

**NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE  
EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE  
ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN:**

**ITALY**

by

<i>Alessia Di Pascale</i> <sup>1</sup> <i>University of Milan</i> <a href="mailto:Alessia.di.pascale@bakernet.com">Alessia.di.pascale@bakernet.com</a> <a href="mailto:alessiadp@yahoo.com">alessiadp@yahoo.com</a>	<i>Chiara Favilli</i> <sup>2</sup> <i>Researcher European Union Law –</i> <i>University of Florence</i> <a href="mailto:chiara.favilli@unifi.it">chiara.favilli@unifi.it</a>
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*Supervisor*  
*Prof. Nascimbene Bruno*

**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.*

*Decreto legislativo 30 maggio 2005, n. 140 “Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all’accoglienza dei richiedenti asilo negli Stati membri” in GU n. 168 del 21.7.2005. Date of entry into force 20 October 2005 (art. 15)*

<http://www.interno.it/legislazione/pages/pagina.php?idlegislazione=714>

*Legislative Act concerning only the implementation of the directive and adopted by the Government after Parliament delegation (art. 67 Italian Constitution);*

*Annex I*

- 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,...)*

- *Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;*
- *Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);*
- *Provide the texts of any translation of the above norms into English if they are available.*

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<sup>1</sup> Parr. 6-9

<sup>2</sup> Parr. 1-5; par. 10

1. Law: *Decreto legislativo 30 maggio 2005, n. 140 “Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all’accoglienza dei richiedenti asilo negli Stati membri” in GU n. 168 del 21.7.2005. Date of entry into force 20 October 2005 (art. 15)*

<http://www.interno.it/legislazione/pages/pagina.php?idlegislazione=714>

Legislative Act concerning only the implementation of the directive and adopted by the Government after Parliament delegation (art. 67 Italian Constitution);

2. Administrative circular: *Circolare Ministero interno prot. n. DCS/1/2005 del 17.10.2005 – Oggetto: Modalità di accertamento dei posti in accoglienza per i richiedenti asilo ai sensi dell’art. 6, comma 1, del decreto legislativo 30.5.2005, n. 140, recante “Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all’accoglienza dei richiedenti asilo negli Stati membri”*

<http://www.asgi.it/content/documents/dl05102500.circolare.posti.in.accoglienza.doc>

3. Administrative circular: *Circolare Ministero dell’interno prot. n. 400/C/2005/1170/P/15.1.12 del 22.10.2005 – Oggetto: Decreto legislativo 30.5.2005, n. 140 – “Attuazione della direttiva 2003/9/CE che stabilisce norme minime relative all’accoglienza dei richiedenti asilo”*

<http://www.asgi.it/content/documents/dl05110900.circ.int.221005.doc>

4. Ministerial Decree: *DECRETO DEL MINISTERO DELL'INTERNO 28 novembre 2005 (in Gazz. Uff., 5 dicembre 2005, n. 283) - Linee guida, formulario delle domande e criteri per la verifica della corretta gestione del contributo erogato dal Fondo per le politiche e i servizi dell'asilo e loro armonizzazione alle disposizioni del decreto legislativo del 30 maggio 2005, n. 140. Misure e modalità del contributo economico a favore del richiedente asilo che non rientra nei casi previsti dagli articoli 1-bis e 1-ter del decreto-legge 30 dicembre 1989, n. 416, convertito, con modificazioni, dalla legge 28 febbraio 1990, n. 39, così come introdotto dall'articolo 32 della legge 30 luglio 2002, n. 189.*

<http://www.interno.it/legislazione/pages/articolo.php?idarticolo=702>

5. Administrative Circular: *Circolare del 27 novembre 2002 sulle Convenzioni tipo e “linee guida” per la gestione di Centri di Permanenza Temporanea e Assistenza (CPT) e di Centri di Identificazione (CId, già centri d’accoglienza)*

<http://www.interno.it/stampa.php?sezione=1&id=21698>

6. *Regolamento attuazione 303/2004*

<http://www.interno.it/stampa.php?sezione=6&id=631>

English Version [http://www.interno.it/assets/files/7/20050420122845\\_10-113-232-21.pdf](http://www.interno.it/assets/files/7/20050420122845_10-113-232-21.pdf)

A. Leaflet: <http://www.interno.it/assets/files/10/20051021105725.pdf>

B. Verbale declaration of asylum seekers under Geneva Convention  
[http://www.interno.it/assets/files/7/20050420163440\\_10-113-232-28.pdf](http://www.interno.it/assets/files/7/20050420163440_10-113-232-28.pdf)

7. L. 1990 no. 39, as changed by Artt. 31-32 L. 2002 no. 189: *Norme urgenti in materia di asilo politico, di ingresso e soggiorno dei cittadini extracomunitari e di regolarizzazione dei cittadini extracomunitari ed apolidi già presenti nel territorio dello stato*

<http://www.welfare.gov.it/Sociale/immigrazione+ed+integrazione/norme/leggi/1989-12-30DLn.416+.htm>

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)*

In Italy the competence to adopt legal norms on reception conditions for asylum seekers is of the central Government according to Art. 117, 2<sup>nd</sup> par. lett. a) of the Italian Const., that confers to the central Government the exclusive competence on asylum and the legal status of third country nationals. Regional authorities have competence on subjects connected with the reception such as the social services and the services related to migration such as mediation, housing, integration. At the moment this regards mainly the services organisation although there is a wide difference among regions in the standard of social services. The Constitution states that the Government shall fix the “essential levels of social protection” that will establish the minimum standard to be granted in the whole country. After a lot of debates the negotiations between central Government and Regions on this crucial point is at a standstill.

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.*

Since 1989 Italy adopts each year a law, named *Legge comunitaria* (European Law) in order to implement European law such as Directives, Decisions or ECJ Decisions. The “*Legge comunitaria*” can: provide directly the norms necessary to conform to the European law (this can happen when only small changes are sufficient); delegate the Government to adopt the norms with an act having the force of law or with a regulation (this is possible when there is already a law but there is not a reserve of law in the Constitution); consider sufficient an implementation through administrative acts. The *Legge comunitaria* has at least two annexes listing the Directives that the Government is delegated to implement. The difference between the two annexes is that only for one of

them is requested the opinion by the competent Parliament commissions before the official adoption of the Legislative Decrees.

Directive 2003/9/EC has been implemented with the most common techniques, the delegation to the Government to adopt an act having the same force of Law (Art. 67 Italian Constitution). This topic is covered by a reserve of law stated by art. 10, 2<sup>nd</sup> and 3<sup>rd</sup> par., Italian Constitution. Directive 2003/9/EC was listed in Annex A of L. 31 October 2003, n. 306 *recante disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee – legge comunitaria 2003*, so that the opinion of the Parliament was not necessary to adopt the decree (Art. 1, par. 3, L. 106/2003).

The Parliament participation in this process of transposition is very modest. This is aggravated by two factors: the draft of the *Legge comunitaria* is written by the Government and there has not been any act by the Parliament on the Proposal directive. We can affirm that the Parliament has been completely absent from the entire process of adoption and transposition of the Directive.

- 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.*

Although there is not a wide debate on the implementation of the Directive the implementation is not generally only a copy of the Directives, except for the definitions. The Government legislative officials are charged to propose a draft that is generally not so much changed. That draft is written taking account the national law and trying to change it the minimum as possible.

- 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)?*

Italy has adopted all the legislative acts and the administrative circulars necessary to implement the European Directive and to enable the administration to apply the norms (see annex II-III-IV)

## **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).*

As already mentioned there has not been an in-depth preparatory study and there has not any public document related to the changes adopted with the directive transposition. (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).

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).*

D. Consoli e G. Schiavone, *Analisi della procedura semplificata, della procedura ordinaria e delle collegate misure di trattenimento dei richiedenti asilo*, in *Diritto, Immigrazione e cittadinanza*, 2005, 2, pp. 13-27

ICS - Consorzio italiano di solidarietà, *La protezione negata – Primo rapporto sul diritto di asilo in Italia*, Milano, 2005

ICS – Consorzio italiano di solidarietà, *Il diritto di asilo in Italia nel 2005*, Torino, 2006.

A. E. Matarazzo, *Accoglienza e concessione del diritto di asilo - Osservazioni su materie di notevole spessore per una visione europea e internazionale dei fenomeni, scongiurando il rischio dell'adozione di provvedimenti «emotivi»*, in *Lo Stato civile italiano*, 2005, fasc. 12, pagg. 953

N. Morandi, *La normativa comunitaria sul diritto di asilo*, in *Diritto, immigrazione e cittadinanza*, 2005, 1, pp. 51-67

M.A. Quiroz Vitale, *Richiedenti asilo, Centri di prima accoglienza e politiche pubbliche dell'immigrazione. Alcuni dati sulla realtà milanese*, in B.M. Bigotta, F.A. Cappelletti, *Il Diritto di asilo*, Padova, 2006

M. Sideri, *I richiedenti asilo e l'accesso al mercato del lavoro in Italia tra legislazione internazionale, progetti di riforma e prassi quotidiana*, in *Diritto delle relazioni industriali*, 2005, pp. 862 ss.

S. Sonnino, S. Masiello, *Politiche europee sull'asilo e i rifugiati*, in *Gli stranieri*, 2005, pp. 113

G. Vitale, *La nuova procedura di riconoscimento dello status di rifugiato: dall'audizione avanti la Commissione territoriale all'impugnativa giurisdizionale*, in *Diritto, Immigrazione e cittadinanza*, 2005, 4, pp. 47-65

L. Zagato, a cura di, *Verso una disciplina comune europea del diritto di asilo*, of next publication

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 not at the moment any decision of jurisprudence based on the implementation of the new rules of transposition of the directive

### **3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS**

*The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. **Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. ***Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)***

L. 189/2002 (named Bossi-Fini) has provided three different ways of granting reception to asylum seekers: 1. the National reception system (SPRAS); 2. the reception in the Centre of Identification; 3. the reception in the Centre of Temporary stay.

1. The first one is the reception in centres set up by local authorities through a system modelled on the positive experience tested with the *Programma Nazionale Asilo (PNA)*. Art. 32 L. 189/2002 has now named the scheme “*Sistema di protezione per richiedenti asilo e rifugiati*” (SPRAS – System of protection of asylum seekers and refugees) and has created the *Fondo nazionale per le politiche e i servizi dell’asilo* (also with the European Refugee Fund) to support the activities. The administrative body is located in Rome and is named Servizio centrale <http://www.serviziocentrale.it/>.

The basic idea of the System is the active role of local networks leading by the municipalities. The System is run by ANCI (National Association of Italian Municipalities, [www.anci.it](http://www.anci.it)) who has signed an agreement with the Interior ministry on 24<sup>th</sup> July 2003. A subcontract has been signed by ANCI and IOM concerning the activities aiming to find a durable solution for refugees (integration, repatriation or resettlement).

Each year the municipalities who want to be funded must present a project of reception that will be evaluated by the *Servizio centrale*. With these projects have been offered about 2000 places.

NGOs do not have an official role at national level but are involved in the local networks.

The local office of the Government, *Prefettura*, is the *pivot* of the system: it is in charge of admitting the asylum applicant in the reception system and of finding, through the Central system, the available places in one of the centres of the country.

2. The second one is the new one and now most used. The reception in a Centre of identification is granted to those asylum seekers under these conditions: doubts on identity; illegal entry;

3. The last one is for those who after been addressed of a deportation order and detained in a Centre of temporary stay ask for the recognition of the refugee status.

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.*

L. 189/2002 has settled a new procedure to recognise the Refugee status in Italy. That procedure has entered into force on the 21 April 2005 after the entry into force of the Regulation DPR 2004 n. 303.

There are two different procedures for which there are different reception conditions: the standard procedure and the fast one.

In the standard procedure the Police gives the asylum seeker a permit of stay for Asylum application (*per richiesta di asilo*) and a leaflet with the information about the assistance provided by the SPRAS and the modalities to apply for in order to grant assistance. In this case the Local Office of the Government, named *Prefettura*, will decide on the admissibility after an evaluation of the needs of the asylum seekers and will provide a place in one of the centre in the country through the Central service. Also in this case the applicant may be detained in an Identification Centre in order to: verify her/his identity; verify the grounds of the application if not immediately available; awaiting the end of the procedure to be admitted in the territory.

After three days the applicant receives a certificate with his name and after twenty days a permit of stay for asylum application lasting three months and renewable until the procedure ends.

In the accelerated procedure the asylum seeker is always detained in a Centre of identification (*Centro di identificazione*) or in a Centre of temporary stay (*Centro di permanenza temporanea CPT*). The former has been created with L. 189/2002 in order to detain the asylum seekers for the time necessary to identify him/her and not just to examine the application but only when the asylum seeker: has used false documents and has not declared it to the police; has avoided or trying to avoid border controls; has been stopped after illegally entering or residence in Italy. Once the detention is not necessary anymore the asylum seeker must be released and given a permit of stay until the Local commission has not decided on her/his application. The detention can last maximum for twenty days plus ten days in case of a new exam of the rejection of the application. Although the asylum seekers can not leave the centre without losing their legal status, the law does not consider that detention as a deprivation of personal freedom and so does not ask the intervention of the judge as requested by Art. 13 and 16 Const.

In case of detention in the *CPT* (when he/she has an expulsion decree or when is entered and or has stayed in the territory illegally) the asylum seeker must be detained until the application is decided. In this cases the asylum seeker is detained with the other foreigners waiting for the deportation (while the Identification centres are devoted only to asylum seekers).

The praxis shows that the majority of asylum seekers is detained in one of these two centres. This is relevant regarding the reception conditions because in all the cases of the accelerated procedure and detention the reception is granted directly in the Centres. Only when the asylum seeker has left the centre and (if) has got a permit of stay for Asylum application (*richiesta di asilo*) she/he can be admitted to the national reception system (SPRAR).

The main difference among the three types of reception conditions is that of freedom of movement: in the SPRAR system, asylum seekers are in principle free to move; in the Identification centres they are free to move only during the day, while in the *CPT* they are forbidden to move with strict controls by police. Moreover, in this last case their conditions are not different from that of the other foreigners.

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

According to art. 5 d.lgs. 150/2004 the reception starts since the presentation of the application. Some assistance can be granted also before the enrolment of the application according to *D.L. 451/1995* (L. 29.12.1995 n. 563 known as *L. Puglia*) and Regulation of Application Decree 233/1996.

The reception can be granted until the application is not decided (see here under Q15).

#### **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, health, transportation, 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?*

Generally the assistance is given in kind through a centre of the SPRAS, a centre of identification or a centre of temporary stay (as far as they are detained in these centres they get accommodation, food and clothes as the other foreigners awaiting for deportation).

In the SPRAS or in the Centre of identification the asylum seeker is given accommodation, food, clothes, hygienic products or vouchers to buy them. There is also a sort of pocket money for the daily minor expenses. As far as the SPRAS it is not possible to describe in the detail the modalities of reception because every local network plans a project for which ask for funding: what is common is the provision of accommodation (single buildings or apartments), food (in the same building or through vouchers), clothes (in kind or through vouchers) and generally the pocket money.

When the asylum seeker is sent to a centre of identification located far from the *Prefettura* where he has applied for the assistance, he is given a ticket to reach that centre.

As far as the assistance in the reception centres (apart from common services such as accommodation, food, clothes) the material assistance can change by region to region and by city to city. Each city council indeed, presents projects of reception different from that of the other cities.

In case there is no available place the applicant can receive monetary assistance: Euro 27,89 per day for a maximum of 35 days, equivalent to maximum Euro 976,15, but it does not happen often.

In order to have access to the reception measures it is necessary not to possess an amount higher than that considered in the decree of the Interior Office in order to obtain the Tourist visa. This means not more than 5226,78 Euro for a period of 6 months.

- 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.*

The assistance given by the SPRAS can be considered sufficient as stated in the common agreement by NGOs (see the questionnaire sent by Italian NGOs and the report edited by ICS, listed in the bibliography). As far as Identification centres or Centres of temporary stay there are no particular issues raised about the delivery of food, clothes or other material assistance. However the CPT are centres of detention a lot of which with problems of overcrowding and general bad conditions of stay as condemned by several NGOs: while we are writing a Ministerial commission headed by the UN official Staffan de Mistura is in charge of conducting a special inquiry to verify and report about the conditions in the centres (<http://www.interno.it/news/articolo.php?idarticolo=22693> ). According to ICS, during the 2005 NGOs have not been able to enter in the Identification centres.

As far as the reception offered in money, we must compare the 976,15 Euro with the minimum amount of social aid fixed in 381,72 Euro per month (foreigners can benefit of that amount only when they have a long stay permit or when they are recognised as refugee). The amount of E 976,15 is adequate only if the procedure ends shortly days and if she/he has the chance to be hosted for free. In a lot of regions and in particular in the big cities the rent rates are very high also for one room. After that period the asylum seeker finds her/himself without any social assistance and without the chance to work. If the asylum seeker can not eventually find a place in a centre of reception he risks not to have the minimum amount to live. This sort of reception is a residual option that seems applied hardly ever (see the answers given by Parodi Danilo from the Genova Municipality, Q1.B).

## **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)**

*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.*

According to Art. 1, *D.lgs.* 2005/140 contains the rules on reception conditions of asylum seekers. Art. 1, par. 2, expressly excludes the application in case of temporary measures (*D.Lgs.* 2003 n. 85 that has implemented Directive 2001/55/EC). According to Art. 2 devoted to definitions, the asylum seeker is only the foreigner who apply for the recognition of the refugee status as defined by the Geneva Convention.

For the other forms of protection there is not a specific reception system. In Italy the right of asylum is recognised by Art. 10, 3<sup>rd</sup> par. Const., with a definition very much broader than that of Art. 1 of Geneva. However that Constitution Article has not been implemented with a

secondary law so that the only legislative framework has been for years that of the Geneva Convention. Since 1997 national Tribunals recognise direct effect to Art. 10 so that it is possible to apply for asylum appealing to a Court (with a lot of differences between courts). The applicant will receive a permit of stay for “jurisdictional grounds” but it does not allow to work. Besides with Law 189/2002 and Art. 15 of Regulation 2004 n. 303, the Local commission can deny the refugee status but ask the Police to issue a permit of stay on humanitarian grounds (Art. 5, par. 6, L. 286/1998) because there are other risks included the breach of Art. 3 ECHR (for the first time expressly mentioned in a legal act concerning foreigner). Those who will get a permit of stay will be able to work.

**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.*

**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)?*

Italian Law does not recognise expressly the diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (article 3, §2). It is not excluded that a sort of protection should be given in exceptional circumstances but not being a rule of general international law Italy is not bound to recognise it or to accept those requests.

**Q.14.** *Are reception conditions available as from the moment one 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?*

Art. 5, par. 1, *D.Lgs.* 2005 n. 140 states that the asylum seeker who is not detained in a centre of identification or in Centre of Temporary Stay, gets the assistance since he gets the Permit of Stay. This is released in 20 days since the application is enrolled. But the following par. 5 specifies that the access to the reception measures is allowed since the moment of the application’s enrolment. More over some additional measures and forms of relief can be provided also before according to *L.* 1995 n. 563 (known as *L. Puglia* providing the use of armed forces in activities of sea border controls in the Puglia Region).

The asylum seeker who is sent in a Centre of identification or in a CPT will benefit of the reception measures inside the centres and since he starts to stay there.

In order to benefit of the reception measures, the asylum seeker must show the lack of sufficient means for her/his life and that of her/his family. The amount under which the protection is granted is established with the reference to a period of maximum six months and taking as measure the amount requested to get the permit of stay for tourism (Art. 13, par. 3 Directive).

The reception is granted only if the application is presented within eight days since the entry in Italy or, in case of application enrolled during a legal stay for other days, within 8 days since the starting of the persecution. The respect of this temporal condition can be showed with any means included the applicant declaration: the reception can be revoked if the police can demonstrate that the declaration is false (Art. 16, § 2, Directive). This condition appears quite strict and too rigid: it is applicable to all the asylum seekers automatically without the possibility for the authority to take into account the personal situation and so adopting reasonable decisions proportionate to the specific case.

**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 Art. 5, par. 6, the reception assistance ends with the communication of the decision on the Asylum application. According to Art. 11 if the procedure is not finished in six months since the enrolment of the application, the permit of stay is renewed for other six months and the asylum seeker is allowed to work.

In case of rejection the applicant can appeal but must leave the territory and the recourse has not an automatically suspensive effect. However the applicant can ask the *Prefetto* to be authorised to stay in Italy until the end of the jurisdictional recourse. In this case the asylum seeker will benefit of reception measures according to Art. 5, par. 7, which states that the asylum seeker "is admitted to the reception system only until is not allowed to work". This is a puzzling rule: it is not clear why the asylum seeker must apply again for the reception instead than going on with the measures already allowed. Moreover, and more critical, it is the provision of the reception's end when he is allowed to work. According to Art. 11, § 1, after six months the asylum seeker is allowed to work. Art. 5, § 7, together with Art. 11, § 1, risks to be interpreted as an automatic lost of the reception measures when the asylum seeker is allowed to work. This is a point of contrast with the directive that at Art. 16, § 5, states that the reception conditions will not be withdrawn or diminished before a negative decision is taken while Art. 11 States shall allow asylum seekers to work after maximum one year since the application's enrolment without saying anything about the cessation of reception measures.

It is necessary to interpret *D.Lgs.* 2005 n. 140 in conformity with the Directive and this can be done using its Art.11, § 4, that expressly states that the asylum seeker while working can continue to benefit of the reception conditions but contributing to the costs. This rule must be applied also at those who have appealed a negative decision and are authorised by a Court to stay in Italy. Otherwise the asylum seeker who does not work, despite been allowed and able, risks not to benefit of the reception measures while still in the territory awaiting for the final decision.

According to the law the reception measures end also in case of a positive decision: the problem here is that the refugee is not still able to provide for himself also considering the drastic reduction of the procedures length. Indeed with the new procedures the majority of the application are decided in very short terms. Also in case of standard procedures when the asylum seeker is detained in a Centre of identification the procedure tends to end in thirty days maximum. This means that also in case of a positive decision it is unlikely that the refugee will be able to find a positive way of integration without personal resources. It is so very important to have strategy of integration of these people and guaranteeing measures also after the positive decision.

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

Art. 12, par. 1, lett. c), states that the reception measures are revoked in case of previous presentation of an asylum application in Italy. The reception assistance ends with the communication of the decision. The applicant can appeal against this decision to the Regional Administrative Tribunal. The law does not rule expressly about the decision to accord the assistance but by analogy we have to infer that the reception measures are not granted since the beginning in case of a successive application.

Q.17<sup>3</sup>. **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 large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):**

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

According to Art. 3 D.Lgs. 2005, n. 140, the applicant is informed about the Health services and reception conditions and the way to ask for them (lett. e); the reference of UNHCR and NGOs and the way to enrol the minors in the school, the access to the reception measures provided by the local authorities, the way to access the training courses lasting not more than the permit of stay.

This leaflet of 7 pages contains also information about the asylum procedure and only a paragraph, the third, contains the information on reception assistance together with the conditions of detention. Despite what provided by the Decree in the leaflet there are not information on enrolment of minors in school. At p. 5 there is written that once in the centre the asylum seeker can ask the NGOs or UNHCR in order to apply to attend Italian language course, legal assistance and other useful information.

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

The information are written, giving the applicant a leaflet already mentioned in the Regulation 2004 n. 303, Art. 2, par. 6.

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

The leaflet is available in Italian, English, French, Spanish and Arab (Art. 6 and 4 Regulation 2004 n. 303).

**D. Is the deadline of maximum 15 days respected?**

According to Art. 3 D.Lgs. 2005 n. 140 the police must give the leaflet in 15 days after the presentation of the asylum application. Circular of 22.10.2005 states that it is recommended to give the leaflet when the application form is filled-in. This is very important because with the new and fast procedures it is not reasonable and risks to be useless to give the information about reception conditions after 15 days.

Q.18<sup>4</sup>. **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 extend a mandatory provision):**

**A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?**

According to Art. 3, par. 6, lett. d), the leaflet aforementioned contains the address and the telephone numbers of UNHCR and the main NGOs specialised on asylum assistance. So at p. 4 of the leaflet there is written the address and telephone number of UNHCR in Rome; an

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<sup>3</sup> To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>4</sup> To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

annex contains the address and telephone numbers of relevant national organizations. There is also the number of the Central service in Rome.

In the electronic version of the leaflet there is not the NGOs list.

**B. *Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?***

The information is written contained in the leaflet. There is no indication in the decree about the opportunity to give information orally, for example in cases of people who are not able to read or write or who speaks languages different from those in which the leaflet is written (see next point).

**C. *Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.***

Art. 5 Decree 150/2004 refers to Art. 4 Regulation 303/2004 which states that the information are given in a language understood by the asylum seeker or, if not possible, in Italian, English, French, Spanish and Arab according to the preference expressed by the applicant.

**D. *How many organisations are active in that field in your Member State?***

Many organisations work in the field of asylum: some (about ten) are represented in all the territory or play an active role at national level (in particular those located in Rome); others are active only at local level where can play relevant role in the reception being involved in the projects presented by the municipalities. It is impossible to say how many because in each city there can be an NGO working only at that level. Anyway the main NGOs are: CARITAS, ICS, ARCI, CIR, Comunità di Sant'Egidio, Evangelic Churches.

**Q.19. *Documentation of asylum seekers (see article 6):***

**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 of identity?) (see §1 of article 6 which is a mandatory provision)***

The police delivers a document with the applicant's name that certifies he has applied for asylum. Art. 4, par. 3, expressly states that the document does not prove the identity but only that the person has asked for asylum. In twenty days the asylum seeker who is not detained will receive also a permit of stay for asylum application (*per richiesta di asilo*). Also the applicant detained will receive the permit of stay if he is released before the end of the procedure.

**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)?***

In case of detention the asylum seeker will get a document with her/his name and the specification of the condition of detention. Also this document does not prove the identity of the asylum seeker.

There is nothing about the faculty of States of conferring the applicant a travelling document in case of serious humanitarian reasons for which the applicant must be in another States (see Art. 6, par. 5, of the Directive).

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

There is not a formally expiry date of this document but, for those asylum seeker who are not detained, it will be substituted by the permit of stay for asylum application.

**D. *What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected<sup>5</sup>?***

According to Art. 4, par. 1, the document is delivered in three days since the presentation of the request. Not all the Police Offices are able to deliver the document on time because of their organisation and staff not sufficient to deal with all the applications.

**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)?***

There is not a specific norm and it is very unlikely that the police will deliver such a travel document. Anyway in case of very long procedure it is not excluded that the administration will allow it.

**F. *Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.***

The system of registration of asylum seekers is separated from that of aliens. The data concern in particular the permit of stay issued by the Ministry of the Interior who is in charge of holding the permits of stay through the local police offices.

There is also the database related to the asylum seekers hosted in the reception centres or in the Centre of identification or of temporary stay.

NGOs have repeatedly denounced the lack of an efficient database collecting the applications, the rejections and the approval of the asylum requests.

**Q.20. *Residence of asylum seekers<sup>6</sup>:***

**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 and in case, which part? (see article 7, §1 which is a mandatory provision)***

In principle the asylum seeker who is not detained is free to move in the entire territory. In order to have an hearing in front of the Commission all the communication are addressed to the declared address so it is very important for the asylum seeker to communicate any change of domicile.

Those who benefit of the reception measures through the SPRAR have to establish their effective residence in the centre where there is the available post. An exception, but limited to

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<sup>5</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>6</sup> Nota bene: the case of detention is covered by other questions and should be ignored under this question.

residual cases, is when the applicant receives an amount of money until there is not any available post in the centre. When located in a centre, also the competence of the local Commission that must decide on the application can change: if in principle it is the Commission competent for the regions where the application is lodged; in case of transferral to a centre in another region also the competence of the Commission will change.

Therefore the only way to benefit of the reception measures is to stay and have the residence in the centre, that is the hypothesis foreseen by Art. 7, §4, if the Directive.

- B. *About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of 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 application, attribution of reception conditions,...).***

Those who are not detained and who are not hosted in a centre of reception must communicate their address. There are not specific limitation. They can change also the domicile but they must inform the police of that change, because every communication is done to the declared address.

- C. *About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of 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 procedure is managed principally by the *Prefettura* that must ask to the National service located in Rome the availability of places in the reception centres.

The asylum seeker who applies for reception conditions is sent to the centre where there is an available post taking account of personal conditions such as family members, pregnant women or disability. These special conditions, if present, have to be indicated by the *Prefettura* when ask to the Central Service the place's availability. In case it is not possible to place the person in one of the local centre managed by the local authority the asylum seeker can be sent to a centre of identification or in a structure set up by L. 563/1995 providing accommodation in case of emergency, for the time necessary to find a post in a centre of reception.

The decision is taken by the Central service and does not involve the applicant.

The reception is offered in the structure and is conditioned to the effective residence of the asylum seeker in that structure except when it is transferred to another after a reasoned decision taken by the *Prefettura*. The address of the centre is communicated to the police and to the Local commission because every communication of the procedure will be sent to that address.

***D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)***<sup>7</sup>

The *Prefettura* sends a written request by fax to the Central service of the Protection system for asylum seekers and refugees. The same request is sent to the Interior Ministry because.

The Central service will inform the *Prefettura* about the available post in one of the accommodation centres. In the negative option the Interior ministry will provide for a post in a Governmental structure, such as a Centre of Identification or a Centre built by the L. 1995 n. 563, known as *Legge Puglia*. Then the *Prefettura* will confirm the reservation of the post and will inform the asylum seeker also giving him the travel ticket to reach the centre.

For logistic reasons for all the 2005 the reception has been granted only in the Governmental structures. The decision about the allocation of the asylum seekers can not be appealed.

In case of there are not places available the *Prefettura* gives the asylum seeker an amount of 790 Euro until there is not a post in a centre and there is the mandatory condition to communicate the domicile chosen to the *Prefettura*.

***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 ensured? (see §5 of article 7 which is a mandatory provision)***

According to Circular 22.10.2005 the reception in a centre of the System of protection is conditioned to the effective stay of the person in that centre. The transferral in another centre can be ordered by the *Prefettura* only for reasoned grounds such as the family reunion.

According to Art. 9, par. 2, Reg. 2004 n. 303 in case of residence in a Centre of identification the *Prefettura* Official can allow the asylum seeker to leave temporarily the centre for personal reasons of health, family or related with the asylum procedure. The leaving must always be compatible with the fixed time of the accelerated procedure. There is not any element to affirm that it is an impartial decision except that it must be reasoned and communicated to the applicant.

In case of detention in CPT the asylum seeker can not leave the centre.

In case of residence in an accommodation centre the applicant can temporarily leave under approval of the director.

**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.**

D.Lgs. 2005, n. 140 does not state anything about reduction but Art. 12 concerns the withdrawal of reception conditions in the following cases:

a) lack of presentation to the centre or leaving it without previous communication to the *Prefettura*; b) lack of presentation to the hearing to the Local Commission; previous application of asylum in Italy; c) proof to have economic means to have assistance (in this

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<sup>7</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

case the applicant must also refund the director of the centre for the expenses in the period he has been hosted); d) serious violation of the centre rules or violent attitudes.

Some remarks can be done on these rules that result not in conformity with the Directive.

In case of lett. a) the reception conditions can be renewed if the applicant is found or back and the lack of presentation is due to reasons of force major or accidental event, while the Directive states that there will be a reasoned decision based on the reasons of the absence.

Let. c) results stricter than Art. 16, § 1, lett. b): this states that the applicant has concealed the financial resources while the Italian law does not take into account the voluntary intention to conceal the financial means.

Let. d) is contrary to the Directive that allows in the case of breach of the centre rules or violent attitude only sanctions and not the withdrawal of the reception measures.

The decision to withdraw the reception conditions can be appealed to the Regional Administrative Tribunal.

The access to the emergency health care is granted in Italy to everybody included illegal migrants who can have access to urgency measures without the risk to be signalled to the Police (Art. 35, par. 3 D.lgs. 286/1998). Those who are not enrolled in the National Health System should pay unless they lack economic means.

**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<sup>8</sup>?***

As already mentioned the reception conditions are rejected if the asylum application is presented later than 8 days since the entry in the territory. The fixed time without the possibility to take in account the specific conditions of each person is too rigid compared to what allowed by Art. 16, par. 2, such as to have presented the application as soon as reasonably possible.

**C. *How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?***

All the decisions are taken by the *Prefettura*. Like all the administrative acts they must be reasoned and according to Art. 12 Reg. 140/2005 they are taken considering facts related to the person in question but the Articles does not leave sufficient discretion to the authority to take into account all the personal situation but seems to be too automatic.

It is evident that the *Prefettura*, that is the local office of the Government, can not be intended as an impartial body. This is also aggravated by the fact that the person is not heard before the measure is taken: for example in the case of violation of the centre rules and violent attitude, Art. 12, par. 3, states that the director of the centre must send to the *Prefettura* a report within three days since the events took place without any involvement of the person.

The person can appeal against the withdrawal of the measures to the competent Regional Administrative Tribunal.

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<sup>8</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

***D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?***

***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<sup>9</sup>?***

As far as we are concerned there have not been any decision or judgement on withdrawal or refusal of reception measures.

**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 a 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)?**

The asylum seeker can appeal against the rejection of the application in 30 days since the notification of the decision. The competent court is the Regional Administrative Tribunal (see the *Corte di Cassazione* 26 April 2006). The recourse has not a suspensive effect but the judge can authorise the applicant to stay in the territory until the end of the procedure. For this reason circular 22.10.2005 states that the reception measures last until the rejection of the authorisation to stay in the territory the reception measures last maximum 6 months since the presentation of the application. After this period the asylum seeker is authorised to work (Art. 11 d.lgs. 303/2004). While working the asylum seeker can stay in the centre but paying a contribution.

**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 Member States)?**

The asylum seeker can benefit from legal assistance. They are informed of the NGOs who can help them also in this regard with the leaflet above mentioned. When they are in the Centre of Identification they can contact the NGOs who are allowed to go there. Also in case of reception in a Centre of reception they are able to talk and ask for assistance through the NGOs working in the centre.

The legal assistance is free for those who lack of economic means: there is a law that provides the reimbursement for lawyer who assist people in these cases.

**C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones<sup>10</sup>?**

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<sup>9</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>10</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

As far as we are concerned there have not been any decision or judgement on withdrawal or refusal of reception measures.

**D. Is a mechanism of complain for asylum seekers about quality of receptions conditions 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)?**

There is not a mechanism of complain about quality of receptions conditions.

According to circular 27 November 2002 (see point 4 under Q.2) the reception centres must respect a minimum standard and have to be run following common guidelines. In case there is a breach of those rules the contracts with the subjects managing the centres, or a service within the centres, can be revoked.

The *Prefettura* is the authority in charge of doing the periodic checks in the centres.

## **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 member States and 14, §2, (a) which is a mandatory provision).**

In relation to the definition of member of the applicant's family, Legislative Decree 140/2005 recalls the definition contained in article 29 of the Single Text on Immigration law. The following categories fall within the scope of application the Decree: 1) the spouse not legally separated; 2) dependent children younger than 18 years, regardless of whether they were born in or out of wedlock, on condition that they are unmarried or that they are legally separated, and that the other parent, when existing, has given his/her consent; 3) children older than 18 years, in the event that for objective reasons they can not take care of themselves due to healthy problems causing total disablement; 4) dependent parents in the event that they have no other children in their country of origin or of provenance as well as parents older than 65 years if the other children can not take care of them for proven serious healthy reasons.

It is important to note that the above mentioned members of the family must be on the territory of the State at the time when the application for asylum is filed.

Pursuant to section 9 of Legislative Decree 2005/140, asylum seekers must be accommodated in a centre which ensures the protection of life and of the family unit, when possible.

**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 leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

Accommodation may take place in collective accommodation centres or in private apartments spread all over the national territory. As a general matter, all accommodation structures (centres or apartments) must comply with some minimum common requirements regarding the structure, organisation and management.

Although Legislative Decree 140/2005 does not define in details such requirements, they are described in the Guidelines (“Manuale Operativo per l’attivazione e la gestione di servizi di accoglienza e integrazione per richidenti asilo, rifugiati e beneficiari di protezione umanitaria”) issued by the Central Service of the Protection System for asylum seekers and refugees. (Please refer to question 39 below). This document expressly states that such centres must comply with applicable laws and regulations concerning town planning, housing, fire prevention, health and safety matters.

- B. What is the total number of available places for asylum seekers?<sup>11</sup>  
Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

For 2007, 2350 places for asylum seekers will be available. Out of this number, 350 places are destined to persons with special needs. No distinction between the types of accommodation is available.

It must also be taken into consideration that three identification centres have been set up:

- 1) Sicily, Salina Grande (Trapani) – 210 places;
- 2) Calabria, Crotona – 300 places out of the 1322 places available in the multifunctional centre which also hosts an accommodation centre and a centre of temporary stay /CPT;
- 3) Puglia, Borgo Mezzanotte (Foggia) – 200 places.

In addition three other centers are used as identification centers even if they do not have such juridical status (they are located in Caltanissetta, Cassibile and Bari Palese)

The UNHCR estimates that approximately 2000 places are available in all these identification centres for asylum seekers.

- C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?<sup>12</sup>

The number of places for asylum seekers is not considered sufficient to meet their needs. In order to evaluate if these places may be considered sufficient, it must be taken into consideration that in 2005 approximately 10.000 asylum applications were filed.

In addition, as pointed out by ICS in their 2006 report, there are thousands of applications that were filed in recent years under the previous procedure and that are still pending. Taking into account such people, the estimated needs of accommodation amounts to approximately 20.000 places.

- D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

In case of special need, the Ministry of Interior may commandeer the propriety of structures, lease areas and premises may build, restructure or maintain premises and in general may undertake all necessary actions in order to create up adequate structures.

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

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

The law provides for different categories of centres in relation to different situations:

- 1) **Accommodation centres** (“Centri di accoglienza”). Asylum seekers who do not have sufficient means that can ensure an appropriate quality of life in

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<sup>11</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>12</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

relation to health and to his/her own support and of the members of his/her family, are entitled to request accommodation measures. Such measures apply also to the members of the family.

2) **Identification centres** (“Centri di identificazione”). These centres have been established by section 1-bis of Law decree n. 416/1989. As a general rule, the applicant may not be retained only for the purpose of examining his/her application. However, he/she may be retained for the time strictly necessary to check the authorization to stay on the territory of the State and some specific requirements (Please refer to question 33 for a more detailed description of such relevant requirements);

As mentioned under point 24 B, three identification centres have been set up. Based upon the information contained in the ICS 2006 report, it results that only the centre in Borgo Mezzanone is open during the day, whereas the others are closed and asylum seekers are not allowed to go out.. In the centre located in Salina Grande asylum seekers would be allowed to go out provided that they are so authorised.

In the two other centres that have been set up without a specific status (Bari palese and Cassibile) asylum seekers are not allowed to go out in any case.

B. Is there a legal time 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?

There is a time limit for the stay in the centres. Such limit depends on the type of measure which is applied.

In relation to accommodation centres, such measure terminates at the time when the decision on the asylum application is adopted and notified.

B. Is there a general regulation about the 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?

The law expressly provides for the adoption of a regulation in relation to identification centres.

In relation to accommodation centres, there is not a specific provision. The need of establishing an internal regulation may be argued by the provision which states that accommodation can be revoked in case of breach of the centre’s internal regulation. Moreover, the Manuale Operativo contains a sample regulation to be adopted within accommodation centres.

C. **Do the regulations foresee the possibility of sanctions 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 ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is 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?**<sup>13</sup>

The competent government authority (“Prefetto”) of the place where the centre is located may issue a motivated decision of revocation of the accommodation measures in the event that:

a) The applicant has not showed at the accommodation centre or he/she has left such centre, with a prior motivated notice addressed to the competent authority (“Prefettura” – local competent Government office);

Under these circumstances the manager of the centre must promptly inform the competent authority (“Prefettura”) that the applicant didn’t show off or left the centre. If the applicant is found or voluntary shows off to the police or the centre, the Prefetto may decide to re-establish the accommodation measures. It has to be pointed out that such re-establishment is granted only in the event that the hearing was not attended or the centre was left for a cause of force majeure or accident (caso fortuito)

b) The applicant has not attended the hearing before the competent body for the exam of his/her application, despite the circumstance that the notice of such hearing was communicated to the accommodation centre;

c) The applicant had already applied for asylum in Italy.

d) It is assessed that the applicant already has adequate means of support. In case of revocation, the applicant must reimburse the costs incurred by the centre;

e) The applicant has seriously and repeatedly breached the rules of the accommodation centre or has had serious violent behaviours. Within three days from occurrence, the manager of the centre must send a report on the facts which may imply the revocation to the competent authority (“Prefettura”).

It is possible to lodge an appeal before the administrative regional Court (“TAR”) against the measure of revocation.

**D. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)**

Asylum seekers are not usually involved in the management of accommodation or detention centres.

E. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? 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?

There are not specific rules on work of asylum seekers in the centres.

**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).**

Pursuant to section 9, para. 1, sub b), of Legislative Decree 2005/140, accommodation centres must ensure the possibility of communicating with members of the family, legal advisers, UNCHR and NGOs. In particular, lawyers and representatives of the UNHCR and NGOs, provided that they have acquired a proven experience in Italy for at least three years in this field, may have access to the centres in order to provide assistance to asylum seekers.

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<sup>13</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Pursuant to article 1-bis, para. 3, of Law Decree 1989, no. 416, as well as the enactment regulation, UNHCR, legal representatives and NGOs authorised by the Ministry of Interior should be given access to identification centres. (Please refer to question 33.G).

However, as indicated by the UNHCR, representatives of the above organisations were not given access to some identification centres (in particular in Puglia and Sicily). Access denial is usually grounded by the competent authority on security reasons.

**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).**

There are not specific rules. Access of UNHCR and NGOs' representatives is organised with each coordinator of the accommodation centre.

**C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?**

This is not specifically regulated.

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

The law does not provide for a medical screening. The UNHCR points out that medical screening is undertaken upon arrival of newcomers in identification centres.

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

Applicants are entitled to receive emergency care and essential treatments, also on a continuous basis for illness and accidents, which are provided by the National Health System. It is established that essential medical assistance of a generic nature, for at least 4 hours per day, must be provided in the centres that accommodate more than 100 applicants.

In addition to emergency and essential treatments, applicants for asylum and the members of their family are registered, by the manager of the centre, in the National Health System.

**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 (are doctors coming to the centres or do asylum seekers go to doctors outside)?<sup>14</sup>**

Based upon the information we received from the UNHCR, it results that medical facilities are available in all identification and temporary Stay centres for emergency care and essential treatment of illness. In case of serious pathologies, individuals are taken out to the closest public hospital.

**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 length of the period during which asylum seekers have no access to the labour market is six months following the filing of the application.

**B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to**

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<sup>14</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

**deliver the permits and how quick are they delivered? What is their length?**

In the event that the decision concerning the application for asylum is not adopted within a deadline of six months following the application and such delay is not attributable to the applicant, the relevant permit for the application for asylum is renewed for six months and the applicant is entitled (and not obliged) to carry out a work activity. Such renewed permit of stay allows the asylum seeker to carry out a work activity until termination of the procedure of review of the asylum seeker's application.

In this respect, it must be pointed out that delay is attributable to the applicant, in particular in the following circumstances:

- A) Presentation of false documents and certificates concerning his/her identity or nationality or somehow related to the elements provided in the application;
- B) Refusal to provide information which are necessary to ascertain his/her identity or nationality;
- C) Failure to attend the hearing before the competent authority, although the notice to attend the hearing was communicated to the accommodation centre or at his/her domicile, for a reason not due to force majeure.

There are not data available as to the length of the procedure to deliver the renewed permit of stay.

- 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?**

This is not regulated by the law.

- 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?**

This is not regulated by the law

- 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 case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)**

Asylum seekers are entitled to access vocational training, in particular to courses which are organised by the accommodation centre where the applicant is accommodated.

- F. **Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?**

The rules adopted further to the implementation of the Directive are more favourable than the previous ones. In particular, under previous legislation asylum seekers were not allowed to work, since such right was acknowledged only after the recognition of the refugee status. After the new law has been enacted asylum seekers are entitled to work in the event that a decision has not been issued by the competent authority after the expiration of a six-month term upon the filing of their application.

- 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)**

Accommodation in an accommodation centre is subject to the circumstance that the asylum seeker does not have sufficient resources. As a consequence if they have sufficient resources they must take care of themselves autonomously.

In the event that they carry out a work activity after the elapsing of the six months deadline, they may still benefit from accommodation, provided that they contribute to the relevant expenses. The manager of the centre shall determine the entity and the modalities of collection of such contribution, taking into account the revenue of the asylum seeker and the costs associated to accommodation. Such contribution is not considered as a compensation for the service rendered but is used for the payment of the accommodation expenses of the asylum seeker who has paid the contribution.

In case it is assessed that the asylum seeker who has requested and obtained accommodation measures has, however, sufficient resources he/she shall reimburse the costs incurred by the centre.

## **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.**

Pursuant to article 8 of Legislative Decree 140/05, the specific needs of applicants and the members of their family must be taken into account for reception. In particular, the following categories are considered: minors, disabled, pregnant women, single parents with minor children, persons for whom it has been assessed that they have been subject to tortures, rapes and other forms of serious psychological, physical or sexual violence.

**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 law provides that special services of reception must be set up in favour of applicants with special needs that must take into account assistance measures which are required in order to deal with their needs. As mentioned above, 350 places are destined to people with special needs.

However, as stressed by the UNHCR, the identification and follow-up of vulnerable cases is an area that needs particular attention. In fact, although psycho-social support should be available in the centres, this is not always the practice.

**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)?**

According to the law, the responsible in charge with centre must set up services guaranteeing a quality of life and health of asylum seekers, taking into account the needs of persons with special needs. The information that we received from NGO's report there are not specific rules that clarify how and when such needs have to be assessed.

**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?**

The necessary medical and other assistance is provided on condition that the coordinator of the accommodation centre has established a formal agreement with the local health authority (ASL). It has to be noted that such formal agreement is not mandatory.

It has been pointed out by some NGO's that in practice the kind of assistance which is provided depends on the persons in charge of the centre and in some cases access to such assistance may be difficult.

**Q.31. About minors:**

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

The definition of minors applies until the age of 18 years.

**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?**

According to the information we received from NGO's, minors have usually immediate access to the education and they may attend public schools with Italian students.

As pointed out by the UNHCR, when families are kept in identification centres, children do not have access to education outside the centre. Although retention in identification centres should not last longer than 20 days, it may happen that families are retained for a longer period, with children not attending schools

**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?**

Except for the period in the centre of identification, minors are subject to the school obligation, pursuant to section 38 of the Single Text on immigration. A problem may arise in relation to unaccompanied minors, since the guardianship may require more than 3 months to be authorised.

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

Minor children are provided with special support, such as language classes. In principle asylum seekers have access to language classes. In practice the situation may be different in each project. Some NGO's have reported that the local municipality tries to facilitate access of foreign students to the education system through specific actions. In other cases, there are specific actions.

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

Minors are in general accommodated with their parents.

**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 general, minors with special needs have access to mental health care and qualified counselling.

**G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)**

When an unaccompanied minor files an application for asylum, the competent authority must interrupt the proceedings and inform the Juvenile Court (“Tribunale per i Minorenni”) that shall appoint a guardian in accordance with applicable provisions contained in the Civil Code, as well as adopt the measures concerning accommodation of the minor. The authority must also inform the Committee for foreign minors at the Ministry of Labour. The appointed guardian must confirm the application for asylum and take immediate contact with the Questura. Pending the appointment of the guardian, assistance and accommodation of the unaccompanied minor is provided by the Comune where he/she is located.

The application is examined by the Commission for acknowledgement of the refugee status that will interview the minor together with the guardian. In case the application is rejected, the minor may lodge an appeal through his/her guardian.

**H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)**

Placement of unaccompanied minors is organised in compliance with the decision issued by the Juvenile Court (“Tribunale per i minorenni”). The concerned local entities may implement specific programs destined to unaccompanied minors, accessing the resources of the National Fund for asylum policies and services.

Unaccompanied children should not be retained in closed identification centres. If they happen to be transferred upon arrival to such centres, they should be transferred to a special centre as soon as they are identified. However, as pointed out by the UNHCR, there have been some cases where unaccompanied minors were retained for several weeks in identification centres.

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

Taking into account resources available in the national Fund for asylum policies and services, and with the prior advice of the Committee for minors, the Ministry of Interior may enter into specific agreements with the International Organisation for Migration (IOM) as well as the Italian Red Cross, in order to implement programs aimed at tracing the family members of unaccompanied minors. The law requires that such programs are performed in the interest of minors and with the obligation of confidentiality, in order to protect safety of the asylum seeker.

## **8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS**

**Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions 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)?**

**A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?**

In the period of assessment of the special needs, asylum seekers are hosted in the places available at that moment as resulting from the National Central Service

**B. Non availability of reception conditions in certain areas**

Please refer to point E below.

**C. Temporarily exhaustion of normal housing capacities**

Please refer to point E below.

**D. The asylum seeker is confined to a border post**

The law does not provides for the possibility to confine asylum seekers to a border post. According to the infoemation we received from the UNHCR, it happened that undocumented asylum seekers have been confined for shorts periods in the international transit zone of the airports, until they were admitted to the territory as asylum seekers. Information centres for asylum seekers and refugees, in Milano Malpensa and Roma Fiumicino, intervene and provide assistance to asylum seekers.

**E. All other cases 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 event that there are no places available in accommodation or identification centres, the local competent authority (“Prefettura”) grants a monetary contribution. Such financial aid is limited to the time strictly necessary to obtain availability of a place within an accommodation centre. The contribution is subject to the condition that the asylum seeker informs that competent authority of his/her domicile.

As pointed out by the UNHCR, in case of sudden high number of applicants, as it is the case during the summer period with increase of arrivals by sea, accommodation is provided in closed reception centres in Puglia (Bari) and Sicily (Cassibile).

**Q.33. Detention of asylum seekers (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 2<sup>nd</sup> indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

**A. In which cases or circumstances and for which reasons<sup>15</sup> (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. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.**

It is important to clarify that the law does not provide that asylum seekers may be detained in prisons during the asylum procedure, but he/she may be **retained** in identification centres or in centres of temporary stay and assistance (these latter are the centres where illegal immigrants subject to an expulsion order are retained).

Pursuant to section 1-bis of Law Decree 30 December 1989, no. 416, as subsequently converted into law no. 39 of 1990, the asylum seeker cannot be retained only for the purpose of examining the asylum application which has been filed.

He/she **may** however be retained for the time strictly necessary to the definition of authorizations to stay on the territory of the State pursuant to the Single Text on immigration law contained in the Legislative Decree of 25 July 1998, no. 286 in the following cases:

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<sup>15</sup> Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that “Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum” is or not respected (even if has not yet to be transposed).

- a. to check or assess the nationality or the identity of the asylum seeker, if she/he does not have travel or identification documents, or if he/she has presented false documents upon arrival in the State;
- b. to check the elements upon which his asylum application is grounded, in the events that such elements are not immediately available;
- c. if the procedure concerning the acknowledgement of the right of being admitted on the territory of the State is pending.

Asylum seeker **must** be retained in the following cases:

- a. Following presentation of an asylum application filed by a foreigner who has been stopped after avoiding or trying to avoid border controls of immediately after, or, in any event, in conditions of irregular stay;
- b. Following presentation of an asylum application by a foreigner who has already received an expulsion or refoulement measure.

**B. 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?**

This provision has not been specifically transposed. However, it must be noted that asylum seekers may be retained in accommodation centres or centres of temporary stay and assistance under specific circumstances. (Please refer to questions 25 and 33 for description of such circumstances).

**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?**

There are not legal alternatives to detention.

**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.**

Retention is decided by the local police authority (“Questura”). It is the authority with which the asylum seeker must file his/her application for asylum.

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

The length of the retention period depends on the ground for the retention measure.

In the cases enumerated under point 33, A, 1, the law requires that the maximum length within the centre of the foreigner must be indicated in the retention measure but this can not be longer than 20 days.

In the cases enumerated under point 33, A, 2, (mandatory detention) a special simplified procedure has been established in order to examine the asylum application.

In case a), within two days upon reception of the application, the competent local police authority who has issued a retention measure must send the required documentation to the competent Refugee Commission that, within 15 days upon reception of the documentation, must proceed to the hearing. The decision on the application must be adopted within three days.

In case b), the competent local police authority issues a retention measure in a temporary accommodation centre pursuant to section 14 of the single text. In the event the foreigner is already retained in one of these centres, the police authority must require a judicial measure

extending such retention period for another thirty days in order to carry out the simplified procedure.

**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?**

In the cases listed under question 33, A, 1 a), b), c) and 2 a), asylum seekers are retained in an identification centre. Identification centres are reserved only to asylum seekers. Under 33, A, 2 b) they are detained in a temporary accommodation centre established, under the Single Text on immigration law, together with illegal immigrants.

Identification centres are in principle similar to accommodation centres. However, asylum seekers may go out only provided that they are authorized to do so. They are usually authorized to go out between 8 a.m. and 8 p.m., except for those who fall within the scope of application of articles 1-bis, para. 1, point a) [i.e. to check or assess the nationality or the identity of the asylum seeker, if she/he does not have travel or identification documents, or if he/she has presented false documents upon arrival in the State] and para. 2, point a) [following presentation of an asylum application filed by a foreigner who has been stopped after avoiding or trying to avoid border controls of immediately after, or, in any event, in conditions of irregular stay]. In these latter cases, the asylum seeker may be authorised to go out from the centre only for serious and proved health and family reasons or for reasons pertaining to the exam of the asylum application.

The Prefetto may appoint to manage the centre, through specific agreements, public or private entities that operate within the area of assistance to asylum seekers and immigrants, or within the area of social assistance.

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

Article 1-bis, para. 3, of Law Decree 1989, no. 416, expressly states that UNCHR representatives are authorized to access the centre. Such access shall also be ensured in favour of lawyers and associations who act in favour of refugees with a consolidated experience within this sector.

The enactment regulation has established in this respect that the representatives of the associations and organizations for the protection of refugees, provided that they have acquired proven and adequate experience for at least three years within this sector, may be authorised by the competent Prefetto, to access specific areas of the centres for the visits, during working hours. The Prefetto grants the authorization, warning on the need of taking account of confidentiality and safety of asylum seekers.

**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)?**

As mentioned above, in the event that the asylum seeker is mandatory detained, a simplified procedure is applied in order to ensure a speedy judicial review.

However, while detention in a CPT must be validated by a judicial authority (including the extension of the 30 days maximum detention term up to 60 days), no specific measure to lodge an appeal against admission to the simplified procedure and consequent transfer to an identification centre is provided for by the law.

**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?**

As a matter of fact, Decree of the President of the Republic of 16 September 2004, no. 303, has introduced specific regulations concerning identification centres before the adoption of Legislative Decree 140/2005. Asylum seekers retained in such centres should benefit from several rights similar to those that contained in the legislative Decree.

The competent police authority issues in favour of the applicant who is detained in the centre a personal statement attesting his position as asylum seeker. Together with this statement the asylum seeker is informed of the possibility: 1) to contact the UNHCR in every phase of the procedure; and 2) of the rules contained in the DPR in relation to visits and stay in the centre.

The asylum seeker detained in the centre is entitled to health assistance. In the centres that accommodate more than 100 asylum seekers must ensure health services of first assistance for at least 4 hours per day.

The law also requires that the centre provides a service of legal information in the matter of acknowledgement of the refugee status.

**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 compliance with the instructions received by the Prefettura, local competent authority, the manager of the centre must set up services in order to ensure a quality of life that dignity and health of asylum seekers.

The UNHCR has pointed out that in practice, as the period of stay in identification centres should in principle be very short (20 days), there are in general very little activities to facilitate orientation and future integration.

**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?**

The Decree of the President of the Republic 303/2004 requires that services are provided taking into account the needs of families, including spouses and first degree relatives, such as minors, disables, old people, pregnant women, persons who in their country of origin where subject to discriminations, abuses and sexual exploitation. Disabled and pregnant women are generally given priority to find appropriate places for them.

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

Minors are usually detained with their parents. In principle, unaccompanied minors can never be detained.

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

Access to education for minors is not provided in identification centres. It must be taken into account that the detention period should not last for more than 25 days.

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

These figures are not available. UNHCR has pointed out that a vast majority of asylum seekers are admitted to the simplified procedure and retained in identification centres. ICS in his 2006 report has estimated that approximately 62% the asylum seekers who have filed an application in 12 months (from 21 April 2005 up to 27 April 2006) have been retained either in an identification centre or in a CPT.

## **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 do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

Local and regional government entities (city councils, province etc) provide practically reception conditions. In order to optimize the protection system for asylum seekers, refugees and foreigners with a humanitarian permit of stay, to facilitate coordination, at national level, of services of territorial accommodation, the Ministry of Interior has created, with the involvement of the association of Italian city councils (ANCI) and the UNHCR, a central system (“Servizio Centrale”) of information, promotion, consultation, monitoring and technical support of local entities that provide reception conditions. The central system is managed by the ANCI.

The National Commission for the right of asylum (hereinafter referred to as the “National Commission”) has been established by Law Decree of 30 December 1989, no. 416, as amended by legislative Decree of 2003. The National Commission is set up within the Department for civil freedoms and immigration of the Ministry of Interior. The National Commission is chaired by a Prefetto (government authority) and is composed by an officer of the Presidency of the Council of Ministers, a diplomatic officer, an officer of the Department for civil freedoms and immigration and an officer of the Department of public safety. A representative of the UNHCR in Italy takes part to the meetings. Where necessary, sections with the same composition may be established.

The National Commission has duties of address and coordination of territorial commissions, of training and updating of members of the same commissions, of collection of statistical data as well as decision powers concerning revocation of the status of refugee.

The Decree of the President of the Republic 303/2004 has specified that the National Commissions’ duties are:

- the creation of the documentation centre on the social-political-economical situation of the countries of origin of the asylum seekers;

- the definition of guidelines for the evaluation of the asylum applications;
- the collaboration with the Ministry of foreign affairs, and in particular Italian permanent representations with international organisations in the area of asylum and human rights;
- the collaboration with similar entities of member states of the European Union;
- organisation of training and updating courses for the members of the Territorial commissions,
- the creation and the updating of a electronic database containing useful information for the monitoring of asylum applications;
- the monitoring of asylum seekers flows also for the purpose of proposing the creation of new territorial commissions;
- the provision, where necessary, of information to the Prime Minister for the adoption of measures of temporary protection.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)<sup>16</sup>

Accommodation centres can be managed by NGOs following a convention entered into with the local municipal body (Comune). The State finances 80% of the total amount required for the accommodation of asylum seekers.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?<sup>17</sup>

In 2006, 102 projects have been activated by local and regional government entities. As it has been pointed out by NGO's, the projects are usually managed together by local NGO's and municipalities, although the level of cooperation may be different in each project.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory 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?

The law only provides that asylum seekers are spread all over the territory of Italy.

The new system aims at building and managing an accommodation system spread all over the country, avoiding concentration in big cities or in arrival areas. The 102 which have been activated in 2006 are effectively spread all over Italy.

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?<sup>18</sup>

According to law 39/90, article 1-sexies, there is a central body named "Servizio Centrale" (Central Service) which coordinates the actors involved in the reception system. NGOs are not represented in the Servizio Centrale.

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?**

<sup>16</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>17</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>18</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The Central System carries out functions of coordination on the functioning of the national system, ensuring the necessary technical support, and supervises management of the projects.

- 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?<sup>19</sup>

The Central Service has approved an operational handbook (“Manuale Operativo”) for the setting up and management of accommodation and integration services for asylum seekers, refugees and foreigners benefiting from humanitarian protection. The purpose of the document is to provide the operators with a useful instrument for the realisation of the projects, helping them in programming the activities of social and legal assistance as well as integration.

The handbook contains a comprehensive set of guidelines describing in details structural and organisational requirements of accommodation centres (both for collective centres and private apartments) and the type of assistance to be provided to asylum seekers within the centres.

In practice, the handbook indicates how and where the centres should be located (living areas easily connected through means of transport), hygienic-sanitarian features, subdivision and size of spaces, personnel skills, management team, material reception conditions etc.

- C. **How is this system of guidance, control and monitoring of reception conditions organised?**<sup>20</sup>

As mentioned above (please refer to answer no. 34), the Ministry of Interior, with the involvement of the association of Italian city councils (ANCI) and the UNHCR, has set up a central system of information, promotion, consultation, monitoring and technical support of local entities that provide reception conditions. The central system is managed by the ANCI. In particular, such Central System has been charged with the following tasks:

- Monitoring the presence on the territory of asylum seekers, refugees and foreigners with a humanitarian permit of stay;
- Establishing a database of the interventions carried out at local level in favour of asylum seekers and refugees;
- Promoting the diffusion of information on interventions;
- Providing technical assistance to local authorities;
- Promoting and carrying out, together with the Ministry of foreign affairs, of repatriation programs through the international Organisation for migrations or other national or international entities, in the humanitarian field.

In October 2003, ANCI entered into an agreement with the IOM that brought to the creation of the SID (“*Sistemi di intervento decentrati e in rete*”). SID is aimed at setting up accommodation and integration systems in favour of asylum seekers, refugees and vulnerable persons, as well as cooperation interventions.

- 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?<sup>21</sup>

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<sup>19</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>20</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

In order to analyse the evolution of the system of reception of asylum seekers in Italy, to understand the problems and highlight good practices, the Association of Italian City Councils (ANCI) has started to collaborate with the CENSIS (Italian Institute of statistics) for the purpose of drafting an annual Report on the Reception System for Asylum Seekers. The first report will be available starting from October 2006. Some figures have been anticipated at the end of June.

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)?

Based upon the figures which have been anticipated at the end of June and that will be contained in the first annual report issued by the ANCI, it results that the total number of asylum seekers covered by reception conditions in 2005 amounted to 4.654. In the first quarter of the year 2006 (January-April 2006) the number amounts to 3.344.

B. What is the total budget of reception conditions in euro for the last year for which figures are available?<sup>22</sup>

Activities and interventions in favour of asylum seekers are financed through a National Fund for asylum policies and services, instituted within the Ministry of Interior. This Fund includes:

- Government budget in favour of asylum seekers and refugees;
- Financial contribution from the European Fund for refugees;
- Financial contributions and gifts of private entities, associations and organisations, also at the international level, and made by other entities of the European Union.

Pursuant to article 13 of legislative Decree 140/05, the government budget amounted in 2004 to Euro 5,16 million. In 2005 such amount was increased of Euro 8.865.500 and in 2006 of Euro 17.731.000.

Based upon the 2006 ICS report, it results that the total budget granted to the SPRAR in 2005 amounted to Euro 14.970.354. Out of this amount only Euro 10.604.732 were destined to ensure the activity of the accommodation centres. The residual amount was destined to cover the following costs: 1) activity of the central system of protection; 2) assisted repatriation; 3) contributions of first assistance.

C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?<sup>23</sup>

Official figures are not available. However, based upon the calculation that has been performed by ICS in their 2006 report, taking into account the funds allocated to accommodation of asylum seekers and the number of asylum seekers who have benefited from such accommodation, it results that in 2005 the average cost per person amounted to approximately 19 Euro.

As ICS points out such amount is all inclusive since it refers to the costs for housing and food, as well as for all the services that are supplied to the asylum seeker and to his/her family.

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<sup>21</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>22</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>23</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- 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?

The approved projects of local government authorities are financed through the National Fund for Refugees.

- 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?**<sup>24</sup>

Legislative Decree of 30.5.2005 that has enacted the directive contains a specific provision in relation to financial resources. In particular, the amount of such financial resources has been remarkably increased in comparison to prior legislation.

However, the amount of financial resources available is not sufficient to cover the requests of asylum seekers. In fact, in 2005 the financial resources made available through the Fund for Refugees have allowed to finance 81 local government entities for a total of approximately 2.200 places, but the applications filed by asylum seekers amounted to 8.000.

- Q.41. A. What is the total number of persons working for reception conditions?<sup>25</sup>  
These figures are currently not available.

- 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)?**<sup>26</sup>

Although the law expressly requires that persons working in accommodation centres must receive appropriate training, it is not specified how such training must be provided. Based upon the information we received from NGO's it appears that training is supplied occasionally and often the responsible in charge of the centres act as mentors for the personnel working in the centres. At the central level, training is not sufficiently provided.

- C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?<sup>27</sup>

No there not specific rules on deontology, although the operational handbook sets forth some criteria that should be followed by operators who work in accommodation centres.

## **10. IMPACT OF THE DIRECTIVE**

### **Legal impact of the transposition of the directive:**

- Q.42. **Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated?**

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<sup>24</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>25</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>26</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>27</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

(please note that this question has in particular been added to the questionnaire concerning the new Member States)

The translation into Italian has not raised any problems so far.

**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,...))?**

Law 189/2002 reforming partially the Immigration Law 286/1998 contains two Articles on recognition and reception of refugees. Art. 32, in particular, has for the first time foresees at a legislative level the *Sistema di protezione per richiedenti asilo e rifugiati*. Until then there were only projects funded by European and national funds and ruled by administrative acts.

Art. 32 does not state anything about conditions or standard of reception and also the Regulation of application 2004 n. 303 that, as stated in Art. 21, par. 2, entered into force on 20 April 2005, concerns the procedures rather than reception conditions.

Eventually Legislative Decree 2004/303 has been the first law on reception conditions.

**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)?**

Having a legislative text concerning only reception conditions has definitely improved the clarity and coherence of the provisions: now we have the law setting the standard and rules on reception with two Administrative circulars dealing with the details of application, the institution of Fund to finance the activities.

**Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.**

The main changes in national law can be summarised in the following:

The clear statement of duties upon the administration such as information and standard of assistance;

The limitation of the discretion such as in the case of revocation of the measures and of the freedom of circulation;

The new role given to the *Prefettura*, that plays a very active a crucial role in all the phases of the reception measures since the admission until the revocation.

#### **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 in case the main points which have been discussed or have created difficulties)**

As mentioned at the beginning the standard system of transposition of Directives does not ease the debate and the involvement of Parliament on each Directive. Between political parties there has not been any debate at all and so also in media. Only some NGOs have tried to shed lights on the Directive and its transposition but reaching only those very much involved on the subject.

**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).**

The transposition of the directive has not lowered the level of protection existing before also because, as above stated, there was not before a legislative system and a clear definition of standard. However it is important to stress that the level was already lowered by the reform of the asylum procedure, in particular the provision of a simplified procedure with the detention of asylum seekers in Centre of Identifications or Centre of temporary stay, where asylum seekers can stay with aliens awaiting for deportation. The mix between the new rules on asylum procedure and reception conditions bring to see in complex the level of protection lowered. The reason is not the reception of Directive 2003/9/CE but, considering the relevant changes of rules on procedures, the impact of the Directive's transposition is minimum.

## **11. ANY OTHER INTERESTING ELEMENT**

**Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?<sup>28</sup>**

One of the main problems of the management of the system in Italy is the structural lack of data on the matter of asylum (a similar consideration can formulate about immigration). This reflects on the lack of analyses, reports and evaluation of policies. It is also very difficult to give opinion about the reception system due to the differences that there are in Italy among the different projects realised by the local networks.

Another point of weakness of the system of reception conditions is that with the effect of the new asylum procedures only a large minority of asylum seekers will be able to benefit of them because almost all the asylum seekers will be detained either in a Centre of Identification or in a Centre of Temporary Stay.

The strength is the network of NGOs and local authorities that in last years have worked together granting reception at a local level with some interesting experience.

**Q.49. Mention any good practice in your Member State which could be promoted in other Member States<sup>29</sup>**

**Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.**

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<sup>28</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>29</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.