyse the experience already gathered by some Member States in order to see what best practices can be recommended for use in other Member States. Such a mechanism is after all a way of placing asylum seekers at the centre of the system that is created for them and whose beneficiaries they should be.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

Q. 23 Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to the Member States and article 14 § 2 which is a mandatory provision)

The relatively restrictive definition given to the notion of family in Article 2, d) of the Directive allows Member States to conform easily to European requirements, which are in any event limited. While many Member States have extended this definition in their domestic legislation[i], some compatibility problems, varied in nature, have nevertheless arisen in national reports.

For Luxembourg, Slovakia, Latvia and Sweden who have not introduced a definition of the asylum seeker, the rapporteurs concerned considered that the definition of family applicable to family reunification of refugees could reasonably be transposed to the asylum seeker.
Even if this appears to be the case, it remains that such a transposition of the Directive by interpreting national law may not be considered sufficient to guarantee legal certainty and the effectiveness of Community law.

A difficulty arises with regard to Germany who place limits on the family unit: in **Germany** problems may appear if requests are not presented simultaneously because of its distribution policy for asylum seekers on its territory. These cases are however rare and rather the consequence of a lack of information. Finally, the Spanish report indicates that the transposition norm used cannot be considered as a legal or by-legal act, which obviously constitutes a violation

In **Sweden** there is no definition of 'family member' in the national law in respect of this provision in the Directive. However, there is a provision on family unity in accommodation centres and a practice regarding this provision that is in line with the Directive.

On the contrary, two cases where the Directive has been interpreted broadly should be pointed out. Belgium allows an asylum seeker for whom the procedure has been put to an end to continue to benefit from material reception conditions if the asylum request of a family member is still being treated. France conforms to the requirements of Article 8 of the Directive in a very positive manner; if family unity is not possible, the legislation provides, in conjunction with those received, for a personalised solution to allow them to be reunited as soon as possible and to assure that this solution is followed through until fruition.

In general, it appears from an analysis of the national reports that, some problems related to the definition of the family aside, family reunification is respected in the framework of accommodation allocation.

[i] Notably for adult children (Italy, Portugal, United Kingdom) and the ascendants in specific circumstances set out in national legislation (Italy, Spain, United Kingdom) or same-sex partners in Finland and Germany.

NO TRANSPOSITION	Sweden, **Slovenia**[i]
PROBLEM	Cyprus, Luxembourg, Slovakia, Sweden, Germany[ii], Spain

Q. 24 A How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14 § 1 which is a mandatory provision but leave space to Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises)

Housing obviously constitutes an essential, if not the primary, element of reception conditions to ensure an adequate standard for asylum seekers. As much as Article 14 of the Directive imposes a results-based obligation to provide a roof over the heads of asylum seekers it leaves a lot of room for manoeuvre with regard to how to precede; the accommodation can be provided in all the possible manners set out in Article 14 or in its monetary equivalent.

There is a general tendency to accommodate asylum seekers in communal reception centres which are sometimes organised in a very elaborate way like in the Netherlands[iii]. The United Kingdom which organises its accommodation in other facilities such as private houses, flats or hotels, as envisaged by Article 14, §1, (c) of the Directive, is an exception. Some Member States also offer asylum seekers the possibility to be accommodated in individual housing (Belgium, Germany – only in exceptional cases, Italy, Sweden). This possibility is also envisaged when the reception capacities of the centres are not sufficient (Slovenia, **Spain**). In this latter state it must be underlined that although asylum seekers admitted to the normal refugee status determination procedure have appropriate accommodation, housing is not mentioned in the Asylum Regulation. Further specification at legal or by-legal level on the entitlement to housing would be advisable.

In the rare cases (infra) where the capacity of national reception mechanisms turns out to be insufficient and prevents the direct provision of accommodation, France and Belgium offer the asylum seeker financial compensation which is supposed to allow them to cover housing expenses. This compensation sometimes turns out to be insufficient in France, which can result in a problem with regard to Article 13, §2 of the Directive which obliges Member States to provide for material conditions assuring "an adequate standard of living for health and subsistence of the asylum seeker". In Cyprus, asylum seekers who cannot have access to the reception centre which has a very limited capacity must pay for private accommodation themselves.

In **Bulgaria** there is a problem in that, according to the law, if an asylum seeker disposes of the necessary means to meet their living needs throughout the asylum procedure, they *may be granted permission* to have an accommodation *on their own account* at an address which they choose and in this case the asylum seeker does not receive financial or material assistance by

[i] With regard to Articles 8 and 14 § 2 a): Family members are accommodated together in practice, but no provision stipulates the obligation to accommodate them together or to assure the protection of family life.
[ii] With regard to Articles 8 and 14 § 2 a): rare cases of inadequate practical implementation.
[iii] In this Member State there are at least five types of accommodation possible according to notably the procedure: temporary emergency reception centres, registration centres, centres for orientation and integration, reception centres for returns as well as other forms of accommodation which require administrative inscription in a geographically close reception centre.

the State Agency for Refugees. In this regard the national law does not contain the material and procedural law guarantees as stipulated in Art.7, Para.2 ("for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application") and Para.4 ("shall be taken individually and established by national legislation") of the Directive.

In **Malta** too there is a problem in that accommodation is not provided to asylum seekers who are never detained –see Q 11-.

PROBLEM	Lithuania, Cyprus, **Bulgaria**, **Malta**, **Spain**, **Italy**

Q. 24 B What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

A comparison without adjustment of the gross figures in the table below indicating the number of reception places available in the different Member States would not be meaningful. On the one hand, the number of places must obviously be put in the context of the number of asylum seekers which need to be received in order to evaluate whether the Member State's offer corresponds to the demand which must be satisfied. On the other hand, these figures only cover a more or less reduced part of the actual reception capacity of Member States as they do not always take into account the number of places offered to asylum seekers in alternative or private accommodation (houses, apartments, hotels), in particular in Belgium, Germany, Italy, France and Slovenia.

The figures provided are surprising due to the large divergence existing between Member States; this is all the more so in absolute terms whilst also significant in relative terms (infra). The number of places available varies with extremes ranging from 32 in **Portugal** to 30.000 in the Netherlands. These extremely divergent figures, which could bolster the debate on "burden sharing" between Member States of the European Union, supposedly putting in place a Common European Asylum System, mirror the flows of asylum seekers which differ greatly among the Member States for various reasons.

MEMBER STATES	NUMBER OF RECEPTION PLACES AVAILABLE IN DECREASING ORDER
Netherlands	30 764
Austria	Approx. 30 000 in the Laender Approx. 1 400 in the Federation
Sweden	18 800 but most asylum seekers go directly to relatives or friends when the application has been made.
France	19 470 end of 2006 with a target of 20 410 to be reached end of 2007
Belgium	Approx. 15 700
Germany	10 381 (March 2007)
Poland	3 958
Italy	2 350
Czech Republic	467 places in the reception centres and 1 808

	places in the accommodation centres
Spain	2079
Malta	Both open and closed centres: between 1800 and 2000
Finland	1774 (May 2007)
Hungary	1 845
Romania	1478 in 5 accommodations centres + other places in transit centres nearby the border
Luxembourg	1 627
Slovakia	1188
Greece	770
Lithuania	400 (500 in an emergency situation)
Slovenia	202
Latvia	200
Cyprus	80 to 100
Estonia	42
Portugal	32
United Kingdom	The question of available reception places is difficult to answer: while it would be possible to gauge an approximate number of housing places from the government contracts with private housing providers, many asylum seekers make their own accommodation arrangements

Bulgaria: no information available.

Q. 24 C Is the number of places for asylum seekers sufficient in general or frequently insufficient?

The national reports illustrate that the number of places available within the reception facilities are generally sufficient. Some Member States have even begun to close facilities (Czech Republic, Sweden, The Netherlands). This satisfactory situation seems currently due to a certain extent to the fact that the numbers of asylum seekers are in general decreasing in the European Union. One can wonder if this would still be the case if the number of applicants were to increase again.

Difficulties of varying types exist only in three Member States:

1. A structural problem is posed in Cyprus given that this Member State only has one place in a reception structure for every ten requests made. This serious deficiency supports the claim that this Member State does not satisfy article 24, §2 of the Directive which requires that Member States allocate the necessary resources to implement its provisions (see the answer to question 40 E below). The situation is all the more worrying as not only does this Member State not comply with its accommodation responsibilities, it also does not deal with other duties imposed on it which have already been cited (supra).
2. In Italy, the number of asylum seekers appears to be higher than the number of places available in the accommodation centres. In 2005 more than 8.000 applications were

filed, which is remarkably higher than the number of available places in accommodation centres.

3. **France** is facing with a chronic shortage of places in its facilities but is proceeding for the moment with a two-pronged advancement which may resolve the problem over time. While consistently increasing the number of places available which should be up to 20 410 by the end of 2007, it is reforming the asylum procedure to accelerate treatment of requests in such a way that a better rotation of those in the centres is foreseeable. The situation nevertheless merits some follow-up monitoring to see if the system will actually improve and this all the more so as the compensation given to asylum seekers who are forced to find their own accommodation is in general insufficient.
4. In **Greece** according to the opinion of the UNHCR and NGOs, the number is currently insufficient.

In **Malta** it must be stressed that in practice there have been cases when release from detention was delayed due to a lack of accommodation in the community.

Q. 24 D Are there <u>special measures foreseen in urgent cases</u> of a high number of new arrivals of asylum seekers (outside the case of application of the Directive on temporary protection)?

The Member States divide into two groups in this regard.

The first, which is the larger group, is characterised by the notable absence of an emergency provision and includes **Bulgaria, Romania, Malta**, Cyprus, Hungary, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, the United Kingdom and Greece. Some Member States (Estonia, Poland, Slovenia, Sweden) point to the possibility of increasing their reception capacity in practice if needed.

The second group is comprised of the few Member States which have put in place more or less elaborate action plans depending on a case by case basis:

- A simple reference to a response in the legislation in Luxembourg without this provision having been made more concrete;
- The identification of the actors in charge of a response at local, regional and national level (France)
- The extension of reception capacity in the Czech Republic and in Italy ;
- A calculation of the number of places which could be made available if necessary in Finland (the emergency plan foresees 50.000 places and the goal for the future is 100.000);
- Rapid responses ranging from the rental of property to the building of light facilities even the conversion of public buildings into reception centres (Italy) coupled with a redistribution of the asylum seekers present in the reception centres in order to be able to give priority to new arrivals there (Germany);
- In Austria, the Federal Act says that the Federation is obliged to create capacities in the Lander to cope with unpredictable and inevitable shortages of places. It is not clear how it should organise such contingencies, nor are there any implementing rules.
- **In Belgium**, in cases of lack of space in the reception centres, the law authorises temporary accommodation for a maximum period of ten days in an emergency reception centre where social assistance is limited. A minimum is nevertheless guaranteed, namely the granting of "food, lodging, access to sanitary facilities and

medical services as described in Articles 23 to 29". Concretely, one centre is currently geared to emergency reception in the Brussels region.

The Commission may consider this information useful for the development of a strengthened practical cooperation in the field of asylum as envisaged in its communication n° 67 of 17 February 2006.

Q. 25 Accommodation centres (all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)

Q. 25 A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

Member States can be classified into three groups in this regard.

The first group is composed of States which do not distinguish between different categories of reception centres and those which have only one centre at their disposal (Cyprus, Latvia, Lithuania, Portugal, **Malta**) or those where the reception facilities vary in practice without establishing a link between the type of accommodation and the different stages of the asylum procedure (Luxembourg, Italy, Sweden, Greece and France where emergency structures exist in the event of a shortage of available places).

The second group is comprised of the Member States in which the asylum procedure determines the distribution of asylum seekers to different categories of reception centres. Thus, in Austria the separation of asylum seekers into different centres for the admissibility procedure and the substantial examination relates to the sharing of the competence to manage these facilities between the Federation and the Länder respectively. Finland, **Hungary**, Poland and Slovenia organise accommodation according to a first registration phase of the request followed by a period in another accommodation facility while the request is being examined. The system is similar in Slovakia and the Czech Republic where the asylum seekers are lodged in first reception centres until the results of the medical examinations of the asylum seeker are known and give rise to a transfer to accommodation centres.

The Netherlands definitely has the most elaborate system based on a distinction between four types of centres:

- a temporary emergency reception centre for asylum seekers who have not yet been admitted to the procedure ;
- registration centres constituting the phase during which the asylum seeker officially submits his or her asylum request. In this registration centre, the immigration authorities will check whether the asylum application can be dealt with quickly (in cases when extensive research is not needed) or not. In the first case the asylum request will be dealt with within 48 hours. This procedure is the so-called accelerated asylum determination procedure. The asylum seeker will stay in the AC until a final decision is made. When it appears impossible to reach a decision within 48 hours, because more research is needed, the asylum seeker will be referred to a:
- centre for orientation and integration. After a first negative decision the asylum seeker will be referred to a centre for return.

The first two types of centres pose problems as the Netherlands does not apply the Directive to these types of first reception structures contrary to the Directive's requirements (see above the answer to question n°14).

In the United Kingdom where there are no reception centres, there exist however "induction centres" where asylum seekers are accommodated while waiting for an answer to their request for individual accommodation, but this Member State applies the Directive to these facilities.

The third group is comprised of Member States offering different categories of accommodation between which the asylum seekers are distributed according to a temporal criterion which is sometimes combined with other considerations. In Germany, after a first period of in principle three months, asylum seekers in reception centres are directed towards other accommodation facilities. Belgium offers the possibility to move from a reception centre which is the equivalent of a benefit in kind to private accommodation thanks to a social benefit furnished in cash after a certain period while taking the other elements which are specific to the individual asylum seeker such as family presence or the state of their health into account to direct asylum seekers towards the most appropriate type of accommodation. In Austria, this possibility is subject to authorisation, bearing in mind that the authorities are generally in practice reluctant to offer this possibility before a certain period has lapsed.

In the Czech Republic while the judicial procedure before the Supreme Administrative Court is pending, certain modalities of reception conditions, in particular with regards of housing, change.

Q. 25 B Is there a legal limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

In general, no temporal restrictions on the length of stay in reception centres exist, the stay can therefore last throughout the entire length of the asylum procedure with some exceptions:

- Cyprus forces asylum seekers to leave reception centres after two months and to find their own housing at their own expense, which violates the Directive (supra).
- in Greece, the period of stay in a reception centre is limited to one year in accordance with the presidential decree.
- in **Malta**, although there is no legal time limit, under current policy asylum seekers are allowed to stay in Open Centres for a maximum of one year after which time they must find their own accommodation in the community; this time limit is not always strictly applied in practice, particularly in the larger centres.

Q. 25 C Is there a general regulation about internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Internal operating rules of reception centres exist in almost all of the Member States. In most cases they are general regulations which are applicable to all centres (**Belgium** where the detailed rules are yet to be laid down in a Royal decree, the Czech Republic, **Estonia and**

Latvia where there is however only one public reception centre , France, Finland, Hungary, Lithuania, Luxembourg, Poland, Slovakia as well as the United Kingdom with regard to accommodation), with the exception of a few Member States which leave each one to adopt their own system of regulation (Austria, Cyprus, Germany, Portugal, Greece, Sweden). In the Netherlands each type of centre has its own regulations. A comparison of these different rules in Member States might prove interesting in order to identify the best practices. One will note with interest that:

- France provides asylum seekers with a booklet setting out a charter of rights and freedoms as well as the operational rules of the centre upon arrival. Moreover, a contract for the stay is concluded and specifies the services offered.
- Each asylum seeker arriving in the United Kingdom receives an information letter about his/her rights and responsibilities ;
- Slovenia has proposed to adopt new regulations concerning the internal functioning of the House of Asylum. They are very precise and define accurately the life in the accommodation centre, the rights and obligations of the asylum seekers and the sanctions in case of violation.

Q. 25 D **Do the regulations foresee the possibility of <u>sanctions</u> against asylum seekers in case of breach of the rules (see article 16 § 3). If yes, which sanctions for which rules? Which is the competent authority to decide? How is it insured that the decisions are taken, individually, objectively and in particular impartially (for instance through an independent arbitrator) as requested by § 4 of article 21 which is a mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n° 22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?**

All the Member States have foreseen sanctions to be taken against asylum seekers in the event that they do not respect the obligations which are imposed on them by the internal rules of the reception centre. Even if the instruments used vary (either all sanctions are set out in specific rules of a legal or regulatory nature or they are part of internal regulations), it is possible to quite easily deduce the major courses of action which are common to all of the Member States:

1. <u>with regard to behaviour which is susceptible to sanctions :</u>
    - when the asylum seeker does not present himself/herself at a reception centre ;
    - abandoning the reception centre without authorisation of for a period longer than that determined;
    - the damaging of reception facilities ;
    - the refusal to or obstruction of work and activities organised by the reception facility;
    - violent behaviour towards other asylum seekers or the staff of the reception centre.

It stems from numerous reports that the asylum seekers can only be punished after repeated serious misbehaviour.

2. <u>With regard to the applicable punishments :</u>
    - A warning ;
    - A reduction or a withdrawal of social benefits ;
    - The transfer of the asylum seeker to another facility where this is possible.

It is noted that the sanctions may lead to the removal of the asylum seekers from the reception facility in Austria, Italy, Hungary, the Netherlands, Greece **and Malta** which may give rise to legal problems if no alternative reception facilities are made available.

3. With regard to judicial remedies :
   Remedies are almost always available and are generally litigated, with the exception of the Slovene case where no judicial remedy is possible.

It is undoubtedly with regard to the authority competent to dispense the sanction that the national systems vary most, ranging from the manager of the reception facility to the Minister himself, via the intermediary administrative authorities. Regarding the Member States where the sanction is dispensed by the manager of the structure, the question arises whether the manager is impartial as required by the Directive insofar as this person could even be implicated in the conflict with the asylum seeker. The Spanish case may be cited in this regard where a role is accorded to NGO representatives making the decision a collegiate one.

It seems that this aspect of reception conditions could easily be harmonised if the need was felt with regard to the principles of subsidiarity and proportionality. It should be noted in this regard that the transposition law in **Belgium** seems to be a faithful transposition model for the Directive, notably insofar as it foresees that sanctions are dispensed by the manager or the person responsible for the facility in a reasoned, objective and impartial manner.

Q. 25 E Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or elections of representatives)? (See article 14 § 6 which is an optional provision).

The optional clause set out in Article 14 § 6 of the Directive has not been enthusiastically welcomed by Member States. Only one Member State (France) has truly organised via legislation for the participation of asylum seekers in the management of the reception centres in a detailed organised way. **In Belgium** the law guarantees residents the right to participate in the organisation of community life within the reception centre. The nature of this participation is not specified further. The FEDASIL report states that some collective centres have a committee of 'wise men' in which asylum seekers can find their voice. This participation also exists in Cyprus although two other Member States have left this question up to the reception centres (Germany, Slovakia). A few others have practices in place which allow asylum seekers to informally participate in the management of reception facilities (Spain, Finland). It is therefore a question on which progress could be made in the European Union starting from an exchange of information and experiences between Member States.

Q. 25 F Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

The question of work in the accommodation facilities is dealt with by the Member States in very different ways. Two major tendencies can be witnessed outside the Member States that do not foresee any rules on the matter (France, Italy, Latvia, Portugal, Greece, **Malta**).

Several Member States (Austria, Belgium, the Czech Republic, Germany, Hungary, Poland, Slovenia, Estonia) oblige asylum seekers to carry out certain tasks generally related to the maintenance of the reception facility or to participate in activities by giving a sort of quid pro quo, in the form of remuneration which cannot exceed a determined amount (two times more than the pocket money, a weekly maximum, a particularly low hourly rate or a restriction on working time to only one month) or bus tickets (Slovenia). The work specifically organised in reception centres seems to be subject to quite a strict framework which seems to differentiate it from a real salaried activity.

A small number of Member States do not offer any compensation to asylum seekers for the work which they undertake (Finland, Lithuania, Luxembourg, Spain).

The case of The Netherlands who allow asylum seekers to carry out certain tasks illustrates that participation in an activity, even one which is not very well paid, in a reception centre contributes to the well being of asylum seekers and the conviviality of the location. Indeed, this Member State foresees the allocation of sums due for work undertaken for the communal benefit of accommodated asylum seekers, which are then spent to acquire common property. Even if it seems difficult to imagine common rules at European level because of the differences between national practices, the question could eventually give rise to the exchange of experiences between Member States in order to identify best practices.

Q. 26 A How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14 § 2, b) which is a mandatory provision)

This obligation is, for the most part, respected by all of the Member States, either insofar as they have literally transposed Article 14, §2, b) into internal legislation (Luxembourg, Belgium, Greece), or access to reception centres is in reality very open, or the free movement guaranteed to asylum seekers allows them to move about easily, without taking into account that the legal advisors or representatives of NGOs can themselves assure a presence in the reception centre.

With regard to practice, only Slovenia seems to pose problems because of the conditions of access of lawyers to the reception centres. In **Estonia**, practical considerations complicate the exercise of this right because the centre is located in an area which is difficult to access or in one of the rare Member States where the UNHCR does not have an office (which can be easily understood given the very low number of asylum seekers in the Baltic States).

In **Bulgaria**, there is no transposition of Art.14, §2, (b) of the Directive. In practice asylum seekers in open centres who have freedom of movement can visit the offices of the respective actors. In closed centres asylum seekers can call by phone (if they have the financial means to call).

In **Spain** further specification at legal or by-legal level would be advisable. In the internal practice asylum seekers have free access to their relatives, legal advisers, UNHCR and NGOs.

NO TRANSPOSITION	Bulgaria, United Kingdom[i]
PROBLEM	Slovenia, Estonia, Spain

Q. 26 B What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14 §7 which is a mandatory provision)?

Access by legal advisors, UNHCR or NGOs to accommodation structures is largely respected by Member States. Sweden, France and Spain do not explicitly affirm this prerogative in their internal law but there is no need for such a rule as access to the centres is free. UNHCR highlights the existence of difficulties for some NGOs to obtain the authorisation required to enter reception centres in certain Länder in Germany. Greece's legislation does not foresee access for NGOs.

UNHCR benefits from a particular statute in a few Member States which guarantees unlimited and full access to accommodation locations (Austria, the Czech Republic, Lithuania, Luxembourg, Poland, Slovenia, Greece as well as Austria regarding the practice). The other legal advisors or NGO representatives are obliged to dispose of prior authorisation accorded by different systems: the designation of NGOs which then dispose of free access (the Czech Republic, Luxembourg, the Netherlands, Portugal, Slovakia), authorisation required for every visit, even if it is sometimes a mere duty to inform the reception centre in advance (Poland). While this last practice seems restrictive compared to the very liberal systems, it still does not constitute a violation of the Directive insofar as this requirement seems more linked to an internal concern for life inside the centres than a will to restrict access to them. The nomination of NGOs authorised to intervene in the accommodation locations of asylum seekers takes place in very different manners (nomination by the state alone in Portugal or by the authorities managing the reception centre in Germany). It is noted that the Netherlands associates UNHCR to the nomination mechanism for NGOs. **In Finland**, there is no clear legal provision providing for the access of UNHCR or legal advisers and NGOs, although the practice is that the possibility to receive visitors is within the ambit of asylum seekers´ right to private life, and their right according to the Aliens Act to have a legal adviser in the asylum procedure.

In **Lithuania**, legal provisions on access of asylum seekers in the Foreigners Registration Centre to lawyers are lacking but in practice such access is ensured. In **Italy** NGO's refer that despite legal provisions there are no specific rules and the situation may be different from centre to centre. In **Latvia** despite the fact that the provision is not transposed, the representatives of UNHCR and NGOs may visit the reception centre, also the asylum seekers may visit their offices. There is no legislation that would provide for the restrictions to the access. The same applies to the legal representatives – they shall just inform the administration that they wish visit an asylum seeker and on the preferable date/time prior to their visit. There is no legislation that would provide for the limitation of the access. In **Spain** too in the internal practice legal advisers, UNHCR and NGOs have free access to reception centres.

In **Bulgaria** there is no transposition of Art.14, §7 of the Directive. No access is allowed to the accommodation and housing facilities themselves. Asylum seekers in open centre visit

[i] This is complied with in practice: Asylum seekers are free to contact UNHCR, NGOs and seek legal advice either on their own accord or by making use of the referral service

lawyers and NGOs by going to their offices or meeting with them outside the accommodation centre itself. There is an office of the Bulgarian Helsinki Committee at the registration centre for asylum seekers at the State Agency for Refugees. Asylum seekers in closed centres can call a lawyer or an NGO by telephone. Visits by **lawyers** are nevertheless authorised and carried out in special counsels' rooms at the specialised centre for temporary accommodation of foreigners. As far as **NGO representatives** are concerned, the latter are not allowed visiting asylum seekers in closed centres unless there is a signed agreement to that end between the NGO and the head of the National Police Directorate at the Bulgarian Ministry of the Interior, which in practice is very difficult to achieve. For the latter rule the head of the specialised centre for temporary accommodation of foreigners invokes the Rules for the Internal Order at the specialised centre, but they are not published and no access to them is allowed.

In **Greece** the new Decree does not provide access to NGO representative. In **Slovenia** there are no provision in the new Act on International Protection regarding access of legal advisers to accommodation centres and other housing facilities. Also, no obligation to allow free access to NGOs to accommodation centres.
Finally in the **United Kingdom** the referral system for communication with NGOs, legal advisers and UNHCR is set up in practice. As part of the New Asylum Model process, those who request support and accommodation are usually allocated a solicitor on a rota basis. In many ways this is a very positive step forward as individuals found it difficult on occasion to find a solicitor previously. In some cases however the applicant is not given an appointment before the substantive asylum interview. Those applying only for cash-support must still find their own solicitor.

One could suggest amending the Directive to include a specific provision entitling UNHCR to unqualified access asylum seekers without possibilities for Member States to limit it on the basis of security grounds.

NO TRANSPOSITION	**Bulgaria, Spain, United Kingdom, Latvia**
PROBLEM	Germany, Greece, Slovenia, **Estonia: see Q 26 A, Finland**, **Italy**, **Lithuania**,

Q. 27 A **Is a <u>medical screening</u> organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (See article 9 which is an optional provision).**

Although the Directive contains only an optional clause, a vast majority of Member States organise obligatory medical examinations; Italy, Estonia, the United Kingdom and Sweden are exceptions offering this possibility to asylum seekers who would like to avail of it.

The breadth of the practical exams differs from one Member State to another. One would be hardly surprised that tuberculosis checks are normally foreseen. An HIV test is explicitly foreseen in Cyprus, Finland and Spain, but sometimes only for specific categories of asylum seekers such as pregnant women like in the **Czech Republic**. In this Member State the new law amending the Asylum Act stipulates medical screening for reason of determining the age of unaccompanied minors in case of doubts about their age. If a minor refuses to undergo this

treatment he or she will no longer be considered a minor. The law provides certain safeguards against misuse of this provision and stipulates that the Ministry of the Interior must inform the applicant about the 'age screening' within 15 days after submitting a declaration in a language understood by the applicant. Furthermore, applicants must be informed about the consequences of the 'age screening' and also about the consequences of refusing to undergo the 'age screening'.

If this has been deemed appropriate for public health reasons but also in the interest of the asylum seekers, it should be possible to harmonise the internal legislation of Member States by making a medical examination of all asylum seekers compulsory without too many difficulties regarding the existing general practice in the European Union.

Q. 27 B. Do legal provisions on reception conditions ensure that asylum seekers receive <u>at least emergency care and essential treatment of illness</u> as requested by article 15, §1 which is a mandatory provision? Do they have a further access to health care?

The obligation to provide at least emergency treatment as well as treatment which is essential for illnesses seems to be unanimously respected by the Member States, even if the exact meaning of the second notion is difficult to determine. All foresee in their national legislation, or even their constitution (Finland), the obligation to furnish emergency and basic health treatment to asylum seekers, sometimes by precisely stipulating the medical services which they have access to (Hungary). This is not contradictory to the generally negative opinions expressed by NGOs about access of asylum seekers to health care as their own requirements are in general higher than the relatively low standards included in the Directive which are of course, from a legal point of view, our starting point.

Several Member States further widened the categories of care which asylum seekers are entitled to (Austria, Germany, Hungary, the Czech Republic, the Netherlands, Poland), allowing them sometimes to benefit from a coverage close to that accorded to their own nationals (Czech Republic, Poland, The **Netherlands**). In this latter state it must be underlined that since 2005 some basic medical costs have been taken out the basic insurance for nationals and transferred to relatively cheap extra insurances. However for asylum seekers it is because of the law not possible to enter into these insurances. In the **United Kingdom**, while regulations ensure access to emergency, primary and secondary healthcare to asylum seekers on the same basis as the indigenous population, in many instances there are problems with registering with GPs and getting treatment.

Some rapporteurs have identified situations in which one can question whether the obligations of the Directive are respected. The German rapporteur has highlighted the difficult situation of asylum seekers who suffer from chronic illnesses. In Lithuania there is a problem in practice: if there is no immediate and serious danger to the person, only very basic health services are provided in the centres. The **Maltese** report 2007 stresses that that the main issue in the area of healthcare provision is not about entitlement but about access to medical care although there has been significant improvement in this area, particularly in detention, as has also been recognised by NGOs (see Q 27 B and Q 27 C of the national report).

PROBLEM	Lithuania, United Kingdom, **Malta**, **Czech Republic**[i],

Q. 27 C **What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (do doctors come to the centres or do asylum seekers go to doctors outside)?**

Two major tendencies can be identified regarding access of asylum seekers to care in practice. In a first group of Member States, surgeries are organised in the reception centres themselves, either in that doctors are available there (some German Länder, Austria, Lithuania, Belgium, one centre in Greece), or doctors visit them regularly (Finland, the Czech Republic, Hungary, the Netherlands, Poland, Slovakia). In other Member States, asylum seekers consult the doctor outside of the reception centres (in other German or Austrian Länder, Cyprus, Latvia, Luxembourg, Portugal, the United Kingdom, France, Greece and Slovenia) sometimes necessitating a journey in order to be seen to (Cyprus, Slovenia). In Open Centres in **Malta** asylum seekers had to go outside the reception centre to obtain treatment. During 2007 Medecins du Monde offered an on-site medical service in the lager Open Centres with very positive results both for the state medical service and for the residents at the centres.

In financial terms, the handling is automatic where the medical consultations take place in reception centres. With regard to the Member States which provide for consultations outside of reception centres (Germany regarding some Länder, Austria for asylum seekers in reception centres, Cyprus, Hungary for specialist doctors, Latvia, Luxembourg, Portugal, United Kingdom, France, Slovenia), asylum seekers are integrated into the sickness insurance scheme in Austria, **France**, Luxembourg, **Portugal** or fall within the scope of the budget of the Ministry of the Interior (Latvia and Slovenia only for the initial medical screening).

Attention has been drawn to practical difficulties, in particular when the asylum seeker must request a reimbursement certificate for medical expenses from the administration (Germany) as well as in Cyprus where certain healthcare establishments require the production of a medical card although legislation provides only proof of status as an asylum seeker. In the **Czech Republic** in practice, the health care system works well only because of 'residuary intervention' by NGOs. In the **Netherlands**, in 2005, the Dutch Public Health Inspection visited two application centres. It concluded that the health care for asylum seekers in application centres was insufficient.

Q. 28 A **What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (See article 11 which is a mandatory provision)**

The national reports reveal two trends.

Half of the Member States have followed the path of the Directive which in principle does not allow asylum seekers access to the labour market until one year has passed (**Bulgaria**, **Romania**, the Czech Republic, Estonia, Germany, France, Latvia, Malta, **Poland**[ii], Slovakia,

[i] See details in the national report, Q 27 C
[ii] The draft law of 14 March 2007 –see Q 1 in the national rapport- cuts down this period to 6 months.

Slovenia, the United Kingdom, **Hungary**). In this latter State asylum seekers are allowed to work within the reception centre from the submission of the application.

Ten Member States have on the other hand opted for more favourable provisions than the Directive by foreseeing access to the labour market at the end of varying periods:

- Immediate access to the labour market in Greece;
- 20 days maximum from the date of introduction of the asylum request in Portugal;
- 3 months in Austria and Finland;
- 4 months in Sweden[i];
- 6 months in Italy, Spain and the Netherlands (the latter however limiting this access to 12 weeks per year during the procedure) as well as in **Cyprus** where after 6 months access to the labour market is permitted subject to applicable restrictions as to the employment sectors that may be entered.
- 9 months in Luxembourg.

In **Belgium** the federal Minister in charge of reception conditions is not competent for employment, which pertains to the competence of another federal minister. The current legal framework poses a problem in that after the introduction of the new asylum procedure, even if the asylum application has been pending for over a year, the asylum seeker is not authorised to work. In **Estonia** the situation is no less problematic, even if access to the labour market is authorised after one year. In fact, there is no regulation in place as required by the transposition law. Therefore the access to work is not guaranteed as there is no procedure for applying for a work permit for an asylum seeker.

Lithuania, on the other hand, violates the provisions of the Directive by not allowing asylum seekers to work, even when the procedure lasts for over a year.

As regards Article 11, §3 which seeks to preserve access of asylum seekers to the labour market during procedures with suspensive effect, one rapporteur explicitly underlines that internal law does not regulate this situation (Spain).

In **Bulgaria** it is not yet clear how the new transposition law of 29 June 2007 will be applied. It stipulates that "the alien seeking asylum has a right to access the labour market if the procedure has not been completed up to one year since the submission of the asylum application for reasons that cannot be attributed to the applicant". It seems that the "access to the labour market" referred to in this norm does not involve waiving of the requirement for a work permit under the Ordinance on the Conditions and the Procedure for the Issuance, Rejection and Revocation of Work Permits for Foreigners in the Republic of Bulgaria (16 April 2002). According to the latter, a work permit for asylum seekers is not required only within the labour activities organised in the centres of the State Agency for Refugees. This questions the applicability of the right of asylum seekers to access the labour market since a work permit is only issued to an alien only under the condition that the employer proves that

[i] If a final decision is judged not to be reached within four months from the point of time the application for asylum or international protection was made (referring to the Aliens Act ch. 4 §§1 or 2), the asylum seeker is explicitly excepted from the demand for a work permit. Hence, the asylum seeker should have access to the labour market at least after four months after the application for asylum was handed in. Further, the regulation does not limit the access to the labour market even earlier than four months (for example, if the Migration Board after three months judges that a final decision will not be taken before four months, the regulation does not prevent access to labour market after three months).

no Bulgarian citizen is available to do the job in question.

NO TRANSPOSITION AT ALL	Lithuania
PROBLEM	**Belgium**, **Bulgaria**, **Estonia**

Q. 28 B After that period, are asylum seekers obliged to obtain a work permit? If so, is there a limit for the administration to deliver the permits and how quickly are they delivered? What is their length of validity?

Almost two thirds of Member States require asylum seekers to possess a permit or an authorisation to work (Austria, Belgium, **Czech Republic**, Estonia, Germany, **Greece**, Hungary, Latvia, Malta, the Netherlands, Poland, Slovenia, Sweden, Spain, Luxembourg, France, Spain, United Kingdom where an authorisation from the Home office is required). In those Member States, access to the labour market will be limited to a smaller or greater extent depending on the constraints flowing from the work permit system of the Member State concerned. As this question is governed in extremely diverse ways by the Member States and has not been subject to any harmonisation at European Union level, the result is that there are still very diverse approaches throughout the EU to this question. For example in Germany, the work permit can be subject to a number of limitations as to working hours and/or the type of activity carried out. In the **United Kingdom** the Home Office does not automatically inform asylum seekers that they have the right to apply for permission to work after one year without an initial decision, or when the year has passed. If an asylum seeker applies to the Home Office after a year, waiting times vary greatly with some receiving no reply.

A minority of Member States, who do not impose such an obligation, is comprised of Portugal, Finland, Italy and Cyprus although this Member State has a very restrictive practice (infra). As asylum seekers can, in any event, only integrate temporarily into the labour market until a decision is taken on their asylum request, the obligation for them to possess work permits should be reconsidered in light of the experience of those Member States which do not require it.

Q. 28 C After that period what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised ?)

In addition to necessitating a work permit, some Member States have set more or less restrictive conditions governing asylum seekers' access to the labour market as article 11 paragraph 2 of the Directive permits:

- work by asylum seekers is limited to 12 weeks throughout the entire year in the Netherlands, which in fact considerably limits asylum seekers' access to the labour market when the procedure lasts for several years ;
- the position filled must be temporary in France because of the status of the asylum seeker;
- while asylum seekers are not legally subject to any restriction in Cyprus, they can only work in the agricultural sector in practice.
- in Austria, work is limited to seasonal work therefore the maximum is six months within a year.

The United Kingdom generally prohibit asylum seekers from exercising a commercial or independent activity, which begs the question whether article 11 only targets employed work. The authors of this study follow that interpretation.

Although these limitations are not contrary to the Directive insofar as they do not detract from the substance of the right to work, it obviously poses questions concerning the coherence of the common asylum policy. If the harmonisation of legislation is considered to be a means of limiting the secondary movement of asylum seekers between Member States, it is clear that disparities remain regarding access to work which jeopardise the realisation of this goal. Indeed, it is obvious that some restrictions promote underground employment, which constitutes a significant problem which should be reflected upon in the European Union. The debate about access of asylum seekers to the labour market should therefore be reopened. One option could be to amend the Directive in order to no longer give Member States the possibility to impose supplementary conditions other than the work permit.

Q. 28 D What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third country nationals on the other?

Access to the labour market can be subjected, on the basis of article 11, §4 of the Directive, to an additional condition on the part of Member States who can subject asylum seekers to a priority test: all things being equal, the asylum seekers can only be employed when persons from priority categories do not apply. The order of priority differs from Member State to Member State:

- either asylum seekers come after EU citizens or citizens of the EEA as well as legally resident third country nationals (Austria, Cyprus, **Germany,** Luxembourg, Greece);
- asylum seekers are placed on an equal footing with third country nationals who are legally resident but come after citizens of the EU and the EEA (Estonia, Hungary, Poland);
- asylum seekers come, somewhat unusually, before legally resident third country nationals in the Czech Republic.

Other Member States, most notably the Netherlands, Finland, France, Italy, Latvia, Portugal, Slovakia, Slovenia, Sweden, Spain do not resort to this practice.

Q. 28 E Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market and in this case at which conditions? (See article 12 which is optional regarding §1 and mandatory regarding §2)

Access to professional training is dealt with in different ways depending on whether or not it is linked to the exercise of an employment.

The first paragraph of Article 12 undoubtedly leaves Member States the freedom to grant asylum seekers access to professional training that is not linked to employment. Almost half of the Member States (Belgium, Finland, Italy, Lithuania, the Netherlands, Slovakia, Spain as well as **Malta Poland** in practice) have opened this type of training to asylum seekers. However, this access is restricted to certain types of vocational training in Luxembourg. The national provisions concerned are sometimes put in place in Member States with the support

of Community programmes such as EQUAL (**Poland**) or the ERF. In Austria there is no explicit restriction for asylum seekers, but in practice they do not have access.

While, as a general rule, access to vocational training is optional for the Member States, this option is however limited regarding training in relation to an employment contract, with such training only permitted "to the extent" to which there is access to the labour market. The words "to the extent" can firstly suggest that such training must be commensurate with the terms upon which access to the labour market is to be granted. However, following a second interpretation, the provision is simply designed to ensure that the rules on access to employment are not undermined. It is quite difficult to decide on one of these interpretations. While the second one can obviously not lead to any problem of transposition, there could be following the first interpretation problems in Slovenia because that Member State does not give the asylum seeker access to vocational training linked to employment even when he has access to the labour market.

Q. 28 F Are the rules regarding access to the labour market adopted to transpose the Directive <u>more or less</u> generous than the ones applicable previously?

The Directive had no impact in 7 Member States (**Bulgaria**, **Romania**, the Czech Republic, Finland, the Netherlands, Germany, Sweden) as the national provisions in place already corresponded to its requirements. It is not at all surprising to find Germany in this list because this Member State used all of its power to influence the content of Article 11 in such a way as to not be obliged to change its domestic law on this point.

The Directive has had a positive impact on asylum seekers on the labour market in 11 Member States:

- The transposition of the Directive has forced some Member States to grant quicker access to the labour market (Hungary, Portugal) ;
- asylum seekers were previously refused access to the labour market throughout the entire procedure (Luxembourg, Italy, France, Slovakia, Poland, Estonia, Latvia, **Malta**) ;
- In the United Kingdom, transposition has created an entitlement to access the labour market whereas before it was entirely left to the discretion of the Home Office.

The Directive had a negative impact in two Member States contributing either to the restriction of access of asylum seekers to the labour market (Austria) or by introducing ambiguities into domestic legislation making administrative practices uncertain (Cyprus).

The impact of the Directive had been underestimated by observers and commentators who had incorrectly gauged the standard of harmonisation required by Article 11 as compared to domestic legislation due to an inadequate knowledge of the exact state of affairs in national legislation. The Directive has had an effect on this important point in more than a third of Member States. Moreover, this impact has been largely positive for asylum seekers for whom access to the market has been facilitated in the Member States concerned. Finally, the theory regarding negative side effects according to which Member States which have more favourable provisions will be encouraged, in the absence of a standstill clause, to align themselves with the lower standards set out in the Directive, did not had these consequences: the Member States concerned have either maintained (Finland, the Netherlands) or even reinforced (Luxembourg, Portugal) their more favourable internal provisions.

Q. 29 Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (See article 13 § 3 and 4 which are optional provisions)

Poland and Latvia aside, all Member States have introduced mechanisms obliging asylum seekers who dispose of sufficient means to contribute to their reception in various means into their systems.

A majority of Member States require that asylum seekers with sufficient resources contribute financially towards their reception conditions (the Czech Republic, Estonia, Finland, Germany, France, Italy, Hungary, Malta, the Netherlands, Portugal, Slovakia, Slovenia, Sweden). Within this category of Member States, some have even established means-testing scales for contributions towards the cost of accommodation or food (the Czech Republic, Finland, Germany). Contributions to costs are notably expected from asylum seekers who carry out a salaried activity (Malta, Spain, Sweden). Another approach is to limit or withdraw benefits (Austria, Belgium, Cyprus, Czech Republic, Germany, France, Luxembourg, Malta, Spain, Sweden, United Kingdom).

Only a few Member States have legislated a requirement for the reimbursement of sums received unduly (Cyprus, Lithuania, Luxembourg, Malta, Greece, the Netherlands, Portugal, United Kingdom).

As the principle of asylum seekers contributing to reception conditions is shared by the majority of Member States, it appears conceivable to turn the optional clauses of §§3 and 4 of article 13 into legally-binding provisions.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q. 30 A **Which of the different categories of persons with special needs considered in the Directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

Belgium, Cyprus, Spain, Italy, Greece, Luxembourg, Portugal, Slovenia and the United Kingdom explicitly cater for the different categories of persons listed in article 17 §1 of the Directive which, as a result, has influenced the national law of these Member States. On the other hand, certain Member States do not cater for the situation of a group or of several groups of vulnerable persons in their legislation (Austria where the situation may vary from one Land to another and **France** where from the categories mentioned only unaccompanied minors are given a special status.**).**

The Czech Republic lists certain categories of vulnerable persons, referring moreover to "other persons according to individual cases", similarly Slovenia adds "persons requiring special needs". In **Poland** the special chapters of the Act on Protection are dedicated to unaccompanied minors and persons with special needs. The Act does not copy wording of Article 17 § 1 of the Directive but it refers to aliens whose psychophysical state allows presuming that they have been victims of violence or of aliens with disabilities. Pregnant women and elderly people are not mentioned but it does not mean that their needs are not taken into consideration in practice. Other Member States do not cater for any of the categories listed in the Directive and address asylum seekers with special needs as a whole. **Germany** points out that additional benefits may be granted if these are necessary to ensure the health or existence of the asylum seeker. On the other hand the German rapporteur also underlines that the transposition law is ambiguous and provokes a restrictive interpretation which does not meet the directive's requirements. In **Lithuania**, needs of persons with special needs are not always properly met in practice, in particular in the FRC due to the nature of this institution as non-social establishment. In Sweden, the categories of persons with special needs are not expressly listed in the legislation on reception conditions, but are covered in a more general manner in other legal provisions such as the "Social Services Act" and guidelines from the State authority in charge.

Finally, some Member States also consider other categories of persons other than those covered by the Directive: Belgium hosts victims of human trafficking in specialised centres; Finland pays particular attention to families.

Finally, the technique used by Member States for addressing asylum seekers hardly matters when the categories of persons are listed by the Directive only as examples. The only thing which matters from a legal point of view is that persons with special needs see that these needs are being effectively taken into account "in the national legislation", as is required by article 17, §1 of the Directive. This is surely not the case of Latvia which does not cater for any category of vulnerable asylum seekers; the same applies to Estonia which only refers to minors, probably because they are the object of specific provisions in the Directive. The problem with these two Member States may, however, be purely legal on account of the extremely small number of asylum seekers that they receive.

According to the **Bulgarian** rapporteur, the transposition law which lists the different categories as set out in the Directive is of a purely declaratory nature because no further rules elaborate its implementation.

In **Malta** NGOs report that it has often proved difficult in practice for persons subjected to torture, rape, and psychological, physical or sexual violence to obtain protection as vulnerable persons.

NO TRANSPOSITION	Estonia, Latvia[i]
PROBLEM	**Germany**, **Lithuania**, **France**, **Malta**, **Poland**

Q. 30 B How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

The reader is asked to note that the specific measures granted to unaccompanied male and female minors are dealt with in the answer to question 31. The specific measures taken in favour of persons with special needs concern mainly two spheres.

First of all housing about which one can provide the following information:

- In Belgium, the place of registration is chosen according to the needs of the beneficiary depending on availability. Thereafter, the practice is to grant a transfer according to the personal situation of the asylum seeker;
- In Spain, vulnerable asylum seekers have priority for access to reception centres for refugees;
- In Finland, special attention is given to granting adequate housing to pregnant women and disabled persons;
- In **Hungary**, vulnerable persons are accommodated in individual accommodation (rather than communal);
- In Latvia, the only reception centre is equipped for persons using a wheelchair;
- In Malta, families with children and pregnant women who cannot be detained are accommodated in special houses;
- In the Netherlands, there are housing facilities with equipment adapted for disabled persons and single rooms for pregnant women;

[i] Neither current legislation of Latvia in force nor the Draft Law do not specify any provisions in relation to the asylum seekers with the special needs and the procedure of their identification.
So far there was no any experience in work with the persons who have been tortured, raped or victims of serious physical or psychological violence. It is possible that in this case the assistance of the psychologist would be ensured, keeping at the same time all the guarantees provided in the legislation for asylum seekers. As the administration of the reception centre indicated in its reply, the reception centre is equipped for the disabled persons – there is a ramp and special equipment (wheelchair and other remedies). It is also planned to establish a separate facilities for minors and women. There is an experience in work with the families that had infants. Taking into account the number of the asylum seekers each person with the special needs it are enough resources to ensure the satisfaction of these groups of the asylum seekers. The special identification of the persons is not performed, but the staff of the centre relies on their experience and on the individual wishes expressed by the asylum seekers.

- In the Czech Republic, vulnerable asylum seekers are housed in the protected zones of centres that are more secured than others. Families, women and children have separate accommodation.
- In Slovenia, applicants with special needs are accommodated in a specific wing of the House of Asylum and specific activities are taken over by NGOs;
- In Sweden, there are apartments which are especially equipped for disabled persons.

Furthermore, the question of health care will be tackled hereunder as an answer to question 30D because the Directive accords this question a specific importance through specific mandatory provisions (see below).

It has been pointed out that in **Germany**, practice is sometimes directed by courts and tribunals. Thus, for example, the administrative tribunal of Munich decided that a child suffering from several illnesses had the right to be admitted into an integrated kindergarten in order to meet his specific needs; the administrative tribunal of Gera meanwhile considered that the implantation of a prosthesis is not necessary, even if the asylum seeker's hip is irrevocably damaged, as long as there is the possibility of a painkiller treatment which enables him to live without pain. In any case the national rapporteur stresses that the transposition law is ambiguous and may, if interpreted restrictively, lead to a violation of the Directive's requirements

It has been underlined that no measure was taken in Cyprus for the granting of a specific aid because of the small number of cases that presented themselves. In spite of its possibly limited character, this situation constitutes nonetheless, on the part of this Member State, a failure to put the directive into action. In **The Netherlands** the regulation states in general terms, without distinction between the different categories of persons, that more vulnerable persons with special needs have the right to special support or counselling. Nevertheless there is no specific provision for the covering of extra costs vulnerable persons, like handicapped persons, make. In **Slovakia** in practice, specific approach to persons with special needs is difficult to see in everyday asylum seeker life.

In **Malta**, in practice, **there is no system in place to address the special needs of vulnerable asylum seekers who <u>are never detained</u>**. Regarding those who are detained -at some point- the special needs of vulnerable persons are taken into account in two areas.
The first is that of release from detention; government policy on detention states that vulnerable people shall not be detained. However in practice, as a rule, all are detained upon apprehension by the immigration authorities for illegal entry or stay. Vulnerable persons are then released from detention after their vulnerability is determined through an individual evaluation of their personal circumstances, medical clearance is obtained and accommodation is found in the community. **<u>While vulnerable asylum seekers are in detention, no special provision is made for them.</u>** The second area where special provision is made for vulnerable asylum seekers is that of accommodation in the community: there are special purpose-made facilities in place to accommodate certain categories of vulnerable asylum seekers – i.e. unaccompanied minors, pregnant women and families with minor children. **There are no special facilities available to accommodate other categories of vulnerable persons**, such as persons suffering from disability or physical or mental health problems. They are therefore either accommodated within facilities for asylum seekers run by NGOs or within mainstream facilities, but placement in these centres are not always easy as resources are very limited.

NO TRANSPOSITION	**Bulgaria, Estonia, The Netherlands, Latvia[i], United Kingdom[ii]**
PROBLEM	Austria, Cyprus, , Italy, Lithuania, **Germany, Malta, France[iii], Greece, Slovakia, Sweden**

Q. 30 C How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?

Article 17 §2 of the Directive is of great importance, as the assessment of persons with special needs determines the granting of the specific reception conditions to which they have a right under articles 18 and 20 of the Directive. It is to be noted that this question may also have a bearing on the proofs which, particularly for persons who are victims of torture or of other forms of violence, may be provided within the context of their application for asylum.

Certain Member States have provided for a specific procedure at the time of the medical screening of asylum seekers (Cyprus, Poland but it seems that this system does not function well in practice), at the time of the lodging of the asylum claim (Spain, Portugal), at the time of the first hearing in the context of the asylum procedure (**Czech Republic** where nevertheless the national rapporteur considers that the law is too ambiguous and does not explicitly stipulate that the special needs of the concerned persons are supposed to be legally identified), at the time of arrival on the territory or at the border (Poland), or at the time of an interview with a social assistant in the centre (Finland). **In Belgium**, an assessment of the individual situation must take place within 30 days from the designation of the place of registration. Moreover, it continues throughout the stay within a facility. In **Hungary**, the new Government Decree makes it a duty of the authority to find out if the person is in a special situation (i.e. is a vulnerable person) or not. The regulation envisages the involvement of expert doctors or psychologists in case of doubt. The expert involvement requires the consent of the affected person. The obligation of the authority is phrased in general terms (”in the course of the application of the provisions of the law and of the decree”), so no specific time limit is set. Estonia and France have provided for specific procedures only for unaccompanied minors

11 Member States, with some among them receiving asylum seekers in great numbers and among whom there must be persons with special needs, have unfortunately not provided for any specific procedure to identify asylum seekers with special needs (Germany, Austria[iv], Luxembourg, Italy, Latvia[v], Slovakia, Slovenia, **Bulgaria**, **Lithuania**, **Estonia**, **The Netherlands**[vi]**)**. The identification of the special needs of the persons concerned therefore

[i] Please refer to Q 30 A
[ii] No transposition concerning persons with special needs other than as regards article 17 of the directive
[iii] Please refer to Q 30 A
[iv] The national rapporteur mentions “In Order” and underlines that when an asylum seeker claims a specific form of support necessary because of his or her special needs, the competent authority has to take an individual decision, because it is bound either by the General Administrative Procedures Act or by the equality principle as laid down in the Austrian Constitution which require an objective and impartial decision. For us this in not a specific procedure in the sense of the Directive.
[v] See question Q 30 A
[vi] However, in practice, special needs are identified by the Community Health Services for Asylum Seekers (MOA).

depends -when they are detected- on their being taken into account by the authorities who examine the application for asylum, the social workers, the NGOs and the police, unless the asylum seeker concerned or a family member accompanying him draws attention to the case. Such a system is questionable, as it allows for some uncertainty regarding the identification of the persons with special needs, if clear regulations and precise instructions are not given in this regard to the persons who come into contact with the asylum seekers, which does not seem to be the case in the concerned Member States.

The **United Kingdom** has added in implementing legislation a provision whereby there is no duty to carry out or arrange for the carrying out of an individual evaluation of a vulnerable person's situation to determine whether he has special needs

In **Malta**, the identification of the concerned persons is absolutely crucial as the recognition of their special needs will release them from detention.
Identification of vulnerable persons is usually carried out by the immigration authorities on arrival, the staff at the detention centres, and NGO personnel or staff of other agencies visiting the centres. All persons identified are referred to OIWAS, the government agency responsible for conducting an assessment of vulnerability. There are no fixed timelines within which assessment and release should take place – in fact **this procedure may take weeks or even months**. In practice, the length of time a vulnerable person spends in detention will depend on a number of things, including the point at which the individual is identified, availability of accommodation in the community and the nature of the condition giving rise to vulnerability. With certain categories of people whose vulnerability is immediately obvious, such as pregnant women or minors, identification and assessment are relatively straightforward. Moreover, once they are identified and their vulnerability is ascertained they are released from detention more or less automatically. In cases where vulnerability is less obvious and may be disputed, such as persons suffering from medical conditions, certain kinds of disability, mental health problems, or trauma and torture, identification and assessment are more difficult in practice and release may take longer to obtain. NGOs reported that the criteria used to assess such cases are not always clear. Moreover, even once vulnerability is ascertained by OIWAS, the government agency responsible for such assessment, release is not automatic but has to be ordered by the Principal Immigration Officer on a case-by-case basis. According to NGOs working in the field, once an immigrant is found to be vulnerable the PIO usually orders release, however, having to go through an additional step in the process means that release may take longer to obtain. Nevertheless the national rapporteur points out that some progress has been accomplished which seem to be real despite the persistent controversies about the length of the detention for the purpose of evaluation of specific needs.

Unfortunately, article 17 of the Directive is questionable in that it does not explicitly require, from a legal point of view, a specific procedure to be put in place in order to identify those asylum seekers with special needs. In reality, the system clearly rests on an identification of these persons, it is a matter on which progress needs to be made in certain Member States. Progress towards a system of identification could be achieved either by obliging Member States to draw up a specific procedure for the identification of special needs (the medical screening, which most of the Member States impose on asylum seekers as shown by the answer to question 27 A, seems to be a suitable opportunity to carry out this identification) or at least, by providing clear and precise regulations, obliging the authorities and persons

entering into contact with the asylum seekers to refer those who seem to have special needs to the competent department which can allow them to benefit from adequate reception conditions. A first step forward could be made through the exchange of best practices among Member States (possible "providers" and "benefiting" Members States could be listed on the basis of the indications given above), but legal certainty on such a crucial point for persons with special needs requires an amendment of the Directive during the second stage of the building of a Common European Asylum system.

Q. 30 D Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?

First of all, two Member States (Cyprus and France except for minors who benefit from a special medical support) do not take into account special needs. In **Malta**, neither article 15(2) nor article 20 are specifically transposed into national legislation, however, as was previously stated, the Refugees Act entitles all asylum seekers to free medical treatment, which, as a rule, they can obtain. The legislation of Slovakia not precise enough

In many Member States, the necessary treatment is given in or by rehabilitation centres financed mainly (**Finland**) or partially (United Kingdom, Germany, Italy, Greece, Austria) by NGOs or non-State funds, sometimes on the basis of contract signed with the public authorities (for instance in Belgium).

Furthermore, the analysis of the practices of Member States by the Odysseus academic Network, which in this regard has benefited from a complementary report drafted by the International Rehabilitation Council for Torture Victims, reveals many deficiencies – the list hereunder is not at all exhaustive:

- In **Germany**, sufficient treatment is not always given. Moreover the national rapporteur himself stresses that the transposition law is ambiguous and leads to a restrictive interpretation which does not meet the Directive's requirements and that no specific provision for victims of torture and violence exists.
- In **Austria**, long waiting lists and the fact that translation and transport costs are not covered are a problem regarding real access to the necessary support. Sometimes special needs of persons are not adequately identified. See also in the national report recent a publication on the identification of traumatised persons during the asylum procedure
- In **Italy**, specific aid is only provided for if the director of the reception centre has a formal agreement with the local authorities. This type of agreement however is not mandatory. Moreover NGOs refer problems in practical implementation
- In Poland, NGOs note that the psychological help given is insufficient.
- In the United Kingdom, regulations integrate the specific medical needs of the asylum seekers, but these needs are neither well evaluated nor addressed in practice.
- In Slovenia, specific medical help is only given by an NGO.

In **Finland** the national rapporteur underlines practical deficiencies too: in the field of mental health care, there can be regional differences and difficulties in accessing professional care, particularly for trauma patients: the rehabilitation may not be available. Since the asylum procedure may last up to 2-3 years, this can become a problem.

In United Kingdom while Regulations exists to meet health care needs, including special needs, the practice is not consistent in ensuring that these needs are appropriately assessed and acted upon. There are problems with the quality of clinical assessments by NHS staff and with acting upon such assessments.

Only a few rare good practices could be identified. **In Belgium**, in practice victims benefit from psychological help, provided by counselling or mental health centres outside the reception centres. Upon arrival of the asylum seeker in the reception centre, he or she will be assigned a social assistant. In concertation with the social assistant, the doctor of the reception centre may establish that the asylum seeker requires more specialised psychological help. The doctor then calls upon mental health centres such as "Racines aériennes" or "Exil", which provide specific medical psychological and social support designed to prevent and heal the consequences of traumas related to war, organised violence and torture.

This question which presents a problem in a lot of Member States should be the object of the particular attention of the European Commission in order to avoid that the provisions of the Directive which, it should be stressed, have been drawn up in such a way as to make them mandatory, do not remain a dead letter. Regarding cases of torture, the manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment know as the "Istanbul Protocol" as well as the Health professional's guide to medical and psychological evaluations of torture (document entitled "Examining Asylum seekers" elaborated by Physicians for Human Rights) could be used as a starting point. Besides monitoring the implementation of the Directive by Member States, in order to register progress in the matter, national initiatives could be encouraged through financing by the European Refugee Fund.

In **Bulgaria** no specific provision exists and the national rapporteur cites **extremely worrying cases** where asylum seekers who have suffered torture not only received no special support whatsoever but were even confined in isolation for having entered Bulgaria illegally.

In the **Czech Republic** for Article 20, the law is too ambiguous and does not explicitly stipulate that the victims of torture, rape or other serious acts of violence must receive the necessary treatment of damages caused by the aforementioned acts.

In **Romania** there is no specific provision for the victims of torture. Persons with special need are only considered in a general manner.

NO TRANSPOSITION	- Latvia[i], **Estonia**, **Bulgaria** - Malta **(art. 20 only)** **- Czech Republic**[ii] and Lithuania **(art. 15 § 2 only)**
PROBLEM	- Italy, United Kingdom, Slovakia,

[i] See Q 30 A
[ii] Although the necessary medical and other assistance is provided to persons with special needs and victims of torture throughout their entire procedure, strictly legally speaking the ASA does not explicitly stipulate this obligation.

	Germany, **Finland, France** - Austria, Cyprus and **Malta (art. 15 § 2 only)** **- Czech Republic, Romania, The Netherlands and Lithuania (art 20 only)**

Q.31. **About minors:**

Q. 31 A **Till which age are asylum seekers considered to be minor?**

All Member States consider an asylum seeker under the age of 18 as a minor, in conformity with article 2, h) of the Directive.

Q. 31 B **How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?**

Many Member States explicitly (Belgium, Cyprus, Spain, Finland, France, Hungary, Lithuania, Portugal, Slovenia, Sweden) and/or implicitly (United Kingdom, Estonia, France, Luxembourg, the Netherlands, Finland, Austria) allow asylum seekers access to the education system in conditions analogous to those of nationals. Some have adopted specific provisions regulating the access of minor asylum seekers to their education system (Spain, Greece, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Sweden, Czech Republic and Austria but in this State it concerns only language courses enabling them to follow lectures).

The transposition of article 10, §1 is problematic in various Member States like for instance:

- In Austria, child asylum seekers are subject to the same regulations as nationals. Beyond the age of 15, education is provided for unaccompanied minors accommodated in special centres. As for the others, access to education is not always ensured because of the agreement with the school or the place where the minor lives;
- In Slovenia, minors have access to primary education in two schools near the reception centre under the same conditions as nationals in the case of minor asylum seekers aged between 6 and 15 years. Those between the age of 15 and 18 may only be admitted to secondary schools if places are available and depending on the good will of the school in contravention with the principle of equality regarding the access to education as per article 10, §1. Moreover, in practice, there are problems regarding the accessibility of the school by bus (failure to deliver bus tickets to parents) and the availability of books and school equipment;
- In Finland, even though the right to primary education is guaranteed by the Constitution, the specific legislation on primary education does not state an unequivocal obligation to provide asylum seekers' with children places in municipal schools. Problems have occasionally arisen locally due to this ambiguity in the law;
- In the Czech Republic, minor asylum seekers have, since the recent adoption of a new Act on Schooling, been provided with a less favourable treatment (for instance, they have to pay a higher fee than the Czech citizens for the provision of school services, i.e. accommodation and catering, contribute to expenses for school facility etc.) in

kindergarten education, as well as in certain educational establishments, such as art schools and music conservatories and certain school services such as meals. The situation is exacerbated by the low amount of pocket money granted to asylum seekers (17 euros per month). Kindergarten education is, however, available in reception centres. This renders the system, to a great extent, in conformity with the Directive, but all the same, it creates a problem for children residing in private accommodation. In practice, few asylum seekers go to secondary school, as only a few of them speak Czech at a sufficient level;

- In **Italy** children in accommodation centres usually have immediate access to education. This is not the case in identification centres, where they should stay for maximum 20 days. Unfortunately, this is not always the case and as consequence they do not have access to education while they are retained there. Please refer to the questionnaire for further clarifications
- In **Malta** the transposing norm does not expressly stipulate that secondary education shall not be withdrawn for the sole reason that the minor has reached the age of maturity - however in practice access to secondary education would not normally be withdrawn for this reason-.
  Moreover, while the transposing norm makes no distinction between minors in detention or in the community – it simply provides for access to education for asylum seekers who are minors and minor children of asylum seekers - in practice minors in detention do not go to school nor are there special arrangements for their education within the centres. They are placed in mainstream schools upon release. In cases where, for some reason, release takes long to obtain, access to education is delayed.
- In **Bulgaria** access to education for minors in detention is not provided.

PROBLEM	Regarding Q 31 B: Finland, Czech Republic, Slovenia, **Malta**, **Estonia** Regarding Q 33 M (in case of detention): **Austria**, **Estonia**, Italy, Austria, Belgium, Czech Republic, The Netherlands, Lithuania, Finland, Slovakia, **Malta**. **Bulgaria and France[i]: No transposition**

Q. 31 C Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

Germany, Cyprus, Latvia, Greece, Portugal, the Czech Republic and Slovakia respect the time limit prescribed by the directive of maximum three months running from the lodging of the application for asylum. In the **Czech Republic** although both conditions of Art. 10 § 2 of the Directive are respected in practice, strictly legally speaking the law does not explicitly lay down these limits. In **Finland** too in practice in most cases the deadline is respected although

[i] This is explained notably by the very short periods of retention of minors, which therefore does not require the putting in place of educational provisions.

there is no clear time limit in the law for when the schooling of children of asylum seekers should begin. On the other hand, Estonia, Lithuania, Netherlands, **Spain, United Kingdom** and Luxembourg do not prescribe any time limit; however, one cannot automatically conclude that there is a violation of the Directive in this regard if, in practice, access to education is ensured within the prescribed time-limit, which is in fact the case for **Lithuania, Spain, United Kingdom,** Luxembourg, for Netherlands, for Slovenia (within 30 days) and for Belgium (within 60 days). In Hungary, although in practice the children may attend school from the very first day upon the will of the parents, the law in force only requires their attendance after one year presence.

It happens, however, that the time-limit required by article 10 §1of the Directive is not always observed in practice, in several Member States, for different reasons:

- Germany, where the respect of the Directive creates a problem in the Länder where child asylum seekers are not obliged to go to school;
- **Poland**, where the examinations designed to evaluate the level of the children to be placed in an appropriate class take place only twice a year, with the result that, in practice, only half the children go to school during the year 2005-2006. But for the year 2006-2007 88% children have started the school. The first semester – 536 children and the second semester 646. It means that there is really a significant progress.
- France, where frequently the minor asylum seeker who arrives too late in the course of the scholastic year is obliged to wait until the following school year;

It has been pointed out that in **Austria** although the maximum delay of three months is generally not exceeded in practice, Art 10 § 2 has not been transposed into national legislation.

The information that could be gathered concerning access to education until the material execution of an expulsion decision and not from the moment when it is legally made is fragmentary. While such a guarantee exists in Hungary, Luxembourg and the Czech Republic, this is not the case with regard to Slovenia.

Q. 31 D Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the receiving Member State (see article 10, §2 which is an optional provision)?

Language classes are provided in schools (Austria, Latvia, Czech Republic, Poland) and/or in reception centres when these are sufficiently big (Austria, Spain, Lithuania, Poland, Czech Republic, the Netherlands, Slovakia), or organised by NGOs in Slovenia. Specific teaching is organised in certain Member States at the beginning of the minors' schooling on their arrival in the receiving country:

- In Germany, there are often transitory classes in the big cities;
- In Belgium, the pupils who arrive first are directed towards bridging classes;
- In Finland, there are special preparatory classes in which special importance is given to language courses;
- In Luxembourg, some associations have set up transition classes;
- In the Netherlands, schools sometimes organise specific courses with the aim of allowing children to participate in normal classes as soon as possible;

- In France, language classes do not exist in all schools, but pupils might benefit from a specific welcome programme;
- In the United Kingdom, in theory specific education can be provided but this depends in practice financial resources of the local authorities;
- In Greece, specific education is mentioned in the presidential decree.

Q. 31 E Are minors in general accommodated with their parents or with the person responsible of them? (See article 14, §3)

In practice, Member States generally accommodate minors with their parents or with the adult member of the family responsible for them. However, Lithuania does not recognise responsibility of family member for the minor by custom. In **Estonia**, it is not regulated in the Acts but general practice is that children are accommodated with parents, taking the best interests of the child into account. The same apply in **Luxembourg, Slovenia, Spain** and in **Latvia** where in practice children are always accommodated with their parents or close relatives.
In **Bulgaria** the directive is respected in practice but the national provision refers only to relatives of *unaccompanied* minors. There is no explicit provision as to minors in general.
In **Malta**, on the contrary although the law makes reference to 'the adult family member responsible for them whether by law or by custom', there is a practical problem: in the absence of a specific court order, minors who are arrive in the care of an adult who is not a parent, e.g. an aunt or an older sibling, are usually deemed to be unaccompanied when they are being considered for release from detention.

NO TRANSPOSITION	**Estonia**, **Luxembourg**, **Latvia**, **Slovenia**
PROBLEM	Lithuania, **Bulgaria**, **Malta**, **Spain**

Q. 31 F Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

In most Member States, legislation provides access to rehabilitation services, appropriate mental health care and qualified counselling for minors who have been victims of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatment or of armed conflict (Germany, United Kingdom, Austria, Belgium, Cyprus, Spain, Finland, Greece, Italy, Lithuania, the Netherlands, Poland, Portugal, Czech Republic, Slovakia, Sweden). It must be underlined that the **Austrian** rapporteur mentions that in some few cases only accompanied minors are being disregarded because their special needs cannot be identified and there are waiting lists for persons outside special care generally.

On the other hand, the legislation of some Member States does not contain any specific provision in this regard (Estonia, **France**, Latvia, **Malta** as well and Luxemburg).

It is essential to point out that the existence of legislation which article 18 §2 does not put much emphasis on, does not seem to guarantee that the services prescribed by the Directive are effectively provided to minors in practice:

- In the **United Kingdom**, while legislative provisions exist which oblige to carry out needs assessment which should provide a vehicle to refer to all necessary services,

there are problems in practice with regard to those whose needs are less obvious and may be overlooked

- In Cyprus, there is no formal systematic procedure for the care of minors with special needs;
- In **Lithuania**, nothing has in practice been put in place and moreover there is no transposition;
- In Hungary, such care is given by one NGO (Cordelia Foundation) which operates through external funds;
- In the **Czech Republic** the law is too ambiguous and does not explicitly stipulate that the victims of torture, rape or other serious acts of violence must receive the necessary treatment of damages caused by the aforementioned acts.
- In **Finland** there are regional differences and in some parts of the country there are difficulties for children in obtaining mental health care. Children of asylum seekers hence may have problems to access professional mental health care and counselling.

As several Member States are concerned, it is clear that this point deserves special attention from the European Commission.

In **Bulgaria**, there is no explicit transposition of Art.18, §2 of the Directive in refugee specific legislation. The general rules on "children at risk" would apply under the Law on Child Protection. However, although similar, the definition of "a child at risk" given in the Law on Child Protection does not fully correspond to the specific refugee-related hypothesis envisaged in Art.8, Para.2 of the Directive.

In **Romania**, the persons with special needs are considered only in a general manner.

NO TRANSPOSITION	Estonia, France, Latvia, Luxemburg, Malta, Lithuania
PROBLEM	Cyprus, Germany, United Kingdom, **Bulgaria, Czech Republic, Finland, Romania, The Netherlands**

Q. 31G How and when is the <u>representation of unaccompanied minors</u> (guardianship, special organisation) organised and regularly assessed? (See article 19, §1 which is a mandatory provision)

All Member States provide specific legal provisions regarding the representation of unaccompanied minors with a problem in Malta where transposition is partial. Such representation is generally assumed by a legal guardian (Germany, Belgium, Cyprus, Estonia, Finland, France, Spain, Greece, Latvia, Hungary, Italy, Malta, Poland, Slovakia, Slovenia, Sweden) and sometimes by an organisation (Netherlands) or by the public prosecutor (Portugal).

However, the practical implementation of the legal provisions creates a problem in several Member States, resulting either from the absence of a legal guardian or from the role that is assigned to him:

- In the United Kingdom, all unaccompanied minors should be referred to the "Refugee Children's Panel" where a counsellor is appointed for them, without this being possible in all cases.

- In the Czech Republic, minors were represented by an "asylum guardian" who was competent until the appointment of a "residential legal guardian" appointed for the whole length of their stay in the Czech Republic. However, by a judgement of 11th February 2004, the regional Court of Hradec Kralove decided that an "asylum legal guardian" cannot be appointed for unaccompanied minors. This poses practical problems, for the "residential legal guardian" is often not familiar with the subject of asylum.
- In **Lithuania and in Greece**, no regular assessments are made in practice and moreover in **Greece** no such assessments are mentioned in the Presidential Decree.

It has not been possible to gather sufficient information concerning the question of finding out whether enough monitoring is effected by legal guardians in conformity with the requirements of article 19, §1 of the Directive.

In **Bulgaria**, there is incomplete transposition of Art.19, para.1 since the requirements of speediness and regular assessments are not stipulated in Bulgarian law. Furthermore, according to the Law on Asylum and Refugees, if no legal guardian has been appointed, unaccompanied minors are represented *during the procedure* by the Social Assistance Agency under the Law on Child Protection. The transposition law (namely the Law on Asylum and refugees) raises three important concerns. First of all, it discourages the incentive of the State Agency for Refugees to look for the appointment of a legal guardian by not stating under what conditions a legal guardian is not appointed. Secondly, it provides for the representation of the minor asylum seeker only during the asylum procedure, while the legal guardian is appointed in principle. Thirdly, under the Law on Child Protection the Social Assistance Agency is not obliged to assume the representation of the minor; it only has the right to do so.

PROBLEM	Czech Republic, Greece, United Kingdom, Malta, **Bulgaria**, **Lithuania**, **Greece**, **Luxembourg**

Q. 31H How is <u>placement</u> of <u>unaccompanied</u> minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (See article 19, §2 which is mandatory provision)

All Member States organise a system of specific accommodation for unaccompanied minors, whether with members of the family or with a foster-family or in specific centres. The legal provision in **Slovakia** are however not specific enough. In practice, specific approach to accommodation of minors is difficult to see in everyday asylum seeker life.

Certain Member States (Germany, Sweden, Portugal) have availed themselves of the possibility provided by article 19 §2, 2nd indent of the Directive, to place unaccompanied minors aged 16 and over in accommodation centres for adults.

In the **Netherlands** the provision is only transposed partially. Nevertheless in practice children under the age of 12 are received in foster families. Unaccompanied minors above 12 years will be accommodated in children's communal units or in special campuses for unaccompanied minors. These centres are not identical to the accommodation centres for adult asylum seekers mentioned by article 19, §2, 2nd indent of the Directive.

In **Malta** Article 19(2) is only partially transposed into national legislation: the regulation does not include any provisions regarding placement, apart from stating that unaccompanied minors aged 16 or over may be placed in centres for adult asylum seekers. Nevertheless in practice, minors are not usually entrusted to the care of relatives who are not parents.

In **Luxembourg**, no legal or administrative disposition provides that if an unaccompanied minor is placed in such accommodation, he or she remain there until the date he or she is required to leave the territory.

PROBLEM	Slovakia, Malta, **Luxembourg**, **The Netherlands**, **Sweden**

Q. 31 I **How is the <u>tracing of the family members</u> of the <u>unaccompanied</u> minors organised? Are measures taken to protect confidentiality of information when necessary? (See article 19, §3 which is a mandatory provision)**

Only the legislation of the Land of Vienna (Austria), Latvia and Luxembourg and **Malta** have no provision regarding the tracing of the family members of unaccompanied minors, but in practice, this tracing is nevertheless carried out in some of these States: in Vienna since unaccompanied minors are accommodated in special care facilities making use of the Red Cross Tracing Service, in Luxembourg very recently where the government has concluded an agreement with the Red Cross. In the Netherlands tracing family members is only carried out on the request of the minor, on the initiative of his legal guardian or with the help of the Red Cross. In **Malta** tracing of family is only undertaken at the minor's request and, very often, on his/her own initiative. In **Estonia** there is legal problem as the terminology used in the law refers to fugitives not to a refugee or an asylum seeker or separated child.

The tracing of the unaccompanied minor's family may be entrusted to different authorities: State services for the protection of children (Youth Welfare Office in Germany, Office for International Legal Protection for Children in the Czech Republic), the authorities working on the examination of the application for asylum (Austria, Cyprus, Portugal), the services responsible for the reception of asylum seekers (France, Sweden), the legal guardian (Belgium, France, Poland), the Minister of the Interior who can conclude specific agreements with the IOM or the Red Cross (Italy), the "Migration Department" with the legal guardian and the NGOs (Lithuania), NGOs (Malta, Sweden), the Ministry of Foreign Affairs (Portugal) or even the Embassy of the reception country in the minor's country of origin (Sweden). The "Tracing" service of the Red Cross is often called upon for such tracing in the United Kingdom, Belgium, Luxembourg, Italy, the Netherlands, Slovenia and Austria. In **Finland** the recent transposition law does not provide for hearing of the child or taking into account the child's or his or her guardian's opinion concerning tracing, or call for the consent of the child or the guardian.

In **Hungary** according to the new Government Decree it is the responsibility of the refugee authority to trace persons responsible for the minor unless there are reasons to believe on the basis of the information available to the refugee authority that there is a conflict of interest between the minor and the adult responsible for her/him, or - with a view to the best interest of the child - tracing of the adult is not called for. The authority may turn to refugee authorities of other EU member states, or rely on the assistance of UNHCR, ICRC, Red Cross

and Red Crescent societies and other international organisations dealing with support of persons in need of international protection.

Certain Member States do not provide any specific measure regarding the confidentiality of information (Belgium, France, **Slovakia**), as opposed to Austria, **Finland**, Greece, Poland, Portugal, Lithuania, United Kingdom and the Czech Republic.

NO TRANSPOSITION	Finland, Luxembourg, Latvia, Malta, **Bulgaria**, **France but practice**, **The Netherlands**, **Austria: missing only in Vienna**,
PROBLEM	Netherlands, Slovakia, Poland, France, Belgium, **Finland, Estonia, Belgium, Slovakia, Slovenia**

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there <u>exceptional modalities for reception conditions</u> in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be "as short as possible" (see article 14, §8)?

Q. 32 A Persons with specific needs, regarding in particular the period of assessment of those needs?

Member States have not explicitly made use of article 14, §8 to adopt exceptional modalities of reception conditions to assess the possible specific needs of applicants as this provision gives them the possibility of doing. It must be noted that the wording "specific needs" is used and not "special needs" like in chapter 4 of the Directive. It would indeed be strange to lower the level of reception conditions for persons with special needs as it seems to be envisaged by this provision whose meaning therefore remains somewhat mysterious.

Q.32 B Non availability of reception conditions in <u>certain areas</u>

Only Portugal applies different reception conditions when material conditions do not exist in a certain geographical area. In Finland and Poland, it is specified that in case of unavailability of material reception conditions in a certain geographical area asylum seekers are immediately transferred to another area in which the reception conditions are provided.

Q.32 C <u>Temporarily exhaustion</u> of normal housing capacities

Only some Member States have provided for different reception modalities when the accommodation capacities which are normally available are temporarily exhausted.

In Austria, the federal authority has the responsibility of providing capacity for accommodation in case of an unforeseen event or of scarcity in the Länder (it may, for example make use of military camps). In Luxembourg and Belgium structures for urgent reception exist in which, as far as Belgium is concerned, the applicant benefits from limited social assistance, but his/her stay cannot exceed ten days and the fundamental needs must be satisfied. In Greece, asylum seekers can be accommodated in hotels in Athens. Portugal also provides different reception modalities in cases when available accommodation is exhausted.

Q.32 D The asylum seeker is confined to a <u>border post</u>

Several Member States provide different reception conditions when asylum seekers are confined to a border post:

- In Germany, asylum seekers who arrive by air, come from a safe country and cannot present a valid passport are subjected to a specific procedure at the airport where they are accommodated. Article 14, §8 of the Directive is however respected because special conditions apply for a maximum period of 19 days.
- In Austria, the asylum seeker who arrives at the Vienna-Schwechat airport is subjected to a special procedure. The maximum duration of the procedure is 6 weeks which does not seem to be contrary to article 14, §8 of the Directive where *"a reasonable period which shall be as short as possible is foreseen"*. The problem is due to the fact that no

reception conditions are granted on a legal basis and that they are only ensured by an NGO (Caritas).

- In France, asylum seekers may be accommodated in a waiting area for a maximum of 12 days;
- In the Netherlands, the asylum seeker may be detained at Schiphol airport. If no decision is taken within 48 hours, he/she is transferred to a nearby detention centre, the "Border Hostel". In that case the asylum request has to be dealt speedily. According to the immigration authorities' internal guidelines, 'speedily' amounts to a period of 6 weeks. If the asylum application is not be dealt with speedily, this can lead to the annulment of the detention measure.
- In Portugal, material reception conditions are not necessarily different when asylum seekers are detained at a border post, but they might be different exceptionally and for a determined period. As it is not specified that this period must be as short as possible, there is a problem with article 14, §8 of the Directive.

PROBLEM	Portugal, Austria

Q.32 E **<u>All other cases</u> not mentioned in the Directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the Directive on temporary protection).**

In the majority of Member States, legislation does not provide for other cases of different reception modalities (see above the answer to question 24 D about urgent cases characterised by high numbers of arrivals of asylum seekers).

Q.33. **<u>Detention of asylum seekers</u> (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8)**

A. In which <u>cases or circumstances</u> and for which <u>reasons</u> (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected.

The practices of Member States regarding detention of asylum seekers are very divergent. Two extreme cases must be emphasised. On the one hand, Germany where asylum seekers can only be detained for reasons of a criminal investigation, criminal conviction or by virtue of a penal sanction in the case of unauthorised work (detention at the airport is not considered as a case of detention by the German Constitutional Court) and Portugal where asylum seekers can only be detained at the border, if they do not fulfil the conditions for entry into the territory. On the other hand, **Malta** practices the systematic detention of asylum seekers who enter the country illegally (in the sense that they do not have the necessary documents). Nevertheless, it is important to note that immigration status is not the sole factor that determines whether or not an asylum seeker will be detained throughout the duration of the asylum procedure. Asylum seekers with irregular migration status who manage to apply for refugee status before they are apprehended by the immigration authorities are not detained as

a rule. Those who apply for refugee status after having been placed in custody (with few exceptions), however, remain in detention throughout the procedure for the determination of their asylum application. It must be pointed out that technically it is not detention *per se* that is ordered by the Principal Immigration Officer (PIO): actually in terms of the Immigration Act, detention is the automatic consequence of a removal order as issued by the PIO or of a refusal to grant admission to national territory. Detention lasts as long as it takes for an asylum application to be determined. Where an application for asylum is still pending after 12 months, the asylum seeker is released from detention to await the final outcome of his/her asylum application in the community. The only exceptions are vulnerable asylum seekers: these are released to live in the community once their vulnerability is determined, medical clearance is obtained and accommodation is found in the community (see Q 30 B and 30 C).

In the other Member States, the grounds for the detention of an asylum seeker are as numerous (particularly in Belgium) as they are varied and may be specific to asylum seekers or equally valid for foreigners whose stay is illegal. They may be divided in the following manner presented in descending order according to the number of Member States in which they can be invoked:

1. non-compliance with the conditions of entry into the territory :
   - non-possession of the documents required to enter the territory (Austria, Belgium, **Bulgaria**, France, Italy, Malta, Netherlands, Poland, Czech Republic, Slovakia);
   - the absence of a document of identity and the impossibility of issuing it (Belgium, Cyprus, Estonia, Finland, Italy, Latvia, Slovenia, Sweden) ;

2. grounds of a procedural nature :
   - within the framework of an accelerated asylum procedure (Austria, Netherlands, United Kingdom);
   - within the framework of a procedure for determining the state responsible for an asylum application on the basis of Dublin II (Austria, Belgium, France, Luxembourg, Slovakia);
   - in the case of an application filed late without justification (Belgium, Luxembourg) or after the authorities in charge of border controls have interrogated the applicant on the reasons of his arrival (Belgium);
   - in the case of multiple applications when the applicant already has an asylum application (Belgium, Cyprus), or an application on the basis of another identity (Luxembourg), or has omitted to declare that he had already lodged an asylum application in another country (Belgium);
   - with a view to establishing the circumstances arising from the asylum application (Estonia, Italy);
   - in the case of abuse of the asylum procedure (Lithuania, Slovenia) or of the risk of delay in the asylum procedure (Finland);

3. the existence of an expulsion decision from the territory previous to the application for asylum :
   - the applicant has already been expelled from the territory (Belgium, Slovakia, Italy, France, Lithuania, Poland, Slovakia, Sweden) or the applicant had lodged an application for asylum after having been arrested for illegal entry (Cyprus) or an expulsion decision was issued before the asylum application was lodged (Austria, Greece, **Malta**) or the asylum application was lodged with the aim of preventing

the execution of an expulsion decision from the territory (Belgium, Luxembourg, Czech Republic);

4. behaviour of the asylum seeker :
   - the applicant refuses to give his/her identity or nationality, or provides false information in this regard (Belgium, Slovenia, Lithuania, Luxembourg, Poland);
   - the applicant has destroyed or done away with his/her travel documents or his identity documents (Belgium, Poland);
   - the applicant poses a danger to public order or to national security (Belgium, Estonia, Finland, Latvia, Lithuania, Luxembourg, Netherlands, Czech Republic, Slovenia, **Romania**);
   - detention is necessary for reasons of public health, with the aim of avoiding the spread of disease (Lithuania, Slovakia, Slovenia, **Romania**);
   - the applicant has either frequently or seriously breached the rules of the reception centre (Estonia) or has left the reception centre he/she had been assigned to (Austria);
   - the applicant does not comply with reporting duties or with supervision measures (Belgium, Estonia, Luxembourg);
   - the applicant does not comply with the procedure begun at the border (Belgium);
   - the applicant obstructs the taking of his fingerprints (Belgium, Luxembourg);

5. modalities of the lodging of the application for asylum :
   - lodged at the border (Spain);

In Belgium there are two special grounds corresponding to cases when an application can be declared inadmissible before being thoroughly examined (the applicant has previously lived for a certain length of time in one or in several third-countries or is in possession of a valid travel document to a third country).

Most of these grounds refer to the fact that the applicant could make use of asylum without really needing international protection, but simply to immigrate and that it is therefore advisable to detain him/her in order to prevent him/her from setting illegally in the territory or from not complying with an expulsion decision.

It **Italy** it must be underlined that NGOs point out that although retention in identification centres should take place only under relevant circumstances strictly listed, this happens very often. This point is confirmed in the report drafted by the Commission presided by the UN Ambassador, Mr. De Mistura. This Commission was appointed last year by the Ministry of Interior in order to better assess the actual conditions inside identification centres and temporary stay centres. The results were presented early this year and highlight that "although retention of asylum seekers in identification centres (and the application of the simplified procedure) had been conceived as a residual practice to be applied only under very precise circumstances, it has happened that retention has been increasingly applied as a general practice

Regarding **Malta** where these reasons have also been given, one can read in the comments of the Maltese authorities to the follow-up report of the Commissioner for Human Rights of the Council of Europe (op.cit). that "the government cannot afford to allow undocumented and unscreened irregular migrants roaming about freely on the streets. Thus national interest obliges the authorities to thread cautiously and the present detention regime (…) is considered

the best approach at this point in time". Even if it is not explicitly quoted, article 7, §3 of the directive following which "*When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law*" could be used to justify legally the Maltese regime of detention as this provision leaves a very large margin of discretion to the Member States.

However, the incoherences of the current **Maltese** policy begs question : one can indeed wonder what sense it makes to detain a lot of asylum seekers during 12 months if all of them, even if their claim is rejected, will finally be released and very few persons are afterwards expelled from Malta. The "undocumented and unscreened irregular migrants roaming about freely on the streets" that the Maltese Government cannot tolerate for reasons of public interest during the first 12 of their stay, becomes strangely acceptable at the end of this period.

This leads to question of the compatibility of the **Maltese** regime of detention and even of article 7, §3 of the directive on reception conditions with legally binding international or European instruments. Article 31 of the Geneva Convention does unfortunately not give a definition of the "necessary" restrictions which can be applied to the movement of refugees unlawfully in the country of refuge. It must be noticed that the European Court of Human rights does grant a wide margin of discretion to contracting states to detain asylum seekers for the very purpose of preventing unlawful entry: in the case Saadi v. UK of 11 July 2006, the Court "*accepts that a State has a broader discretion to decide whether to detain potential immigrants than it is the case for other interferences with the right to liberty. Accordingly, there is no requirement in article 5 §1 (f) of the ECHR that the detention of a person to prevent his effecting an unauthorized entry into the country be reasonably considered necessary. All that is required is that the detention should be a genuine part of the process to determine whether the individual should be granted immigration clearance and/or asylum, and that it should not otherwise be arbitrary, for example on account of his length*".

Following this decision, it appears impossible to question the necessity of the detention in such cases. This leaves open the question of arbitrariness of detention on account of its length. In the case Saadi which lead the Court to the conclusion that there was no violation of article 5 of the ECHR, it was about a detention of only one week. One has to see what could be the its answer in particular on the basis of the principle of proportionality in a case about **Malta**' system of detention for asylum seekers up to 12 months which has surprisingly not yet been lodged with the Court.

Q33B. Has your Member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be "confined" in such a place?

With the exception of six Member States (United Kingdom, Austria, Finland, Portugal, Czech Republic, Spain), this possibility has been transposed or already existed before the transposition of the Directive in most Member States.

In some Member States, it has been understood as a case of detention:

- in **Estonia** at the beginning of the asylum procedure when asylum seekers are detained in the "initial reception centre"; nevertheless it must be pointed out

that there is currently no initial reception centre although the provisions are in the law;

- in Luxembourg, even if the word detention is not formally used ;
- in Slovenia, there are also other cases in which freedom of movement is *de facto* limited and can be assimilated to detention.

In other Member States, the possibility to oblige an asylum seeker to stay in a determined place is not considered as a case of detention:

- in Germany, restrictions regarding freedom of movement are based on article 7§3 of the Directive. Even if asylum seekers are free to leave the centre or other accommodation, they are obliged to stay within the confines of the competent authority for foreigners. These restrictions are considered necessary for the effectiveness of the asylum procedure and the distribution of asylum seekers across the Länder and municipalities;
- in Belgium, it is possible to oblige an asylum seeker to reside in a particular place, if there are serious reasons to consider him as dangerous to public order or to national security, as well as to place him at the disposal of the government for exceptionally serious reasons, though this is hardly ever made use of in practice;
- in Cyprus, the Minister of the Interior may in the public interest restrict the freedom of movement or decide on a place of residence
- in Greece, the central authority can decide about the residence of the asylum seeker in a certain area for reasons of public interest or public order or, if necessary, for an efficient and quick follow up of the asylum application;
- in Poland, a decision to stay in a certain place or to report periodically to the authorities may be taken ;
- in Slovakia, a decision to stay in a certain and to not leave it may be taken;
- in Sweden, it is possible to put an alien under control and to force him to report every day to the police or to the migration board.

Q 33 C Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

The alternatives to detention call for rather varied measures, among others, the duty of reporting personally to the authorities (United Kingdom, Austria, Finland, Lithuania, Netherlands, Poland, Sweden, Estonia, **Bulgaria** –theoretically-, **Malta**), the confiscation of travel documents (Finland), the deposit of a financial guarantee (Finland) or even the obligation of residing in a particular place (France, Spain). There is no alternative to detention in 9 Member States (Cyprus, Slovakia, Greece, Italy, Latvia, Luxembourg, **Romania** and the Czech Republic).

Moreover in **Malta** there are alternatives to detention for vulnerable asylum seekers and for asylum seekers released from detention to await the outcome of their asylum application in the community, i.e. in those cases where an application is still pending after 12 months.

Q. 33 D Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Detention measures may be ordered by the administrative authorities in charge of immigration matters, as well as by the police (Austria, United Kingdom, Cyprus, Estonia, Finland, Greece, Hungary, Italy, Malta, Czech Republic, Slovakia and Sweden but only in urgent situations) or by border guards (Estonia, Hungary, Latvia, the Netherlands). It is to be noted that Member States are familiar with a detention system decided by the administration and not by the judge, even if the latter is evidently called upon to oversee those cases of administrative detention according to the internal law of every Member State (in the UK, however, detention is not supervised by the Judicial authority). The situation in Lithuania is different: asylum seekers can be detained by police for only 48 hours at most and then any further detention can only be ordered by a court.

Q.33 E For how long and till which stage of the asylum procedure can an asylum seeker be detained?

The following table shows the maximum duration of detention presenting States in an ascending order.

MEMBER STATES	MAXIMUM DURATION OF THE DETENTION
ESTONIA	48 hours or more by a judgment of the Administrative Court
AUSTRIA	48 hours if the applicant has to be brought to the initial reception centre; 72 hours if the applicant has left the initial reception centre or has not complied with the asylum procedure; as short as possible in the case of an expulsion procedure with a maximum of 10 months over a period of two years in compliance with specific conditions
FRANCE	12 days maximum in a waiting zone ; for the duration of the examination of the asylum application in detention centres
PORTUGAL	5 days maximum at the border under the control of a tribunal
LATVIA	10 days or at most for the duration of the asylum procedure
SWEDEN	not more than 2 x 72 hours for persons under 18 years of age ; not more than 2 weeks for persons over 18
GERMANY	19 days in the case of a specific procedure at the airport; sometimes longer for unaccompanied minors under the age of 16 as a legal guardian has to be assigned to them.
ITALY	20 days in the case of a possible detention ; 20 days + 10 days in the case of a mandatory detention
CYPRUS	In principle 32 days but possible until the end of the asylum procedure and until an expulsion decision has been taken
NETHERLANDS	Asylum seekers who have been refused entry: - 48 hours (accelerated procedure) + 6 weeks (= internal guideline, not a maximum which can be enforced through legal proceedings) in case it appears impossible to reach a decision within 48 hours because more research is needed; - 48 hours (accelerated procedure) + 6 months (or longer) when the asylum request has been rejected within the accelerated procedure
POLAND	up to 3 months if an alien applies for refugee status being detained because of illegal entry
LUXEMBOURG	3 months with the possible extension of a further 3 months without exceeding 12 months in the case of an identification

	problem
SLOVENIA	3 months with the possibility of an extension of a month, but this time limit is sometimes surpassed in practice
GREECE	3 months in principle
CZECH REPUBLIC	3 months for minors; 6 months for adults
BELGIUM	5 months with a possible extension up to 8 months in certain cases
SLOVAKIA	6 months
SPAIN	Maximum 7 days at the border
HUNGARY	Maximum 15 days in principle
MALTA	12 months with a maximum of 18 in case of an appeal when the application for asylum has been rejected
FINLAND	No maximum duration
UNITED KINGDOM	No maximum duration
BULGARIA	No time limit
ROMANIA	Until the end of the procedure
LITHUANIA	Initial detention by police can be for up to 48 hours. Further duration is set in each case by the judge without a maximum duration

The authorized duration is most often linked to the legal justification of the detention or the place of detention (France, Portugal). The longest period of detention last up to 12 months in Malta but several Member States do not provide for any maximum period (United Kingdom, Finland, Lithuania, **Bulgaria** and **Romania**).

Q. 33 F **In which places (can we call them "closed centres"?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the "closed centres" at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?**

Asylum seekers may be detained in different places: special centres only for asylum seekers (**Romania**), police stations (Austria, Cyprus, Lithuania, Netherlands), transit zones or waiting zones at the border (Germany, Austria, Estonia, France, Hungary, Latvia, Portugal, Netherlands, Czech Republic, Spain), closed centres for foreigners (Belgium, Greece, Finland, Hungary Lithuania, Latvia, Malta, Poland, Czech Republic, Slovakia), centres of administrative detention (France), deportation centres (Estonia, Slovenia), identification centres and centres of temporary stay and assistance (CPT) (Italy), detention units within the accommodation centre (Slovenia) or semi-closed centres (Netherlands) and even prisons (Finland, United Kingdom, Sweden but this is very exceptional, albeit legally possible and **Luxembourg** where a specific detention centre is however currently under construction).

It is being pointed out that asylum seekers may be detained in the same places as illegal immigrants in 16 Member States (**Bulgaria**, Austria, Cyprus, Greece, Finland, Luxembourg, Malta, Poland, Slovakia, Belgium, United Kingdom, Italy, Lithuania, Czech Republic, Slovenia and Estonia where failed asylum seekers are detained together with all other illegal immigrants who are subject to deportation orders).

Q. 33 G Does UNHCR and NGOs have access to the places of detention and under which conditions?

UNHCR and certain NGOs have in principle access to detention places in all Member States. In **Greece**, NGO representatives are regularly being faced with difficulties in gaining access to asylum seekers in detention.
Modalities of access vary from one Member State to another. For NGOs several Member States require the conclusion of an agreement (France, Hungary, Italy, Lithuania, Luxembourg, Slovakia) or a permission by the head of the detention places (Estonia). Effective access to detention locations poses a problem in Poland (the request for authorisation takes time and the visit is limited to one hour) and in Slovenia (access is restricted and the visit must be organised).

In **Bulgaria**, NGOs are not allowed access to the places of detention unless there is a signed agreement to that end between the NGO and the head of the National Police Directorate at the Bulgarian Ministry of the Interior, which in practice is very difficult to achieve. For the latter rule the head of the specialised centre for temporary detention of foreigners invokes the Rules for the Internal Order at the specialised centre, but they are not published and no access to them is allowed. Lawyers in personal capacity have access to the detainees after presenting their card as members of the Bar.
In **Romania**, UNHCR has unconditional access, NGO representatives with authorisation.

In **Malta**, both UNHCR and NGOs are allowed access to detention centres once a permit has been obtained from the police authorities.

Q. 33 H What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the Directive on asylum procedures of 1 December 2005 following which *"Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review"* respected (even if it has not yet to be transposed)?

Every Member State concerned offers the detained asylum seeker the possibility of lodging an appeal against the detention order. These procedures are specific to every Member State. There is however a problem in Slovakia because there is no speedy review. The same problem occurs in **Bulgaria** and **Malta**. In **Bulgaria**, as any other administrative act, the order for "coercive accommodation" can be appealed before the administrative organ that is next in the administrative hierarchy and before the court. Usually asylum seekers do not find any sense in appealing in an administrative way, because the orders are automatically confirmed. There are no special procedural provisions regarding the court review of detention orders. **When the court is overloaded, it takes a lot of time for a court hearing to be scheduled and there are no time priority rules in this regard.** In **Malta**, on paper, the law provides a number of remedies for a detained asylum seeker to obtain release from detention and/or to challenge his/her detention. Problems however arise in practice due to:

- the scope of these remedies and the manner in which the law is applied by the courts/tribunals concerned (there is a tendency to apply the law rather restrictively);
- the level of accessibility of these remedies, particularly for asylum seekers in detention;

- the difficulties faced by detained asylum seekers when seeking to obtain legal assistance and/or legal aid; and
- the length of time some of these procedures take.

This has raised concerns that, in fact, asylum seekers do not have the possibility of a 'speedy judicial review' of their detention.

The situation in **Portugal** is also problematic: following an amendment to the Portuguese asylum procedure, determining the extinction of the National Commissioner for Refugees (NCR), Asylum seekers whose claims have been deemed non-admissible are no longer entitled to an appeal of such decisions with a suspensive effect before the NCR as provided before by the law. All appeals are now directly presented before the Administrative Courts but bear no suspensive effect. In these cases, asylum seekers at border points have been systematically deported without the opportunity of having the refusal of their claim being reviewed in a timely fashion by an independent authority. Within this new legal framework, the only viable option left for guaranteeing an effective remedy against non-admission decisions at border points is to apply for an injunction measure before the Administrative Courts. Aimed at requesting the immediate suspension of the effects deriving from the non-admission decision – namely the removal of the asylum seeker – until the Court reaches a decision on the merits of the case, this procedure requires, nonetheless, its immediate submission as to avoid such a removal. In these cases, however, a problem arises as the procedure involved in the nomination of a State-appointed lawyer, in accordance with the law, is too lengthy, depriving in practise asylum seekers of the possibility to apply for such injunction measures.

Q.33 I **Is the Directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?**

In 13 Member States (Austria, Estonia, Finland, Germany, Hungary, France, Latvia, Lithuania, **Portugal**, Slovakia, Slovenia, Sweden, **Romania**), the Directive is meant to apply to the reception locations where the asylum seekers are detained**. On the contrary, 9 Member States deem that the Directive is not applicable to the places where the asylum seekers are detained and they have sometimes adopted specific norms in this regard providing that the detainees have access to legal advice and to health care (Bulgaria, Greece, United Kingdom, Belgium, the Netherlands, Poland, implicitly Luxembourg, and Cyprus where these rights are not granted and the Czech Republic where** upon explicit request to answer this question, the Ministry of the Interior replied that **the Directive is NOT considered to be in principle applicable to the detention centres;** On the other hand in those latter Member State, the Directive is still applicable to the other form of the "closed centres" - reception centres - and more specifically, also to the special reception centre at the Prague Airport (i.e. also to the special airport procedure).

The situation in Spain, Italy and **Malta** is unclear. In **Spain** the question concerns only the asylum seekers detained at the border for a maximum period of 7 days as apart from this case asylum seekers are never detained. In **Malta** although the authorities have never explicitly stated that the provisions of the Reception Conditions Directive do not apply in principle to the places where asylum seekers are detained, in practice most of the provisions of the Directive are not applied to asylum seekers in detention. In **Italy** most provisions of the Directives are applied also in identification centres. However, NGOs', UNHCR and the

Government appointed commission, have pointed out that the practical standards in identification centres are in many cases not compliant with such requirements.

The divergent views of the Member States certainly pose an important question of principle regarding the scope of the Directive. The Directive itself does not explicitly answer the question whether it applies or not to detention centres for asylum seekers. At first glance, only the material reception conditions defined in article 2, j), such as housing, food and clothing as well as a daily allowance must be provided to asylum seekers detained in virtue of article 13, §2, second indent 2 of the Directive, according to which "*Member States shall ensure that that standard of living is met (…) as well as in relation to the situation of persons who are in detention*". This narrow interpretation is however contradicted by a reading *a contrario* of several provisions (article 14, §8 and articles 6, §2 and 7) following which the reception conditions are in principle applicable to places where asylum seekers are detained, unless the Directive foresees exceptions or derogations. The authors of the report at hand favour the second interpretation while recognising that this difficult question should be solved by an amendment of the Directive in order to clarify its scope which could otherwise be determined by the Court of Justice.

PROBLEM following the 2nd interpretation above	**Bulgaria, Czech Republic**, **Greece**, United Kingdom, Belgium, the Netherlands, Poland, Cyprus, Luxembourg and probably **Malta** and Italy too**.**

Q. 33 J **Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be "as short as possible" (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the Directive (is article 13, §2, second indent of the Directive following which "*Member States shall ensure that standards of living is met (…) in relation to the situation of persons who are in detention*" respected?).**

In case of detention, the differences in practice concerning reception conditions in comparison with the Directive are quite numerous. The most important examples extracted from the national reports are listed below:

- the detainees have little or no pocket money (Austria, Finland, Slovakia, Italy, Luxembourg);
- they cannot work (Finland, Malta, Slovenia, Lithuania);
- no activities or very few activities are available during their free time (Finland, Luxembourg);
- they are more supervised on account of the fact that their telephone conversations may be tapped, their correspondence checked and visits limited (Hungary);
- they do not always have access to an interpreter (France, Belgium);
- health care and legal assistance are in practice of an inferior quality (**Austria**, Belgium, Slovenia and **Italy** for the legal assistance).
- Limited possibilities of access to social workers (**Lithuania**)

- Most asylum seekers do not have access to the reception brochure or information on their rights (**Belgium, Italy**)
- Respect for family unity is not always guaranteed (**Belgium**)
- More difficult contact for the NGO's when they have to provide legal assistance (**Poland**)

The situation regarding education is analysed below under question 33 M.

Indications about the respect of article 13, §2 have already been given in the answer to question 12 B and the Member States for which there is a problem precisely indicated in a table (see above).

It is being pointed out that the asylum application of detained persons is given priority in France, which may result in a reduction of the duration of the detention and is in conformity with article 14, §8 of the Directive which allows the setting up of different reception modalities "for a reasonable period which shall be as short as possible in different cases" (especially when the asylum seeker is in detention or at a border post in a place which he/she cannot leave). The idea of urging, of compelling Member States to carry out the asylum procedure with the greatest celerity (even within a certain time-limit) when the asylum seeker is in detention, merits being considered.

In Bulgaria, the situation is more than problematic: there are no provisions in legislation that guarantee reception condition rights to asylum seekers at the Specialized Center for Temporary Accommodation of Foreigners. **Moreover, before the asylum application of the detained asylum seeker is *registered*, the latter has no rights at all. As mentioned in Q 14, sometimes it takes the State Agency for Refugees months to register an asylum application if it becomes registered at all – i.e. if the asylum seeker is not deported before that-.**

In **Malta** and in **Greece** too **the situation of detained asylum seekers is very problematic** (see developments in the national report 2007, Q 33 J for Malta and the National Summary Datasheet for Greece).

Q.33 K Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

In certain Member States, measures are taken to avoid the detention of certain categories of asylum seekers with special needs:

- minors according to legislation in Austria Finland, Hungary, Lithuania and in practice, in Slovenia, though this is not always the case;
- unaccompanied minors according to the legislation in Poland and Belgium, according to practice in France as well as in Slovakia;
- victims of torture, rape or other serious forms of psychological, physical or sexual violence according to the legislation of the United Kingdom, Finland and Poland;
- single women, especially with special needs, according to the practice in Hungary;
- the disabled according to legislation in Poland and to practice in Sweden;
- families (practice in Luxembourg were only single men have been detained till now) and in Slovenia, though this is not always the case);

- vulnerable persons in general according to legislation in Finland and in Malta according to the policy of the Ministry for the Family and Social Solidarity;
- in Latvia and the Czech Republic in practice, persons with specific needs are released and sent to reception centres.

Measures to avoid detention have not been adopted in the other Member States, but some of them, however, take into account, the special needs of asylum seekers:

- In **Italy** services must, according to legislation, be granted to families, minors, the disabled, old persons, pregnant women and victims of discrimination, abuse and sexual exploitation. Nevertheless Amnesty International points out that the needs of pregnant women are often not adequately addressed. In many cases there is not a translator when they undergo a medical examination and immediately after the birth they are often carried back again to the retention centre.
- in Sweden, according to practice, a person suffering from a mental illness is transferred to a hospital for psychiatric care;
- In **Portugal** too in practice namely for minors and pregnant women;
- **In Belgium** particular attention is paid to foreign unaccompanied minors**.**

In **Bulgaria** and **Romania** no specific measures exist with regard to this issue.
For **Malta** see Q 30 B and 30 C. In **Greece** the report of the European Parliament –see the National Summary Datasheet- underlines the alarming situation of unaccompanied minors detained in solitary confinement.

Q. 33 L **Can <u>minor</u> asylum seekers be detained together with relatives? Can <u>unaccompanied</u> minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?**

A broad majority of Member States does not prohibit the detention of minors. Member States are divided into two almost equal blocks as far as unaccompanied minors are concerned. It is being pointed out that according to the information we have, only two Member States detain them in specialised centres in such a way that they are separated from adults. The other Member States that detain unaccompanied minors under 16 in detention centres for adults do not comply with article 4, §2 of the Council Resolution of 26 July 1997 concerning unaccompanied minors who are third-country nationals which [resolution] was supposed to have been implemented by Member States as from 1st January 1999. It is also advisable to see to it that Member States comply with the United Nations Convention on children's rights wherein article 37 particularly provides that the detention of a child must be "of as short duration as possible".

	AUTHORISED DETENTION	FORBIDDEN DETENTION	NO DETENTION IN PRACTICE
MINORS	Czech Republic	Cyprus	Slovenia

[2] For 3 days maximum and only if there is a doubt about the age.
[ii] They can be detained as a last resort, when other alternative measures can be taken. Jurisprudence is divergent and some minors are detained
[iii] Minors below the age of 12 cannot be detained on the basis of the Aliens Act in a police station or house of detention, unless their parents (who are also detained) insist on having their children with them.
[iv] If there are exceptional grounds. In practice the first step is to keep children under surveillance instead of detaining them.

	United Kingdom Belgium Estonia Finland Greece France Hungary **Italy** Latvia Lithuania[ii] Luxembourg Netherlands[iii] Poland Slovenia Slovakia Germany (airport procedure only) Sweden but for a maximum 2x72h[iv] **Bulgaria** **Romania** **Malta**	Austria (only for minors under the age of 14, however with cases of detention in practice) **Hungary**	Luxembourg Sweden
UNACCOMPA-NIED MINORS	**Belgium**[2] Estonia Finland **Germany** (airport procedure only) **Greece** Latvia Lithuania[i] Luxembourg Slovenia Sweden but for a maximum 2x72h[ii] Netherlands[3] **Bulgaria** **Romania** **Malta**	Cyprus **Hungary** **Italy** (in principle: see below) Poland Slovakia Czech Republic[4] France[5] United Kingdom[6] Belgium[7]	Luxembourg

In **Malta** the situation is somewhat unclear as, in terms of written government policy (as opposed to law), vulnerable asylum seekers, which includes accompanied and unaccompanied

[i] They can be detained as a last resort, when other alternative measures can be taken. Jurisprudence is divergent and some minors are detained
[ii] If there are exceptional grounds. In practice the first step is to keep children under surveillance instead of detaining them.
[3] According to a decision of the Council of State of the 24th February 2003, detention must take place in a special detention centre for young people.
[4] For those under 15 years of age; those over 15 may be detained in a specialised centre where they can lodge an application for asylum and are then normally accommodated in a specialised residence.
[5] In France, as far as centres of administrative detention are concerned.
[6] Instructions specify that they should not be detained but for exceptional circumstances and for the shortest period of time possible.
[7] Following the project of law, they must be identified by the legal guardianship service within 3 days and, if considered unaccompanied minors, they will be received in a specific orientation and observation centre.

minors, are not detained. In practice they are detained until age assessment and health screening are conducted and placement in alternative accommodation is found, which may take weeks.

In **Italy** a recent report from Amnesty International highlights an alarming situation with regard to detained minors and unaccompanied minors (see national report Q 33 L).

Q. 33 M **In particular is article 10 regarding access to education of minors applied in those places?**

In a lot of Member States, minors do not have access to education when in detention (Austria, Belgium, **Bulgaria**, Finland, Italy, Lithuania, **Malta**, Slovakia and **France** where this is explained by the very short periods spent by minors in detention which therefore does not require educational measures to be put in place) or it is difficult in practice (in the Czech Republic). In the Netherlands in the "Border Hostels" (detention) education to minor children of asylum seekers is elementary by nature and will only be provided during a few hours a week

In some Member States, the right of children to education is recognized in practice (Latvia, Czech Republic solely for the primary level, United Kingdom where independent inspections have found educational provisions to be deficient) or teaching activities are organized (Lithuania, Netherlands, Sweden). This is therefore a sphere in which progress could be achieved if the detention of minors is not prohibited.

See the table Q 31 B.

Q. 33 N **How many asylum seekers are currently detained in your Member State? What proportion does this represent in comparison of the total number of asylum seekers at the same moment?**

It is impossible to make a synthesis on this point. The national reports show that data is unavailable for a significant number of Member States and that they are not comparable when provided.

It is important to notice about **Malta** that, even if the detention regime concerns most of the asylum seekers, absolutely all of them are nevertheless not detained (to the persons with special needs who will be released after identification, one must add the asylum seekers arriving legally with the necessary documents to enter the Maltese territory and finally as a rule asylum seekers with irregular migration status who manage to apply for refugee status before they are apprehended by the immigration authorities are not detained –see Q 33 A-).

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government provide reception conditions in practice?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The vast majority of Member States have centralised systems. Some (Belgium, **Bulgaria**, The Netherlands, Poland, **Romania**, Sweden) have even created specialised agencies for the reception of asylum seekers with links to several ministries (Home or Internal Affairs, Employment and/or Social affairs, Health, even Immigration and Integration or the Council of Ministers (Government) as such).

The centralisation of the system obviously does not prevent Member States' local authorities from playing a role with regard to reception conditions. Of particular note is the Finnish case where it is the Regional Employment and Business centres, which are under the supervision of the Ministry for Employment, that manage reception centres by concluding contracts with other organisations (the majority of which are other local authorities).

Only four Member States have a decentralised system: Germany and Austria, as they are genuinely federal states, and also Finland and Italy. Moreover, the British system is being regionalised. Despite this, the Italian and Austrian systems also have a federal agency.

In Austria reception throughout the first stage of the treatment of an asylum application remains to responsibility of the federal agency. Division between the Lander is subsequently carried out on the basis of the calculations of the Coordination Office installed within the federal agency. This body is responsible for the allocation of asylum seekers and for the transport of the latter to their place of residence. A less significant role is played at national level in Italy insofar as the existing national organisation plays a role by coordinating and providing information rather than managing reception conditions. The Ministry of the Interior, with the help of the association of Italian regional authorities (ANCI) and the UNHCR, has established a centralised system of information, of allocation, of consultation, of supervision and of technical support for local authorities providing reception facilities. The system managed by the ANCI aims to control the presence on the territory of asylum seekers, to create a database of actions which are advantageous for refugees at local level, to promote the dissemination of information concerning its actions, to provide technical assistance to local authorities as well as to promote and put in place return programmes in collaboration with the Ministry of Foreign Affairs.

In the **United Kingdom** with the New Asylum Model complete, responsibility for all new asylum claims falls to one of six regions across the UK: Scotland and Northern Ireland; North West; North East, Yorkshire and Humberside; Midlands and East of England; London and South East; and Wales and South West. Six new Regional Directors will be in post in the next few months. They are responsible for managing all aspects of Agency business in their regions, except ports and detention centres.

Q.35. Where applicable, are accommodation centres public and/or private (managed by NGOs? If so, are the NGOs financially supported by the State?)

The majority of Member States have chosen a mixed system where centres managed by public authorities exist alongside private centres managed by NGOs (Austria, Belgium, Spain, Finland, Italy, Malta, United Kingdom, Luxembourg). Certain Member States only have public centres (**Bulgaria**, Cyprus, France, Lithuania, the Netherlands, Sweden, Czech Republic, **Romania**, Slovakia and Hungary except one home for unaccompanied children run by an NGO) whereas **Greece** only has private centres managed by NGOs with one exception of one public centre. In Germany, where reception conditions are administered by the Länder, the accommodation can range from being entirely private to entirely public. In Poland, all the centres are managed by the Office although the Act on Aliens gives the possibility to have centres managed by NGOs.

Q.36. Where applicable, <u>how many</u> accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

The number of accommodation centres obviously reflects the number of asylum seekers received but also a choice made as to the type of accommodation. Member States can be categorised into three groups, bearing in mind that for some Member States no data is available:

1. The first group is composed of those having a small number of centres, 10 or less, as a result of a small number of asylum seekers (**Bulgaria**, Cyprus, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Portugal, **Romania**, Slovakia);
2. The second group has on average less than 40 centres: Poland, the Czech Republic, Finland, Spain, Sweden.
3. The final group (Austria, Belgium, France, and the Netherlands) has a denser network of reception centres.

Belgium and Spain have more centres managed by NGOs than centres under the direct management of public authorities.

Q.37. Is there in the legislation a plan or are there rules in order to <u>spread the asylum seekers all over the territory</u> of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

Most Member States have a more or less defined practice which aims to spread asylum seekers throughout their territory, with the exception of those who have only a limited number of asylum seekers and/or a limited geographic territory (Cyprus, Greece, Lithuania, Luxembourg, **Malta**, Portugal and **Romania**).

These practices are generally based on the idea that it is preferable to avoid a concentration of asylum seekers in the biggest cities (Estonia, Hungary and Italy), sometimes despite the need asylum seekers have to travel to the capital or to the nearest city and to have access to various services (Estonia). The Netherlands put in place a negotiation system with local authorities, which leads to the placement of asylum seekers into less populated regions.

There are also more elaborate systems of distribution. The Czech Republic, Slovakia, Sweden and Belgium try to divide up the authorities responsible and the reception centres throughout the territory and to establish equilibrium between the different regions. Slovakia,

for instance, recently opened centres in the east and the centre of the country in order to better balance the distribution of reception centres.

A minority of Member States, including the most populated (Germany, Italy, France, the United Kingdom) have laid down this distribution into legislation with a view to bringing about equilibrium between different regions. The criteria used may be the number of inhabitants (Germany, Austria), the wealth of the region (income tax in Germany), but also, in the second instance, the ethnic origin of the asylum seeker or family unity. The United Kingdom defines eligible areas for this distribution according to the availability of accommodation and infrastructure as well as the area's multi-cultural character.

It will be noted again that the Czech Republic takes the asylum seekers' characteristics into account when distributing asylum seekers throughout its territory in order to respect an ethnic and social balance within reception centres and to take into account the personal situation of those concerned (family, health, belonging to a vulnerable group) whilst asylum seekers are distributed by nationality in Spain.

In **Bulgaria** a step in this direction of distribution is made with the reception centre in the village of Banya in the Bourgas district. However, there are no legal provisions regarding this spread of responsibilities.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

Only a minority of Member States (Germany, Finland, Italy) dispose of a central body representing the different actors linked to reception conditions. In Germany, there is an advisory board at the Federal Office for Migration and Refugees consisting of experts from science, charitable and other non-governmental organisations, administrative courts, administrative bodies and lawyers. This board plays a consultative role. However, it is not a central body which represents all NGOs. In Italy, the central services, whose role is not only one of consultation (see above) is managed by the association of local authorities on the basis of an agreement with the Ministry for Home Affairs but NGOs are not represented there.

Malta has two large consultative bodies at its disposal where NGOs are present, one of which includes the managers of open centres. The United Kingdom also has a central consultation body but membership of the National Asylum Support Forum, coordinated by the Minister for Home Affairs, is individual and non-institutional. Another mechanism for consulting stakeholders in the United Kingdom is the Inter-Agency Partnership, which co-ordinates the work of agencies involved in asylum seekers reception.

Moreover, NGOs sometimes organise consortia such as in the Czech Republic, in Luxembourg and in Belgium or themselves create a federation of different organisations (Hungary).

Q.39 A Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?

The majority of Member States have not established a system of guidance, monitoring and control which is specific to the reception conditions of asylum seekers. These states therefore rely upon their general administrative inspection system to carry out this function for the reception conditions of asylum seekers.

The report on the Netherlands, where there is an operational inspection system, sees a gap in the system insofar as there is no inspection of the quality of reception conditions undertaken, with the exception of the regular health inspections undertaken by the National Health Inspection Unit and the less frequent inspections of the reception conditions for unaccompanied minors. In Cyprus, it appears that the Ministry of the Interior's control system is insufficient to comply with the requirements of Art 23 of the Directive but efforts are being made in this regard.

It is in reality difficult to judge the efficiency of systems of administrative inspections when they are not specific to asylum seekers. It would appear that there is no legal problem with the transposition, although it is preferable to withhold judgment on its concrete application at this point in time.

The control system is obviously more clearly identifiable in those cases where a specific agency is responsible for reception conditions (Belgium, the Czech Republic, Hungary, Italy, the Netherlands, Sweden) even if the responsibilities of this body are not always clearly defined (Poland). Austria also has quite a clear system despite the diversity inherent to federalism. For the part of the Federation, the Ministry of the Interior is responsible. Every Land has an asylum coordinator or a commissioner for asylum. These are installed in most Länder within the departments responsible for social affairs, in some in those responsible for Interior, and are responsible for management and control, although in practice organisations running care facilities will often also take charge. They all meet within a Coordination Council.

Different types of problems arise in two other Member States. Firstly, in the United Kingdom article 23 of the Directive has not been transposed. The only control arrangements in place concern accommodation under target contracts (target contracts set out performance standards which housing providers must respect. NGOs find that these contracts are difficult to enforce). In Slovenia, there is no system of control for reception conditions; the Human Rights Ombudsman only visited the House of Asylum and the Deportation centre on one occasion pursuant to a complaint and once again as a follow-up visit. He controlled what he normally checks in regular prisons and not what is specific to reception conditions for asylum seekers.

NO TRANSPOSITION	**Bulgaria** **Malta** **Lithuania** Slovenia United Kingdom[i]
PROBLEM	Cyprus, **Netherlands**

[i] In the UK the only control concerns housing standards as set out in guidance to contracted accommodation providers but there is no public account of how contract standards are monitored and whether requirements are respected.

Q. 39 B Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,…) to be respected in particular in accommodation centres?

Only a few Member States have clear standards in place applicable to the entire reception system (Some Austrian Länder, the Czech Republic, Finland, Italy, Lithuania, the Netherlands and the United Kingdom) or solely to detention centres (France). Some Member States nevertheless have less precise texts at their disposal (Hungary, Slovakia and **Poland**). In this latter state it may be added that the "*Guide on Bureau of Organisation of Centres for Aliens Applying for Refugee Status or Asylum*" has been published. It is not a document of binding force but it describes the standards of the reception conditions and mechanism of granting assistance in a very clear way. It is published also in English and Russian and is accessible on the Office web site. Moreover there is a "normal legally binding" regulation issued by the Minister of Interior related to the rules of stay in a centre.

The form these standards may take varies (regulations, handbooks, guidelines or even national agreements between reception actors). The document established by the Czech Republic is a good model thanks to its detail and this all the more so as the new Member States have not in general adopted this practice. Belgium and Sweden expressed their desire to harmonise their practices at national level.

Q. 39 C How is this system of guidance, control and monitoring of reception conditions organised?

Only those Member States which do not rely solely on their administrative system of inspection, which is traditionally based on a hierarchical model, answered this question.

In most Member States, there is no minimum of visits to be done. In Greece, controls on the current system are undertaken regularly, with the Ministry for Health visiting the centres every three months on top of the visits carried out by the body of health and social welfare inspectors. In **Estonia**, controls done by the Ministry for Social Affairs take place twice per year. Also the Chancellor of Justice visits the Reception Centre once a year.

It is noted with interest that UNHCR is more involved, whether in association with NGOs or not, in the control procedures of certain new Member States (Poland, Slovakia, Slovenia). In Slovakia, general provisions of the asylum law allow for monitoring by UNHCR and NGOs of the reception conditions in these centres. In Poland, the NGOs seem to have easy access to accommodation centres to complete the control exercised by the administration. It could be interesting to launch a discussion about the possibility of involving UNHCR in the system of control in other Member States.

Q 39. D Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

The number of Member States producing reports on reception conditions (15, namely Belgium, the Czech Republic, Estonia, Greece, Finland, France, Hungary, Italy, the Netherlands, Poland, **Romania**, Spain, Slovakia, Sweden as well as Luxembourg where the report is however not specific to reception conditions for asylum seekers) is higher than the number of those who did not produce reports (10, namely **Bulgaria**, Cyprus, Latvia, **Malta**, Portugal, Germany, Austria, Slovenia, the United Kingdom). It is only logical that all Member States which have an agency specialised in reception conditions produce a report (Belgium, the Czech Republic, Hungary, Italy, the Netherlands, Poland, Sweden).

Reports are generally annual (Belgium, the Czech Republic, Estonia, Finland, France, Hungary, Italy, Poland, Sweden) but can sometimes be more frequent (every three months in Greece, every six months in Hungary). In Greece, the presidential decree sets out an obligation to make a report on the management of centres without specifying how regularly these reports must be produced. Several of the Member States who prepare reports render them public (namely Belgium, the Czech Republic, **Estonia**, Finland, France, Poland, **Spain**, Sweden).

Q. 40 A **What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?**

The important differences in the elements taken into account at national level to calculate the available figures do not allow any serious comparison at European level. See each national report.

Q 40 B **What is the total budget of reception conditions in euro for the last year for which figures are available?**

Q 40 C **What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?**

The important differences in the elements taken into account at national level to calculate the available figures do not allow any serious comparison at European level. See each national report.

Q 40 D **Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?**

In the majority of Member States it is the central authority which covers costs incurred by reception conditions, with the exception of the two genuinely federal states, Germany and Austria.

The Länder cover the entire costs of the reception conditions in Germany, while the cost is divided in Austria between the federal government and the Länder in a 60/40% split which is set out in an agreement according to calculations carried out by a Coordination Council which assembles the Federal Minister for the Interior and those responsible for asylum questions in each Land.

The centralisation of reception conditions does not however exclude all financial interventions on the part of the local authorities of the Member States. This being said, their intervention normally gives rise to a reimbursement by the central authority.

Q 40 E Is article 24 §2 of the Directive following which "Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this Directive" respected?

The answer to this question, which presupposes the undertaking of a comparison of the resources actually employed as opposed to those which are really necessary, is obviously quite difficult to provide. According to numerous opinions of NGOs, the minimum considered sufficient by the Member States is not sufficient in reality. The British rapporteur considers that it is not so much the budget allocated at national level which poses the problem rather it is the lack of resources at local level and control of the use of these amounts. The answer to this question is even more difficult to come up with in the Member States which rely upon the private sector as well as in federal states because of the absence of any overall evaluation.

Several rapporteurs are of the opinion that the Member States allocate the necessary resources to reception conditions Belgium, the Czech Republic, Finland, Latvia, Slovakia, Sweden .

A number of rapporteurs note that certain reception conditions can suffer in particular because of lack of funding.
This scarcity affects food rations in the Netherlands and education in Austria and Slovenia.

The **Estonian** rapporteur concludes that the provision is in order but at the same time she underlines that the money provided for food is insufficient to stay healthy –see Q 12 B- but it is the same amount that is provided to Estonian citizens that are living in need. In **Hungary** it must be pointed out that the resources are adequate to a large extent but much of them are allocated not from the state budget but from external (ERF, donor) sources.

In **Austria**, resources have been allocated by all federal entities in order to fulfil their duties under the Directive. However, organisations in charge of the implementation of the rules in place (e.g. organisations running care facilities, providing legal or social counselling or granting special forms of health care or legal assistance) claim that resources allocated and paid to care providers per person in care are not sufficient to cover the costs incurred if benefits are to provide an adequate standard of living and cover the requirements of persons with special needs.

In **Bulgaria** the rapporteur repeats that at least material reception conditions are not sufficient for an adequate standard of living –see Q 12 B-.

In **Romania** interestingly the rapporteur points out that the amounts provided in the State budget for the payments of the allowances for asylum seekers are sufficient to ensure their payment. However, the level of these amounts granted to the asylum seekers is insufficient for their needs. This fact raises a question on the effectiveness of the transposition of art. 24 par. 2.

The same situation applies in **Portugal**, **France** and also **Lithuania** with regard to Article 13 § 2.

In **Malta** the rappporteur underlines that the budget allocation for immigration and related issues has been substantially increased in recent years in an attempt to address this issue. However, in view of the enormous needs created by the large numbers of undocumented migrants arriving by boat each year since 2002, the resources allocated **are not enough to meet more than the most basic needs of these persons**. The situation is made worse by the fact that, in practice, there is little or no distinction between asylum seekers and other immigrants. Finally not all asylum seekers are provided with reception conditions as required by the Directive (e.g. those who are never detained are usually provided with little or nothing by way of reception conditions).

In **Germany**, there is a problem of practical implementation: no general problem but occasionally reimbursement to NGOs which provide counselling seems to be insufficient.

In the **United Kingdom**, local authorities complain of insufficient resources given to them by central government and lack of political control over those resources which creates a failure to provide consistent services and support

An overall lack of resources is highlighted by two Member States. This is the case in Italy despite the financing of 81 projects by the European Refugee Fund and also in Cyprus where the accommodation centres are considered to be inadequate and the scarcity of qualified personnel is reported, yet with solutions in mind to improve the situation, most notably to outsource certain services. The situation of these two countries is confirmed by the lack of places in reception centres which has already been underlined (see above the answer given to question 24 C).

Spain has transposed this provision in an unusual manner emphasising the availability of public resources rather than their necessity, which constitutes a violation of the principle set out in the Directive.

In Luxembourg, it is premature to evaluate the situation because of the very recent entry into force of the transposition law.

PROBLEM	United Kingdom, Slovenia, Italy, Spain, Lithuania, **Malta** **Bulgaria, Romania** **Austria, Germany** **Cyprus**, **Estonia**, **Portugal**, **Hungary, France**

Q. 41 A What is the total number of persons working for reception conditions?

The figures available at national level are not sufficiently similar to allow any serious comparison at European level.

Q. 41 B How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (See article 14 §5, 19 §4 and also 24 §1 which are mandatory provisions)?

In a small majority of Member States the provisions of the Directive concerning the training of personnel have been correctly transposed (Belgium, Cyprus, Czech Republic, Lithuania, Italy, Austria, The Netherlands, Poland, Portugal, Sweden and Greece) or have at least been adequately given effect in practice (Estonia, **Hungary**, **Malta**, Spain, **Sweden**, **United Kingdom,** Slovenia where it is however dependent on the training programmes organised by actors other than the administration).

One distinction must be made between the Member States. A minority of them have inserted an obligation for training in the law itself which is not requested by the Directive (Belgium, Italy, Lithuania and Portugal have created a duty to train appropriately, in particular for persons working with unaccompanied minors). The details of the training to be dispensed (management of intercultural relations, management of violence, knowledge of the specific needs of particular categories of asylum seekers, knowledge of the asylum procedure…) are even spelled out in the legislation of some Member States (Belgium, Czech Republic, Lithuania, Portugal).

Training related to the special needs of women and minors is the most frequently administered specific training. On the contrary, few reports, with the exception of Belgium and Sweden, mention specific training dealing with victims of torture (the training of personnel who look after these victims is not specifically envisaged by the Directive as opposed to that of the personnel in charge of unaccompanied minors).

The organisations responsible for training vary according to the Member States. In the Czech Republic, Italy and The Netherlands, training is the responsibility of the body responsible for reception conditions. In **Italy** NGO's refer that despite legal provisions, training is not sufficiently ensured. Several new Member States benefit from the support of external bodies when it comes to the training of their personnel, whether they are NGOs or UNHCR. These organisations may simply participate in the training (Estonia, Greece) or be key actors in the training (Poland, Malta, Slovenia) which raises a doubt about the fulfilment of their obligations by these Member States. The number of asylum seekers logically has an impact on the organisation of the training (in this regard, Estonia did not organise a particular training in so far as it only received one unaccompanied minor). Despite the provision is not formally transposed and despite a small number of asylum seekers, **Latvia** nevertheless regularly organises visits of its specialists to other Member States to reception centres (on average three visits per year) and uses the European Refugee Fund to organise an annual training for staff.

Several rapporteurs have underlined the need for the linguistic training of staff and for more translators (Estonia, Greece, Poland). One additional element to be underlined is the lack of staff in general and of qualified staff in particular (Greece, Estonia).

In Austria, the system is marred by the lack of training for managers of private accommodation centres and the lack of adequate training at the level of the Länder.

In **Romania** there is no specification for special categories and in **Slovakia** no specific provisions regarding training of personnel concerned.

In **Germany** the practical implementation is very different across the Länder (Federal States) depending on the respective legislation. An exhaustive assessment is therefore not possible. Practical implementation is possibly insufficient in individual cases.

Q. 41 C Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

The majority of Member States have inserted the principle of confidentiality into their legislation. This can result in a general law or be taken up in a piece of legislation specific to the procedure for the treatment of the files of asylum seekers. The confidentiality obligation is also found in the legislation which applies to those associated with the occupation such as civil servants, social workers, doctors, and even in the rules of conduct established by each profession (Czech Republic, Hungary, The Netherlands, Slovakia).

With regard to private organisations, clauses detailing the confidentiality duty are introduced into employment contracts (Luxembourg, Austria) but they do not formally exist in every Member State concerning the activities of NGOs in reception centres, only certain Member States having limited rules on this matter (Cyprus, Italy, Malta).

In Sweden it could be questioned whether this confidentiality duty applies to those who are in charge of unaccompanied minors.

In **Bulgaria** there are no such rules.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the Directive:

Q.42. Specify whether there are big problems with the translation of the Directive into the official language of your Member State and where applicable give a list of the worst examples of provisions which have been badly translated? (Please note that this question has in particular been added to the questionnaire concerning the new Member States)

Translation problems have arisen in two Member States. The case in Hungary is quite obvious as there is a risk that the meaning of the Directive will be modified for several provisions as the table provided in the national report illustrates. This is also the case in Estonia with regard to certain provisions.

Article 21 of the Directive has notably not been correctly translated into Estonian and the Estonian law does not therefore precisely correspond to the Directive. In fact, the administrative court can only declare that the decision taken by the Council for Citizens and Migration (which is responsible for decisions concerning reception conditions) is incorrect and can only ask this organisation to take a new decision without pronouncing on the substance, which is contrary to the Directive. Questions also arise concerning the translation of some key words such as “reception conditions” in German, “legal assistance” in Swedish or the Slovene translation of terms denoting a duty (notably, the incorrect translation of the English verb “shall”).

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the Directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions…)?

With the exception of Malta, all Member States had certain rules concerning reception conditions at their disposal. The majority had a general law on asylum which includes provisions relating to reception conditions. Italy and the Netherlands do not have a law relating to reception conditions but a text of a regulatory character.

Most of the new Member States have amended an existing legislative act to transpose the Directive. Indeed, they already had to legislate on reception conditions in the run-up to their accession to the European Union.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?)

On the whole the transposition of the Directive has led to a clarification and precision of the rules relating to reception conditions in 11 Member States (Austria, Belgium, Cyprus, Estonia, Greece, Italy, Latvia, Luxembourg, Portugal, Slovenia) and to a smaller extent in Finland, Hungary and Slovakia. This was notably the situation with regard to:

- The definition of vulnerable groups and the right to live in private accommodation in Slovenia ;
- Access to the labour market in Estonia, Hungary, Luxembourg, Slovenia and Poland;
- Access to healthcare in Latvia and Slovenia;
- The education of the children of asylum seekers in Latvia;
- Unaccompanied minors

It should be noted in particular that the transposition of the Directive provided an opportunity to unify all of the texts relating to reception conditions in Italy and Belgium in a coherent manner even though certain provisions of the Directive still need to be transposed in the latter Member State, which risks limiting the effect of the clarification a little. France and Portugal have not yet seized this opportunity to consolidate the texts concerning reception conditions which therefore remain governed by a plethora of norms. Nor did the transposition have a major impact on substantive law in the Czech Republic, Germany, France, Lithuania, Sweden and **Poland**. In this latter State it may be observed the tendency to make the norms of the Act more precise and clear with the draft of 14 March 2007

The transposition has only had a negative effect in terms of clarification and precision in one Member State. British law has become more complicated by the addition or amendment of new provisions which must be compared to the old provisions to precisely determine the rights and duties of asylum seekers.

In the majority of cases the response in **Bulgaria** is **No.**

In **Romania**, in principle, the previous legislation was clear, precise, coherent and detailed, so, from this point of view, there is a ***status quo*.**

In **Malta**, the rules **are definitely clearer**, as now they are written down. However, work still needs to be done to ensure that these rules are fully implemented and that all asylum seekers are provided with adequate reception conditions.

Q.45. Did the transposition of the Directive imply important changes in national law or were the changes of minor importance? Where applicable, list the most important changes that have been introduced.

For one third of the Member States the changes brought about because of the transposition of the Directive are of only minor importance (Austria, Bulgaria, the Czech Republic, Germany, Finland, Hungary, Luxembourg, Sweden, United Kingdom), but it should be taken into account that sometimes important amendments are undertaken by some Member States during the preparatory work for a Directive in order to effectively evaluate its impact. The most important changes concern an asylum seeker's access to employment in a third of the Member States and to education in a smaller group.

The opportunity for the asylum seekers to gain access to the labour market is the primary change in Estonia, France, Latvia, Poland and Slovakia whilst Spain has simplified the procedure for issuing work permits. The right of children of asylum seekers to access education has been clarified in Lithuania, Poland and Slovakia with the transposition of the Directive. The welfare benefits system has also been reviewed on this occasion by some Member States. In the Netherlands the level of welfare allocations is generally on the increase, even if this rise will be gradual, and the temporary benefits to asylum seekers in-waiting is a positive change in France. In Slovenia meanwhile, benefit payments have been revised downwards. The other changes concern legal aid in Lithuania and Slovenia, access to healthcare in Lithuania and in Slovenia as well as information for asylum seekers regarding their rights and duties in the Netherlands. Finally and unexpectedly, the deadline of article 11 for giving access to the asylum seekers has been interpreted by Malta as an obligation to release asylum seekers of detention after one year in order to give them the possibility to work. Moreover as prior to the transposition of the Directive there was only one article in the legislation regulating the treatment of asylum seekers, the transposition of the Reception Directive therefore arguably introduced major changes into national law in this area, by clarifying and, to some extent, broadening state responsibility with respect to the reception of asylum seekers.

See also below answer to the question number 47.

Political impact of the transposition of the Directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the Directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline where applicable the main points which have been discussed or have created difficulties)

Only two Member States witnessed significant public debate at the time of the transposition of the Directive. The debate in Luxembourg mobilised parts of civil society with regard to the maximum detention period of up to one year for asylum seekers, their placement in prison and access to the labour market. In Slovenia, the controversy which pitted the government against NGOs concerning the standard of reception conditions gained media attention. The primary points debated were free legal aid, access to the labour market, freedom to choose accommodation and the level of care provided.

Debates limited to particular issues nevertheless took place in some other Member States due to pressure from NGOs and UNHCR: on the question of the standard of food provision in the Netherlands, on access to the labour market in Cyprus, on placement in a special centre for

breach of the internal rules of the centre in Slovakia and the possibility of asylum seekers to have access to the Supreme Administrative Court in the Czech Republic.

Finally, it is to be noted that the transposition of the Directive nourished a debate which has been recurring in Austria since the 90s on the division of costs of reception conditions between the federal power and the Länder concerning, in particular, the need to update the calculations of the number of asylum seekers.

Q.47. Did the transposition of the Directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the Directive (if yes, try to give the more important examples).

Member States may in this regard be divided into three groups:

1. In the first group (Czech Republic, Germany, Finland, Lithuania, Luxembourg, Sweden), the transposition of the Directive has not changed much relating to reception conditions already in place. These states, which were already largely in conformity with the Directive before its transposition, chose to not lower their national standards when they were higher than those in the Directive.

2. In the second group (Belgium, Estonia, Spain, France, Greece, Hungary, Latvia, Portugal, Malta, The Netherlands, Slovakia), the transposition of the Directive led to the adoption of more favourable provisions than those applicable before its transposition. Great advances were made with regard to the access of asylum seekers to employment in Estonia, Spain, France, Latvia and Slovakia. For the others, the transposition of the Directive has led to an improvement of the following points:
   - an increased awareness of the special needs of asylum seekers and of the limits to the administration's discretionary power in **Hungary** ; also in this State the curtailment from 1 January 2008 of the detention period from 12 months to 15 days;
   - a better guarantee of material reception conditions in Portugal;
   - asylum seekers in Belgium were better informed;
   - family unification in the Netherlands;
   - access to education for the children of asylum seekers in Lithuania, Poland and Slovakia;
   - a review of the welfare benefits system (amount of benefits provided in the Netherlands and the length of provision in France);
   - legal aid for asylum seekers in Lithuania;
   - access to healthcare in Lithuania.

3. The third and final group is composed of Member States where the transposition has, on the contrary, led to a reduction of reception conditions. The transposition has not however led to many changes in Austria and in the United Kingdom where only a few elements of a (potentially) restrictive nature have been introduced:
   - Restrictions on access to the labour market in Austria
   - Stricter sanctions in the United Kingdom

The lowering of standards has, on the other hand, been more marked in Slovenia where several more favourable internal provisions were abandoned at the time of transposition (pocket money for asylum seekers, free legal aid during the first stage of asylum procedure and additional restrictions on access to the employment market, to private accommodation and to healthcare).

From a legal point of view, it is to be noted with interest that the Directive generally led to an increase in reception conditions for asylum seekers. The positive effects of its transposition overshadow its negative effects. This fact deserves a mention as the quality of the level of standards offered by the Directive is often criticised as being too low. The theory of perverse effects according to which the Directive runs the risk of leading to a lowering of the standards of Member States (particularly in the absence of a standstill clause) has not proven to be true, with the exception of the case of one Member State. Even the most controversial provision of the Directive concerning the access of asylum seekers to the labour market which had proved difficult for Member States to negotiate until the last minute has in the end had positive effects on a fifth of the Member States! It should be borne in mind that the positive effects are clearly more marked in the new Member States which have just entered the EU than in the old, even if the only clear case of reduction of the reception conditions concerns a new Member State.

Even if it cannot be denied that the Directive of 27 January 2003 has not led to a harmonisation of reception conditions for asylum seekers in the European Union but has helped to bring the internal laws of the Member States closer to one another in this subject, the progress accomplished at national level should be credited to the European Union which will ultimately have contributed to progress on international asylum law by adopting a Directive which complements the Geneva Convention which, as we know, mainly regulates the statute of recognised refugees as opposed to asylum seekers.

In **Bulgaria**, the changes that have been introduced so far seem to make the national rules more generous (e.g. the permission to work after one year of procedure, the 15-day deadline to provide the asylum seeker with information, the provision on the rights of people with special needs, etc.). However, it is too early to assess since the transposition amendments are in force only since 3 July 2007.

In **Romania** in principle, there is a *status quo* regarding the content of the laws regarding the asylum. In principle, the norms of the transposition law are in line with the Directive (neither more favourable, nor more restrictive).

11. ANY OTHER INTERESTING ELEMENT

Q.48 and 49 What are in your view the weaknesses, strengths and best practices of the system of reception conditions in your Member State?

The reader is asked to note that the points covered in the lists below are not exhaustive as they do not concern transposition problems which feature in specific tables elaborated in this regard, but instead certain weaknesses of the Member States' system for reception conditions which do not necessarily give rise to legal problems regarding the Directive in all cases where the latter normally only fixes minimal norms.

A. Weaknesses

1. **With regard to financial means:**

- The insufficient funding of NGOs with the consequence of less stable relations with the administration as well as a reduced quality of their services in Poland ;
- The tendency to only offer the theoretical minimum necessary to asylum seekers, and even to reduce the sums which have been allocated. The choice of minimum poses practical problems in so far as certain reception conditions are therefore difficult to guarantee (Austria, France, The Netherlands, Poland, Slovenia, and Lithuania). This is true in particular for the medical monitoring of vulnerable persons more difficult and more expensive to organise than for other asylum seekers.
- Insufficiency of the medical expenses covered which only concern emergency care in Lithuania.
- In **Hungary** the state is reluctant to go beyond the minimum and tries to retreat even from the most basic duties, leaving it to project financing, relying on ERF and independent funds (social work, interpretation, legal aid, mental health of traumatised persons).

2. **With regard to the rights of asylum seekers:**

- A lack of differentiation between different categories of persons and confusion in certain cases between asylum seekers and illegal immigrants which means that some might not be able to avail of reception conditions (**Bulgaria**, Greece by border guards, Spain and finally **Malta** where there is a dilution of the protection that should be provided to asylum seekers, particularly in the area of socio-economic rights, and also, in some cases, more favourable treatment being granted to rejected asylum seekers/irregular immigrants than to asylum seekers).
- The absence of specific provisions regarding the categories of persons with special needs in **Romania**
- The lack of a time limit within which the State Agency for Refugees shall be obliged to register the asylum application after its submission in **Bulgaria.**
- An almost total lack of provision of material and other reception conditions for asylum seekers who arrive regularly, admittedly a rather small proportion of the asylum seeking population, in **Malta** –see Q 11-.
- In **Germany**, the system to assess the age of minors who do not have any documents showing their age. Since there is no legal basis for an X-ray examination of the carpal bone, which would deliver reliable results, the assessment is done by mere estimate.

Since reception conditions are different dependent on the age of the asylum seeker, this practice needs to be improved.

- In **Greece** the very problematic situation of detained asylum seekers.
- In the **Netherlands** the fact that the directive is not implemented with regard to asylum seekers in the first stage of the asylum procedure, while they are staying in application centres. There are no legal norms too with regard to the reception of asylum seekers in the emergency temporary reception either.

3. **<u>With regard to accommodation:</u>**

- The inadequate capacity of completely full reception centres (Spain, Greece **France** where efforts have however been made in the past 3 years) where the only solutions are to convert common areas into rooms when there are new arrivals (Slovenia)
- The long-term accommodation of asylum seekers in buildings which are in principle designed for short-term accommodation as a result of the length of the asylum procedure in Finland, Sweden and the Netherlands;
- The bad location of centres with the result that asylum seekers end up isolated in the Czech Republic, Estonia, Greece and the Netherlands;

4. **<u>With regard to staff and administrative management:</u>**

- The excessively wide discretionary power of the administration of the centres (Slovenia, Lithuania)

<u>B. Strengths</u>

1. **<u>With regard to the rights of asylum seekers:</u>**

- Definition of the precise standards applicable to accommodation, food and benefits (Czech Republic, The Netherlands) ;
- The putting in place of a care unit by an NGO in the Netherlands with a view to facilitating the access of asylum seekers to care ;
- Access to the employment market after three months in Finland

2. **<u>With regard to the services provided for asylum seekers:</u>**

- Asylum seekers may stay in the centre for a period of three months after the final rejection decision to prepare for their departure (Poland);
- The existence of a meeting place for asylum seekers and persons living in the surrounding area and also the opening to children from the local community of the crèche and school attached to the reception centre for asylum seekers (**Portugal**)
- Internet access for asylum seekers (Hungary) ;
- Free public transport for asylum seekers in Luxembourg ;
- The accommodation of asylum seekers amongst communities of foreign origin in the United Kingdom.
- In the **Czech Republic** the system of self-catering has been implemented in more asylum facilities.

Q.50. **Add here <u>any other interesting element</u> about reception conditions in your Member State which you did not have the occasion to mention in your previous answers.**

- In Lithuania, the costs of genetic testing for asylum seekers, as opposed to other foreigners, to determine whether a parental relationship exists and their age of asylum seekers is covered by the State.
- In the **UK** a parliamentary Joint Committee on Human Rights has recently conducted an inquiry into the treatment of asylum seekers (see Q7 bibliography in the national report) and concluded that: “In the Committee’s view, the current system is overly complex, poorly administered, offers inadequate information and advice to ensure that people receive the support to which they are entitled and in some cases denies any support at all to those who are destitute.”
- In **Italy** it must be underlined that in November 2006, within the framework of the project EQUAL IntegRARsi, the NGO ARCI has started an experimental innovative initiative in favour of asylum seekers. ARCI has set up a call centre where asylum seekers and refugees can address their questions on the asylum procedure, on the status of refugee and more in general on every issue that may be related to their position. This initiative is aimed at providing correct and appropriate information to the concerned persons. This initiative also involves local authorities, the IOM and the main NGOs that work in favour of refugees.
- In **Poland** it should be observed that the number of asylum seekers’ children attending schools is growing rapidly. In the school year 2004/2005 only 10% of them started their education at schools, in 2005/2006 – 53 % of them and in 2006/2007 – 88% of them. Maybe it is an influence of the Directive.