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# 3.6.2. Entitlement to material reception conditions

### 3.6.2. Entitlement to material reception conditions

Challenges in ensuring reception places prompted a stricter allocation of material reception conditions.

To manage the critical situation with the reception system, Fedasil established a waiting list for applicants who could not receive a reception place immediately after registration in 2022, but this practice was condemned by the labour court both at first instance and on appeal in February and May 2023.

Following a court ruling in January 2022,569and based on the initiative of the same group of civil society organisations, the Brussels First Instance Tribunal condemned Fedasil and the Belgian state again in 2023 for failing to timely register applicants for international protection (*see S ection 3.1*), provide material reception conditions to them and not enforce court decisions. Domestic case law has evolved since September 2022 and the courts oblige authorities to provide material reception conditions and remove the mandatory assignment of applicants to a specific accommodation place. This allows applicants to seek support from other social agencies instead of material reception conditions. The ECtHR also condemned Belgium under the ECHR, Article 6(1) for not executing the domestic court's order to grant the applicant material reception conditions, but dismissed the claim under Article 3, noting that a domestic remedy had not yet been seized to analyse the applicant's living conditions until he was finally given a place in reception.

The new draft Migration Code which was put forward in Belgium better defines the end of reception. It clarified that people who received a final negative decision must leave reception within 30 days. Currently, the end of reception is linked to receiving an order to leave the territory and people who launched other residence procedures could postpone the issuance of this order and stay in reception.570

The Belgian State Secretary also proposed a royal decree for discussion with the Council of Ministers, obliging applicants who work to contribute to reception costs. This possibility has existed since 2011 but in practice was not implemented. The new legislation would establish structural cooperation between Fedasil and social security to exchange information.571

Working applicants' right to material reception conditions has been subject to a series of judgments from the Ghent Labour Court. The court annulled Fedasil's two decisions on withdrawing material reception conditions for applicants who had been working for more than 6 months and had an income higher than the minimum wage, as it failed to take into account the applicant's individual circumstances: the applicant risked becoming homeless regardless of his income level, as he could hardly find accommodation with a temporary residence permit.572In another case, the decision was annulled as the agency failed to take into account that the applicant's situation had changed in the meantime from indefinite contract to interim work, and the agency did not hear the applicant and did not request employment and income data before taking the decision.

Amendments to the Croatian Law on International and Temporary Protection clarified that a recognised beneficiary of international protection may stay in the reception centre for 60 days following a positive decision, if within 8 days they request subsidised accommodation from the competent regional social welfare office and do not have their own sufficient funds. Requests may also be submitted after this time, explaining the reason for missing the deadline.573

In Italy, legislative amendments underlined that applicants do not have access to services provided by municipalities and prefectures in the System Accoglienza Integrazione (SAI), with the exception of resettled applicants, displaced persons from Ukraine and Afghanistan, and applicants with vulnerabilities.574It was clarified that all women should be considered as vulnerable and thus have access to SAI. Applicants were excluded from these services by law in 2018 but then included in the scope again in 2020.575ASGI highlighted that the changes meant that applicants no longer had access to psychosocial assistance, orientation or Italian language classes.576

Provisions on the revocation and withdrawal of material reception conditions were amended to better align with CJEU and national jurisprudence. In cases of serious and repeated violations of the house rules, the prefect may transfer the applicant to another facility, temporarily exclude the applicant from activities or certain services in the facility, or suspend (for a minimum of 30 days and a maximum of 6 months) or revoke financial support. The law underlines that the decision must be adopted individually, in accordance with the principle of proportionality.577 UNHCR underlined that the combination of the provisions of Law No 176/2023 and the removal of psychological service, information provision, Italian lessons and integration activities, introduced by Law No 50/2023, may hinder the identification and referral of vulnerable people to competent services and impeded self-sufficiency and autonomy of applicants.578

Throughout 2023, Italian courts decided on a series of cases related to the entitlement to material reception conditions. The Tribunal of Bologna confirmed that authorities may not request additional documentation from applicants for the formal registration of their application and, thus, for accessing material reception conditions. The prefecture of Benevento was ordered to pay compensation to an applicant who breached house rules and was disproportionately sanctioned with the withdrawal of material reception conditions. In another case, the court suspended the decision to withdraw material reception conditions as the decision was issued before the applicant had the chance to formalise the application for international protection.

Substantial gaps were observed between registration and the formalisation of an application in many provinces in Spain. Convive-Fundación Cepaim noted that this delays access to certain support services, such as vocational training and, in some cases, to healthcare and the general education system.579

Changes were made to access the asylum procedure and material reception conditions in Luxembourg, where applicants must first lodge an application at the General Department of Immigration before they can request accommodation. The changes were made to avoid that people stay in a reception centre without asking for international protection. In addition, legislative amendments clarified the amount of food and hygiene products to be received and defined the same amount of basic assistance for all applicants, regardless of age. The same assistance applies for people with temporary protection. The new text clearly states that material reception conditions may also be given in cash.

UNHCR commented on the Swedish public inquiry from 2022, which seeks to encourage applicants to live in governmental or municipal reception facilities instead of arranging accommodation on their own. Those who would still opt for their own accommodation would not be entitled to benefits. UNHCR underlined that the proposed changes could lead to improved reception conditions and recommended adjustments to initial reception facilities to ensure that they are suitable for longer stays as well, in line with the legislative proposal.580

Iceland amended its laws to specify that applicants with a final rejection retain their reception rights for a maximum 30 days after the administrative decision becomes final. They also retain the right to emergency healthcare. However, there are several exemptions for applicants who can continue to benefit from the right to services: children and their guardians, pregnant women, seriously ill persons, and persons with disabilities who require support. In addition, the police may authorise to postpone the termination of rights when the applicant has demonstrated willingness to cooperate with authorities to return to their home country. Additionally, if the applicant has been unable to return to their home country due to reasons beyond their control, such as disability or force majeure, the police are authorised to postpone the termination of rights to services. Amendments to the law require the minister to issue a separate regulation on the reduction or withdrawal of reception rights.581

Concerning entitlements to material reception conditions in cash, the Finnish Ministry of the Interior launched a project to examine the possibility of reducing the allowance granted to applicants to the possible minimum, in accordance with the new government programme aiming to seek savings.582In 2023, the Finnish Immigration Service changed providers for the prepaid cards, which were exchanged during September-October 2023. The exchange was organised and coordinated by reception centres.583

Draft amendments were published to increase financial support for applicants in Poland, reflecting the general increase in prices. However, the law was not passed.584

The Cash for Food project continued in Luxembourg and was extended to five more reception facilities and to applicants living in private accommodation.585In Germany, following the piloting of applicant payment cards, plans were announced to extend the scheme at a federal level as well. The Federal Chancellor and the heads of government of federal states agreed on

the objective of restricting cash payments to recipients of benefits under the Asylum Seekers' Benefits Act and thus minimising the administrative burden on local authorities. To this end, a payment card should be introduced.586Thus, instead of cash payments, applicants would receive their benefits on a special card.587

The Irish Refugee Council examined the situation of families and children in reception and concluded that the daily expenses allowance was insufficient to cover family needs. Financial constraints often led to children missing social activities, further delaying their integration.588

The Swedish Supreme Administrative Court confirmed that the Migration Agency can revoke or reduce the daily allowance for applicants, if it is proven that they have personal financial resources. The court underlined that lacking personal funds is a fundamental condition for being entitled to the daily allowance.589

In Austria, the Administrative Court in Vienna held that an applicant who was not immediately assigned a reception place was entitled to benefits under the province's basic services and to claim compensation for the period between being admitted to the asylum procedure and the moment of being included in the reception system.590

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