

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.12.2008
COM(2008) 815 final

2008/0244 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down minimum standards for the reception of asylum seekers

(Recast)

{ SEC(2008) 2944 }
{ SEC(2008) 2945 }

EXPLANATORY MEMORANDUM

1. Context of the Proposal

- Grounds for and objectives of the proposal

This proposal is a recasting of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers¹ (hereafter – the Reception Conditions Directive).

The Commission's Evaluation Report on the application of the Reception Conditions Directive in Member States issued on 26 November 2007² as well as contributions received by various stakeholders in response to the Green Paper consultation process³ have identified a number of deficiencies regarding the level of reception conditions for asylum seekers which mainly results from the fact that the Directive currently allows Member States a wide margin of discretion concerning the establishment of reception conditions at national level.

As announced in the Policy Plan on Asylum⁴, this proposal is part of a first package of proposals which aim to ensure a higher degree of harmonisation and better standards of protection for the Common European Asylum System (CEAS). It is adopted at the same time of the recast of the Dublin⁵ and Eurodac⁶ Regulations. In 2009, the Commission will propose to amend the Qualification Directive⁷ and the Asylum Procedures Directive⁸. In addition, in the first quarter of 2009 the Commission will propose the establishment of a European Asylum Support Office, which will aim to provide practical assistance to Member States in taking decisions on asylum claims. The Support Office will also provide assistance to Member States who are faced with particular pressures on their national asylum system, notably because of their geographical position, to comply with requirement of Community legislation, by providing specific expertise and practical support.

¹ OJ L 31, 6.2.2003, p. 18.

² Report from the Commission to the Council and to the European Parliament on the application of directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers - COM(2007) 745.

³ Green Paper on the future of the Common European Asylum System - COM(2007) 301.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the 'Policy Plan on Asylum an Integrated Approach to Protection Across the EU' of 17 June 2008 - COM(2008) 360.

⁵ Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person - COM(2008) 820.

⁶ Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person - COM(2008) 825.

⁷ Council Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection (OJ L 304, 30.9.2004, p.12).

⁸ Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p.13).

- General context

Work on the creation of a CEAS started immediately after the entry into force of the Treaty of Amsterdam in May 1999, on the basis of the orientations given by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of common minimum standards. The Reception Conditions Directive was the first of the five pieces of EU asylum legislation flowing from the Tampere Conclusions. It aims to establish reception conditions that will normally suffice to ensure asylum seekers a 'dignified standard of living and comparable living conditions in all Member States'.

The Hague Programme invited the Commission to conclude the evaluation of the first-phase legal instruments and to submit proposals for the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before the end of 2010. This proposal responds to that call; it aims to address adequately the deficiencies identified during the first-phase of the asylum legislation.

Detailed analysis of the problems identified in relation to this directive and concerning the preparation carried out for its adoption, the identification and assessment of policy options and the identification and assessment of the preferred policy option are included in the Impact Assessment, annexed to this proposal.

- Consistency with other policies and objectives of the Union

This proposal is fully in line with the Tampere European Council Conclusions of 1999 and the Hague programme of 2004 in relation to the establishment of the CEAS.

2. Consultation of Interested Parties

The Commission considered that before proposing any new initiative, an in-depth reflection and debate with all the relevant stakeholders on the future architecture of the CEAS was necessary. It therefore presented a Green Paper in June 2007, which aimed to identify possible options for shaping the second phase of the CEAS. The response to the public consultation included 89 contributions from a wide range of stakeholders.⁹ The issues raised and the suggestions put forward during the consultation have provided the basis for the Policy Plan that defines a road-map for the coming years and lists the measures that the Commission intends to propose in order to complete the second phase of the CEAS, including the proposal to amend the Reception Conditions Directive. The Policy Plan also identifies a number of objectives to be met during the second phase of the asylum legislation concerning the reception of asylum seekers.

The Commission's Evaluation Report was prepared on the basis of two studies on the state of application of the Directive.¹⁰ These studies provided the Commission with valuable information regarding the areas to be addressed in the present amending proposal.

⁹ Available at:
http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylum_system_en.htm

¹⁰ EMN "Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States", May 2006 - study contracted to the Academic Network for Legal Studies on Immigration and Asylum in Europe "Odysseus".

On 5 March 2008 the Commission informally discussed the broad outline of this proposal with the Member States in the Committee on Immigration and Asylum (CIA). Meetings were also organised between December 2007 and March 2008 with academic experts, Member States, NGOs, UNHCR and Members of the European Parliament in order to seek their opinion on the further improvement of reception condition standards. Finally, a meeting was held on 29 April 2008 with UNHCR and NGOs in view of addressing specific issues in relation to the treatment of persons with special needs.

Parties consulted expressed a general consensus to achieving further harmonisation of reception conditions in the second phase of the asylum legislation. Some Member States however underlined the need to retain a certain degree of flexibility regarding access to the labour market and material reception conditions, whereas others expressed a preference to address deficiencies regarding the treatment of vulnerable asylum seekers via practical cooperation measures rather than via a legislative intervention.

The Commission's proposal takes into account to a certain extent these concerns in particular regarding access to the labour market and the modalities established at national level to ensure adequate material reception conditions for asylum seekers. However, taking into consideration the serious gaps detected in relation to the identification of special needs and access to treatment, the Commission decided also to address this issue within the framework of the present proposal.

3. Legal Elements of the Proposal

- Summary of the proposed action

The main objective of this proposal is, as part of the second phase of the asylum legislation, to ensure higher standards of treatment for asylum seekers with regard to reception conditions that would guarantee a dignified standard of living, in line with international law. Further harmonisation of national rules on reception conditions is also required in order to limit the phenomenon of secondary movements of asylum seekers amongst Member States, to the degree that such movements are generated from diverge national reception policies.

In this respect the proposal addresses the following issues:

1. scope of the directive:

The proposal extends the scope of the directive in order to include applicants for subsidiary protection. This modification is considered necessary with a view to ensure consistency with the current EU acquis, namely with the Qualification Directive that introduces the legal notion of subsidiary protection. Moreover in view of adequately clarifying the *rationae materiae* of the directive, the proposal stipulates that it is applicable to all types of asylum procedures and to all geographic areas and facilities hosting asylum seekers.

2. access to the labour market:

Access to employment is beneficial both for the asylum seeker and the hosting Member State. Facilitated access to employment for asylum seekers could prevent exclusion from the host society, and therefore facilitate integration. It would also promote self-sufficiency among asylum seekers. Mandatory unemployment on the other hand imposes costs on the State through the payment of additional social welfare payments. It should be noted in this respect

that labour market restrictions could encourage illegal working.¹¹ This is particularly relevant for those Member States which create obstacles on access to the labour market and which grant very low welfare assistance to asylum seekers at the same time.

The proposal therefore aims to facilitate access to the labour market. In particular, two measures are envisaged. First and foremost, the proposal provides that asylum seekers will be able to access employment after a period of maximum 6 months after lodging an application for international protection; the Commission considers that on the basis of Member States' current practices¹² and taking into consideration stakeholders' contributions to the Green Paper this is an appropriate time period.

Secondly, the proposal stipulates that the imposition of national labour market conditions shall not unduly restrict access to employment for asylum seekers. The rationale behind this amendment is to better underline the objective of the current Article which is to ensure that asylum seekers are provided with fair opportunities to access employment in Member States.

3. access to material reception conditions:

With a view to guarantying that access to material reception conditions ensures 'a standard of living adequate for the health of the asylum seeker and capable of ensuring his/her subsistence', the proposal obliges Member States when granting financial support to asylum seekers to take into consideration the level of social assistance provided to nationals. Moreover, in order to ensure appropriate accommodation for specific categories of asylum seekers, the directive introduces an obligation for Member States when allocating housing facilities to take on board considerations of gender and age, and the situation of persons with special needs.

The provisions for reducing or withdrawing access to reception conditions, already envisaged under the current directive, are meant to ensure that the reception system is not abused. However, as the reduction or withdrawal of reception conditions can affect to a great extent the standard of living of applicants, the Commission considers it important to ensure that asylum seekers are never left destitute under such circumstances and that fundamental rights are respected. In this respect and also taking into consideration current case-law, the proposal limits the circumstances under which reception conditions could be fully withdrawn and ensures that asylum seekers will continue to benefit from access to necessary treatment of illness or mental disorders in relevant cases. The Commission equally considers that it is of outmost importance that decisions on these issues are subject to review before a national court.

Finally, the proposal limits the circumstances, currently prescribed under the directive, where Member States could exceptionally set up modalities for material reception conditions different from those provided under the Directive.

¹¹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions 'Study on the links between legal and illegal migration' - COM(2004) 412.

¹² Immediate access to employment is allowed in Greece, whereas the limitation period is 20 days in Portugal, 3 months in Austria and Finland, 4 months in Sweden, 6 months in Italy, Spain, Netherlands, Cyprus and 9 months in Luxembourg.

4. detention:

Taking into consideration the wide use of detention in the area of asylum by Member States and the developing case-law of the European Court of Human Rights (hereafter – the ECtHR) the Commission considers it necessary to address this issue in a holistic way in this directive with a view to ensure that detention is not arbitrary and that fundamental rights are respected in all cases. The proposal takes as its underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection. This principle confirms the EU acquis on detention, in particular the Asylum Procedures Directive, and is in line with the Charter of Fundamental Rights and with international human rights instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.

The proposal ensures that detention could be allowed only in exceptional grounds prescribed under the Directive based on the Recommendation of the Committee of Ministers of the Council of Europe "on measures of detention of asylum seekers" and UNHCR's Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers of February 1999. Moreover it is foreseen that detention shall be in line with the principle of necessity and proportionality. It is furthermore foreseen that detention should be subject to an individual assessment of each case.

The proposal also guarantees that detained asylum seekers are treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Particular attention is given in this respect to cases where vulnerable asylum seekers are detained; with regard to children the proposal is in line with the 1989 UN Convention on the Rights of the Child. As unaccompanied minors are concerned, it is stipulated that they shall never be detained. Moreover, a number of legal and procedural safeguards are provided with a view to ensure that detention is legitimate.

5. persons with special needs:

The Commission has identified deficiencies in addressing special needs as being the most serious concern in the area of reception of asylum seekers. Identifying special needs not only has a bearing on access to appropriate treatment, but could also affect the quality of the decision-making process in relation to the asylum application, especially with regard to traumatised persons. In this respect the proposal ensures that national measures are put in place in order to immediately identify such needs.

Moreover, the proposal incorporates numerous safeguards in order to ensure that reception conditions are specifically designed to meet asylum seekers' special needs. These amendments reflect several aspects of reception conditions such as access to health care, housing facilities, and education of minors.

6. implementation and improvement of national systems:

The current text of the Reception Conditions Directive contains several rules to ensure the complete implementation as well as the improvement of national systems. If the final aims of the new directive are to be achieved, it is important to ensure the continuity of such monitoring and to strengthen the Commission's role as the guardian of EU legislation. In this respect, at Community level, the reporting system already provided in the directive should be maintained. At national level it is important to guarantee that national mechanisms are

established in order to ensure adequate monitoring and control of the national reception system. Moreover, the proposal extends the current reporting requirement imposed on Member States, in order to include those provisions in relation to which the Commission's evaluation report underlined a number of deficiencies regarding their implementation.

- Legal basis

This proposal amends Directive 2003/9/EC and uses the same legal base as that act, namely point (1) (b) of the first subparagraph of Article 63 of the EC Treaty.

Article 1 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, states that Ireland and the UK may 'opt in' to measures establishing a Common European Asylum System.

In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 18 August 2001, of its wish to take part in the adoption and application of the current Directive.

In accordance with Article 1 of the said Protocol, Ireland decided not to participate in the adoption of the current Directive. Consequently, and without prejudice to Article 4 of the aforementioned Protocol, the provisions of the current Directive do not apply to Ireland.

The position of the above mentioned Member States with regard to the current directive do not affect their possible participation with regard to the new directive once it comes into force.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by the directive nor is subject to its application.

- Subsidiarity Principle

Title IV of the EC Treaty ('TEC') on visas, asylum, immigration and other policies related to free movement of persons confers certain powers on these matters on the European Community. These powers must be exercised in accordance with Article 5 TEC, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

The current legal base for Community action in the area of reception of asylum seekers is established in Article 63(1) TEC. This provision states that the Council is to adopt "measures on asylum, in accordance with the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties" in areas such as minimum standards on the reception of asylum seekers in Member States.

Due to the transnational nature of the problems related to asylum and refugee protection, the EU is well placed to propose solutions in the framework of the Common European Asylum System (CEAS) in particular with regard to issues concerning the reception of asylum seekers. Although an important level of harmonization was reached by the adoption of the

directive in 2003 there is still room for EU action in view of ensuring higher and more harmonised standards of treatment in relation to the reception of asylum seekers.

- Proportionality Principle

The impact assessment on the amendment of the Reception Conditions Directive assessed each option to the problems identified so as to represent an ideal proportion between practical value and efforts needed and concluded that opting for EU action does not go beyond what is necessary to achieve the objective of solving those problems.

- Impact on fundamental rights

This proposal was made subject of an in-depth scrutiny to make sure that its provisions are in full compatibility with fundamental rights as general principles of Community law, as provided in the EU Charter of Fundamental Rights, as well as obligations stemming from international law. As a result, particular emphasis was put on the provisions dealing with detention and procedural safeguards, treatment of persons with special needs notably minors, unaccompanied minors and victims of torture, and access to material reception conditions.

Ensuring higher and more equal standards of reception will have an overall strong positive impact for asylum seekers from a fundamental rights point of view. In particular, the right to liberty and freedom of movement will be reinforced by underlining that a person shall not be detained for the sole reason that he/she has registered an application for international protection; similarly, the proposal also provides that detention should only be allowed in exceptional cases prescribed under the Directive and only if it is in line with the principles of necessity and proportionality.

The rights of minors will be better reflected in the text by ensuring that they cannot be detained unless it is in their best interest, whereas detention of unaccompanied minors is prohibited in all cases. Moreover, the specific situations of vulnerable groups will be more adequately addressed by ensuring that their needs are timely identified and access to appropriate treatment is available. Facilitating access to the labour market could assist asylum seekers in becoming more self-sufficient and will facilitate their integration to the hosting Member State. Furthermore, the principle of non-discrimination will be reinforced by the imposition of the obligation on Member States to ensure that asylum seekers are not unjustifiably treated in comparison to nationals concerning the level of material reception conditions to be provided under the Directive. Finally, the imposition of a reporting requirement on essential provisions of the Directive linked with fundamental rights principles will ensure better monitoring of their implementation at Community level. In this respect it should be underlined that Member States are obliged to implement and apply the provisions of this Directive in line with Fundamental Rights.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down minimum standards for the reception of asylum seekers

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1) (b) of the first subparagraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee¹³,

Having regard to the opinion of the Committee of the Regions¹⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁵,

Whereas:

↓ new

- (1) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers¹⁶. In the interests of clarity, that Directive should be recast.

↓ 2003/9/EC recital 1

- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

¹³ OJ C [...], [...], p. [...].

¹⁴ OJ C [...], [...], p. [...].

¹⁵ OJ C [...], [...], p. [...].

¹⁶ OJ L 31, 6.2.2003, p. 18.

↓ 2003/9/EC recital 2

- (3) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus maintaining the principle of non-refoulement.

↓ 2003/9/EC recital 3

- (4) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of asylum seekers.

↓ 2003/9/EC recital 4

- (5) The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy.

↓ new

- (6) The first phase in the creation of a Common European Asylum System that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, has now been achieved. The European Council of 4 November 2004 adopted The Hague Programme which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect The Hague Programme invited the European Commission to conclude the evaluation of the first phase legal instruments and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before 2010.
- (7) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for asylum seekers.
- (8) In order to ensure equal treatment of asylum seekers throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection and in all locations and facilities hosting asylum seekers.
- (9) Member States should seek to ensure full compliance with the principles of the best interests of the child and the importance of family unity, in the application of this Directive, in line with the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.

↓ 2003/9/EC recital 6

- (10) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party ~~and which prohibit discrimination~~.
-

↓ 2003/9/EC recital 7

⇒ new

- (11) Minimum standards for the reception of asylum seekers that will ~~normally~~ suffice to ensure them a dignified standard of living and comparable living conditions in all Member States ⇒ taking into consideration the level of social assistance available for nationals in the hosting Member State, ⇐ should be laid down~~ed~~.
-

↓ 2003/9/EC recital 8

- (12) The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.
-

↓ new

- (13) In view of ensuring equal treatment amongst all applicants for international protection as well as in order to guarantee consistency with current EU asylum acquis, in particular with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹⁷, it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.
-

↓ new

- (14) In order to promote asylum-seekers' self-sufficiency and to limit wide discrepancies between Member States, it is essential to provide clear rules on the access of asylum seekers to the labour market.

¹⁷ OJ L 304, 30.9.2004, p. 12.

↓ 2003/9/EC recital 9 (adapted)
⇒ new

- (15) ⇒ The immediate identification and monitoring of persons ⇐ ~~Reception of groups~~ with special needs ~~should be~~ ⇒ should be a primary concern of national authorities in order to ensure that their reception is ⇐ specifically designed to meet ~~those~~ ☒ their special ☒ needs.
-

↓ new

- (16) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection, notably in accordance with Article 31 of the Geneva Convention relating to the Status of Refugees of 28 July 1951. In particular Member States should not impose penalties on asylum seekers on account of illegal entry or presence and any restrictions to movement should be necessary. In this respect, detention of asylum seekers should only be possible under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard both to the manner and to the purpose of such detention. Where an asylum seeker is held in detention he/she should have a right to a judicial remedy before national court.
-

↓ 2003/9/EC recital 10 (adapted)
⇒ new

- (17) ~~Reception of applicants~~ ☒ Applicants ⇐ who are in detention ⇒ should be treated with full respect of human dignity and their reception ⇐ should be specifically designed to meet their needs in that situation. ⇒ In particular, Member States should ensure that Article 37 of the 1989 UN Convention on the Rights of the Child is applied. ⇐
-

↓ 2003/9/EC recital 11

- (18) In order to ensure compliance with the minimum procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.
-

↓ 2003/9/EC recital 12 (adapted)
⇒ new

- (19) The possibility of abuse of the reception system should be restricted by ~~laying down cases~~ ☒ specifying the circumstances in which ⇐ ~~for the reduction or withdrawal of~~

reception conditions for asylum seekers ☒ may be reduced or such reception withdrawn ☒ ⇒ while at the same time ensuring a dignified standard of living for all asylum seekers ⇐.

↓ 2003/9/EC recital 13

- (20) The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.
-

↓ 2003/9/EC recital 14

- (21) Appropriate coordination should be encouraged between the competent authorities as regards the reception of asylum seekers, and harmonious relationships between local communities and accommodation centres should therefore be promoted.
-

↓ 2003/9/EC recital 15

- (22) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.
-

↓ 2003/9/EC recital 16

⇒ new

- (23) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that emanating from the Geneva Convention for third country nationals and stateless persons ⇒ Directive 2004/83/EC ⇐.
-

↓ 2003/9/EC recital 17

- (24) The implementation of this Directive should be evaluated at regular intervals.
-

↓ 2003/9/EC recital 18

- (25) Since the objectives of the proposed action, namely to establish minimum standards on the reception of asylum seekers in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article,

this Directive does not go beyond what is necessary in order to achieve those objectives.

↓ 2003/9/EC recital 19 (adapted)

~~In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 18 August 2001, of its wish to take part in the adoption and application of this Directive.~~

↓ 2003/9/EC recital 20 (adapted)

~~In accordance with Article 1 of the said Protocol Ireland, is not participating in the adoption of this Directive. Consequently, and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.~~

↓ 2003/9/EC recital 21 (adapted)

~~In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive and is therefore neither bound by it nor subject to its application.~~

↓ 2003/9/EC recital 5

⇒ new

(26) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 ⇒, 6, 7, ⇐ ~~and~~ 18 ⇒, 24 and 47 ⇐ of the said Charter ⇒ and has to be implemented accordingly⇐.

↓ new

(27) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(28) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States.

Article 2

Definitions

For the purposes of this Directive:

- ~~(a) "Geneva Convention" shall mean the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;~~
- ~~(b) "application for asylum" shall mean the application made by a third country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum unless a third country national or a stateless person explicitly requests another kind of protection that can be applied for separately;~~

↓ new

- (a) "application for international protection" means an application for international protection as defined in Directive 2004/83/EC;

↓ 2003/9/EC
⇒ new

- ~~(b)(c)~~ "applicant" or "asylum seeker" ~~shall~~ means a third country national or a stateless person who has made an application for ~~asylum~~ ⇒ international protection ⇐ in respect of which a final decision has not yet been taken;
- ~~(c)(d)~~ "family members" ~~shall~~ means, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for ~~asylum~~ ⇒ international protection ⇐:

- (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
- (ii) the minor children of ~~the~~ couples referred to in point (i) or of the applicant, on condition that they are unmarried ~~and dependent~~ and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

↓ new

- (iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, where it is in their best interests to reside with the applicant;
- (iv) the father, mother or guardian of the applicant, when the latter is a minor and unmarried, or when he/she is a minor and married but it is in his/her best interests to reside with his/her father, mother or guardian;
- (v) the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married but it is in the best interests of one or more of them that they reside together;

↓ 2003/9/EC

~~(e) "refugee" shall mean a person who fulfils the requirements of Article 1(A) of the Geneva Convention;~~

~~(f) "refugee status" shall mean the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;~~

~~(d)(e)~~ "procedures" and "appeals", ~~shall~~ means the procedures and appeals established by Member States in their national law;

↓ new

(e) "minor" means a third-country national or stateless person below the age of 18 years;

↓ 2003/9/EC (adapted)

⇒ new

~~(f)(h)~~ "unaccompanied minors" ~~shall~~ means ~~persons below the age of eighteen~~ ⇒ a minor ⇐ who arrives in the territory of the Member States unaccompanied by an

adult responsible for ~~them~~ him/her whether by law or by custom, and for as long as ~~they are~~ he/she is not effectively taken into the care of such a person; it ~~shall~~ includes a ~~minors~~ who ~~is are~~ left unaccompanied after ~~they~~ he/she has ~~have~~ entered the territory of Member States;

(g)(~~g~~) "reception conditions" ~~shall~~ means the full set of measures that Member States grant to asylum seeker in accordance with this Directive;

(h)(~~h~~) "material reception conditions" ~~shall~~ means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, ~~⇒ or a combination of the three ⇐~~, and a daily expenses allowance;

(i)(~~i~~) "detention" ~~shall~~ means confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(j)(~~j~~) "accommodation centre" ~~shall~~ means any place used for collective housing of asylum seekers.

Article 3

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for ~~asylum~~ ~~⇒ international protection ⇐~~ ~~at the border, or~~ in the territory, ~~⊗~~ including at the border ~~⊗~~ ~~⇒ or in the transit zones, ⇐~~ of a Member State, as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for ~~asylum~~ ~~⇒ international protection ⇐~~ according to the national law.
2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof¹⁸ are applied.

↓ 2003/9/EC
⇒ new

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from ~~the Geneva Convention for third country nationals or stateless persons who are found not to be refugees~~ ~~⇒ Directive 2004/83/EC. ⇐~~

¹⁸ OJ L 212, 7.8.2001, p. 12

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and other close relatives of the applicant who are present in the same Member State when they are dependent on him or for humanitarian reasons insofar as these provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for ~~asylum~~ ⇒ international protection ⇐ with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, as far as possible, in a language that the applicants ~~may~~ ☒ are ☒ reasonably ~~be~~ supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6

Documentation

1. Member States shall ensure that, within three days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or

she is allowed to stay in the territory of the Member State while his or her application is pending or being examined.

↓ new

The holder of the document shall be granted access to the rights and benefits conferred on asylum seekers under this Directive.

↓ 2003/9/EC
⇒ new

If the holder is not free to move within all or a part of the territory of the Member State, the document shall also certify this fact.

2. Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for ~~asylum~~ ⇒ international protection ⇐ made at the border or within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. In specific cases, during the examination of an application for ~~asylum~~ ⇒ international protection ⇐, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.
3. The document referred to in paragraph 1 need not certify the identity of the asylum seeker.
4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory of the Member State concerned or at the border thereof.
5. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7

Residence and freedom of movement

1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.
2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.

~~3. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.~~

~~43.~~ Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation.

~~54.~~ Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and ~~43~~ and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

~~65.~~ Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

↓ new

Article 8

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Council Directive 2005/85/EC.¹⁹

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant to a particular place in accordance with national legislation, if other less coercive measures cannot be applied effectively. An applicant may only be detained to a particular place:

- (a) in order to determine, ascertain or verify his identity or nationality;
- (b) in order to determine the elements on which his application for asylum is based which in other circumstances could be lost;
- (c) in the context of a procedure, to decide on his right to enter the territory;
- (d) when protection of national security and public order so requires.

This paragraph is without prejudice to Article 11.

3. Member States shall ensure that rules dealing with alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at a designated place, are laid down in national legislation.

¹⁹ OJ L 326, 13.12.2005, p.13

Article 9

Guarantees for detained asylum seekers

1. Detention shall be ordered for the shortest period possible. In particular detention pursuant to Article 8 (2) (a), (b) and (c) shall not exceed the time reasonably needed to fulfil the administrative procedures required in order to obtain information on the asylum seeker's nationality or on the elements on which his application is based or to carry out the relevant procedure with a view to deciding on his/her right to enter the territory.

Delays in the administrative procedure that cannot be attributed to the asylum seeker shall not justify a continuation of detention.

2. Detention shall be ordered by judicial authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed by judicial authorities within 72 hours from the beginning of the detention. Where the judicial authority finds detention to be unlawful, or if there is no decision within 72 hours, the asylum seeker concerned shall be released immediately.

3. Detention shall be ordered in writing. The detention order shall state the reasons in fact and in law on which it is based and shall specify the maximum period of detention.

4. Detained asylum seekers shall immediately be informed of the reasons for detention, the maximum duration of the detention and the procedures laid down in national law for challenging the detention order, in a language they are reasonably supposed to understand.

5. The continued detention shall be reviewed by a judicial authority at reasonable intervals of time either on request by the asylum seeker concerned or ex officio.

Detention shall never be unduly prolonged.

6. Member States shall ensure access to legal assistance and/or representation in cases of detention that shall be free of charge where the asylum seeker cannot afford the costs involved.

Procedures for access to legal assistance and/or representation in such cases shall be laid down in national law.

Article 10

Conditions of detention

1. Member States shall not detain asylum seekers in prison accommodation. Detention shall only be carried out in specialised detention facilities.

Asylum seekers in detention shall be kept separately from other third country nationals who have not lodged an application for international protection unless it is necessary to ensure family unity and the applicant consents thereto.

2. Member States shall ensure that asylum seekers in detention have the opportunity to establish contact, including visitation rights, with legal representatives and family members. UNHCR and other relevant and competent national, international and non-governmental organisations and bodies shall also have the opportunity to communicate with and to visit applicants in detention areas.
3. Member States shall ensure that asylum seekers in detention are immediately provided with updated information on the rules which apply in the facility and set out their rights and obligations in a language they are reasonably supposed to understand.

Article 11

Detention of vulnerable groups and persons with special needs

1. Minors shall not be detained unless it is in their best interest, as prescribed in Article 22(2) and only after taking into consideration the findings of the individual examination of their situation in accordance with paragraph 5 of Article 11.

Unaccompanied minors shall never be detained.

2. Where minors are detained they shall have the possibility to engage in leisure-activities, including play and recreational activities appropriate to their age.
3. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.
4. Where female asylum seekers are detained Member States shall ensure that they are accommodated separately from male asylum seekers, unless these are family members and all concerned individuals consent thereto.
5. Persons with special needs shall not be detained unless an individual examination of their situation by a qualified professional certifies that their health, including their mental health, and well-being, will not significantly deteriorate as a result of the detention.

Where persons with special needs are detained Member States shall ensure regular monitoring and adequate support.

↓ 2003/9/EC
⇒ new

Article ~~8~~12

Families

Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the asylum seeker's agreement.

Article ~~9~~13

Medical screening

Member States may require medical screening for applicants on public health grounds.

Article ~~10~~14

Schooling and education of minors

1. Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

~~The Member State concerned may stipulate that such access must be confined to the State education system.~~

~~Minors shall be younger than the age of legal majority in the Member State in which the application for asylum was lodged or is being examined.~~ Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Access to the education system shall not be postponed for more than three months from the date the application for asylum ⇒ international protection ⇐ was lodged by the minor or the minor's parents. ~~This period may be extended to one year where specific education is provided in order to facilitate access to the education system.~~

↓ new

Preparatory classes, including language classes, aimed at facilitating the access of minors to the national education system, and/or specific education designed to assist their integration into that system, shall be provided where necessary.

↓ 2003/9/EC
⇒ new

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State ⇒ shall ⇐ ~~may~~ offer other education arrangements ⇒ in accordance with national law and practices ⇐.

Article ~~11~~15

Employment

~~1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged during which an applicant shall not have access to the labour market.~~

↓ new

1. Member States shall ensure that applicants have access to the labour market no later than 6 months following the date when the application for international protection was lodged.

↓ 2003/9/EC
⇒ new

2. ~~If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant,~~ Member States shall decide the conditions for granting access to the labour market for the applicant, ⇒ in accordance with their national legislation, without unduly restricting asylum seekers' access to the labour market. ⇐
3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

Article ~~12~~16

Vocational training

Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article ~~11~~15.

Article ~~13~~17

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for ~~asylum~~ ⇒ international protection ⇐

↓ 2003/9/EC (adapted)
⇒ new

2. Member States shall ☒ ensure that ☒ ~~make provisions on~~ material reception conditions ~~to ensure a~~ ☒ provide an adequate ☒ standard of living ☒ for applicants for international protection, which guarantees their subsistence and protects their physical and mental health ☒ ~~adequate for the health of applicants and capable of ensuring their subsistence.~~
-

↓ 2003/9/EC

Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article ~~17~~21, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.
4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

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

~~5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions~~

~~Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.~~

↓ new

5. In calculating the amount of assistance to be granted to asylum seekers Member States shall ensure that the total value of material reception conditions to be made available to asylum seekers is equivalent to the amount of social assistance granted to nationals requiring such assistance. Any differences in this respect shall be duly justified.

↓ 2003/9/EC
⇒ new

Article ~~14~~18

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:
 - (a) premises used for the purpose of housing applicants during the examination of an application for ~~asylum~~ ⇒ international protection ⇐ lodged at the border;
 - (b) accommodation centres which guarantee an adequate standard of living;
 - (c) private houses, flats, hotels or other premises adapted for housing applicants.
2. Member States shall ensure that applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:
 - (a) protection of their family life;
 - (b) the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non governmental organisations (NGOs) recognised by Member States.

↓ new

Member States shall take into consideration gender and age specific concerns and the situation of persons with special needs in relation to applicants within the premises and accommodation centers referred to in paragraph 1(a) and (b).

↓ 2003/9/EC (adapted)
⇒ new

Member States shall ☒ take appropriate measures to prevent ☒ ~~pay particular attention to the prevention of~~ assault ⇒ and gender based violence including sexual assault, ⇐ within the premises and accommodation centres referred to in paragraph 1(a) and (b).

3. Member States shall ensure, ~~if appropriate,~~ that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom ⇒ provided this is in the best interests of the minors concerned ⇐.
4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers of the transfer and of their new address.
5. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work.
6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.
7. Legal advisors or counsellors of asylum seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist the said asylum seekers. Limits on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum seekers.
8. ⇒ In duly justified cases, ⇐ Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:
 - (a) ~~an~~ initial assessment of the specific needs of the applicant is required,
~~material reception conditions, as provided for in this Article, are not available in a certain geographical area,~~
 - (b) ~~housing~~ capacities normally available are temporarily exhausted,
 - (c) ~~the~~ asylum seeker is in detention or confined to border posts.

These different conditions shall cover in any case basic needs.

Article ~~45~~19

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness ⇒ or mental disorders ⇐.

2. Member States shall provide necessary medical or other assistance to applicants who have special needs, \Rightarrow including appropriate mental health care when needed, under the same conditions as nationals \Leftarrow .

\Downarrow 2003/9/EC (adapted)

CHAPTER III

REDUCTION OR WITHDRAWAL OF \boxtimes MATERIAL \boxtimes RECEPTION CONDITIONS

Article ~~16~~ 20

Reduction or withdrawal of \boxtimes material \boxtimes reception conditions

1. Member States may reduce ~~or withdraw~~ \boxtimes material \boxtimes reception conditions ~~in the following cases:~~

~~(a)~~ where an asylum seeker:

\Downarrow 2003/9/EC

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

\Downarrow 2003/9/EC (adapted)
 \Rightarrow new

When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the \boxtimes material \boxtimes reception conditions \boxtimes reduced \boxtimes $\frac{1}{2}$

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

↓ new

2. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

↓ 2003/9/EC

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

~~2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.~~

↓ 2003/9/EC

3. Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.

↓ 2003/9/EC (adapted)

⇒ new

4. Decisions for reduction, ☒ or ☒ withdrawal ~~or refusal~~ of ☒ material ☒ reception conditions or sanctions referred to in paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article ~~17~~21, taking into account the principle of proportionality. Member States shall under all circumstances ensure ☒ subsistence, ☒ access to emergency health care ☒ and essential treatment of illness or mental disorder ☒.

↓ 2003/9/EC

5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.

CHAPTER IV

PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

↓ 2003/9/EC (adapted)
⇒ new

Article ~~17~~21

General principle

1. Member States shall take into account the specific situation of ⇒ persons with special needs in the national legislation implementing this Directive. ⇐ ~~V~~vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children ⇒, victims of trafficking, persons with mental health problems ⇐ and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, ⇒ shall always be considered as persons with special needs ⇐. ~~in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care~~
-

⇓ new

2. Member States shall establish procedures in national legislation with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such needs. Member States shall ensure support for persons with special needs throughout the asylum procedure and shall provide for appropriate monitoring of their situation.
-

↓ 2003/9/EC
⇒ new

~~2. Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.~~

Article ~~18~~22

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. ⇒ Member States shall ensure a standard of living adequate for the child's physical, mental, spiritual, moral and social development. ⇐

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

- (a) family reunification possibilities;
- (b) the minor's well-being and social development, taking into particular consideration the minor's ethnic, religious, cultural and linguistic background;
- (c) safety and security considerations, in particular where there is a risk of the child being a victim of trafficking;
- (d) the views of the minor in accordance with his/her age and maturity.

3. Member States shall ensure that minors have access to leisure-activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article 18 1(a) and (b).

42 Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

Article ~~42~~23

Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.

2. Unaccompanied minors who make an application for ~~asylum~~ ⇒ international protection ⇐ shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for ~~asylum~~ ⇒ international protection ⇐ was made or is being examined, be placed:

- (a) with adult relatives;
- (b) with a foster-family;
- (c) in accommodation centres with special provisions for minors;

- (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers.

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

↓ 2003/9/EC (adapted)

⇒ new

3. ⇒ Member States shall establish procedures in national legislation for tracing the family members of unaccompanied minor. ⇐ They ~~Member States protecting the unaccompanied minor's best interest~~ shall endeavour ⇐ start ⇐ to trace the members of ~~his or her~~ ⊗ the unaccompanied minor's ⊗ family as soon as possible ⇐ after an application for international protection is lodged whilst protecting his/her best interest ⇐. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety.

↓ 2003/9/EC

⇒ new

4. Those working with unaccompanied minors shall have had ⇐ and continue to ⇐ ~~or~~ receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.

Article ~~2024~~

Victims of torture and violence

1. Member States shall ensure that, ~~if necessary~~, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts ⇐, in particular access to rehabilitation services that should allow for obtaining medical and psychological treatment ⇐.

↓ new

2. Those working with victims of torture shall have had and continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in the relevant national law, in relation to any information they obtain in the course of their work.

↓ 2003/9/EC (adapted)
⇒ new

CHAPTER V

APPEALS

Article ~~24~~25

Appeals

1. Member States shall ensure that ~~negative~~ decisions relating to the granting, ⇒ withdrawal or reduction ⇐ of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review ⇒, in fact and in law, ⇐ before a judicial body, shall be granted.

↓ new

2. Member States shall ensure access to legal assistance and/or representation in the cases referred to in paragraph 1. Such legal assistance and/or representation shall be free of charge where the asylum seeker cannot afford the costs involved.

↓ 2003/9/EC
⇒ new

~~24~~Procedures for access to legal assistance ⇒ and/or representation ⇐ in such cases shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article ~~22~~

~~Cooperation~~

~~Member States shall regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions~~

and provide full information on the type, name and format of the documents provided for by Article 6.

↓ new

Article 26

Competent authorities

Each Member State shall notify the Commission of the identity of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

↓ 2003/9/EC
⇒ new

Article ~~23~~27

Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, ⇒ put in place relevant mechanisms in order to ⇐ ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

↓ new

2. Member States shall submit relevant information to the Commission in the form set out in Annex I on a yearly basis, starting from [...]:

↓ 2003/9/EC
⇒ new

Article ~~24~~28

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

CHAPTER VII

FINAL PROVISIONS

Article ~~25~~ 29

Reports

By ~~6 August 2006~~ ⇨ [...] at the latest ⇩, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report, including the statistical data provided for by Article ~~27(2)~~ 22 by ~~6 February 2006~~ ⇨ [...] ⇩.

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article ~~26~~ 30

Transposition

↓ 2003/9/EC (adapted)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 6 February 2005~~ ⇨ Articles [...] [The articles which have been changed as to the substance by comparison with the earlier Directive] and Annex I by [...] at the latest ⇩. They shall forthwith ~~inform~~ ⇨ communicate to ⇨ the Commission ~~thereof~~ ⇨ the text of those provisions and a correlation table between those provisions and this Directive ⇩.

When ~~the~~ Member States adopt ~~these measures~~ ⇨ those provisions ⇩, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made. ⇨ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ⇩

2. Member States shall communicate to the Commission the text of the ⇨ main ⇩ provisions of national law which they adopt in the field ~~relating to the enforcement of~~ ⇨ covered by ⇩ this Directive.



Article 31

Repeal

Directive 2003/9/EC is repealed with effect from [day after the date set out in the first subparagraph of Article 30(1) of this Directive], without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

↓ 2003/9/EC (adapted)

Article ~~27~~32

Entry into force

This Directive shall enter into force on the ☒ twentieth ☒ day ☒ following that ☒ of its publication in the Official Journal of the European Union.

☒ Articles [...] [*The articles which are unchanged by comparison with the earlier Directive*] and Annex I shall apply from [day after the date set out in the first subparagraph of Article 30(1)]. ☒

Article ~~28~~33

Addressees

This Directive is addressed to the Member States ~~in accordance with the Treaty establishing the European Union.~~

Done at [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX I

Reporting form on the information to be submitted by Member States on an annual basis, as required under Article 27(2) of Directive [...]/.../EC]

1. Indicate the total number of persons in your Member State currently covered by reception conditions as stipulated in Article 3(1) of Directive [...]/.../EC], broken down by sex and age. For each such person, indicate whether he or she is an applicant for asylum or a family member as defined in Article 2(c) of Directive [...]/.../EC].

2. On the basis of Article 21 of Directive [...]/.../EC] please provide statistical data on the number of asylum seekers with special needs identified divided into the following groups of persons with special needs:

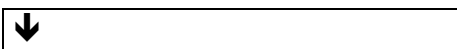
- unaccompanied minors
- disabled people
- elderly people
- pregnant women
- single parents with minor children
- persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence
- victims of trafficking
- persons with mental health problems
- other (please explain)

3. Provide detailed information concerning the documents provided for in Article 6 of Directive [...]/.../EC], including in particular the type, name and format of these documents.

4. With reference to Article 15 Directive [...]/.../EC], indicate the total number of applicants for asylum in your Member State who have access to the labour market, as well as the total number who are currently employed, broken down by economic sector. To the extent that any particular conditions are attached to labour market access for asylum seekers, describe in detail such restrictions.

5. With reference to Article 17(5) Directive [...]/.../EC], describe in detail the nature of material reception conditions, including their monetary value, and how they are provided (i.e. which material reception conditions are provided in kind, in money, in vouchers or in a combination of these elements) and indicate the level of the daily expenses allowance provided to asylum seekers.

6. With reference to Article 17(5) Directive [...]/.../EC], indicate the types and amounts of social assistance available for asylum seekers; include in your reply points of reference with the minimum amount of social assistance made available by Member States for nationals requiring such assistance. To the extent that the social assistance available to asylum seekers differs from those available to nationals, explain the reasons for these differences.



ANNEX II

Part A

Repealed Directive (referred to in Article 31)

Council Directive 2003/9/EC

(OJ L 31, 6.2.2003, p. 18)

Part B

Time-limit for transposition into national law (referred to in Article 30)

Directive	Time-limit for transposition
2003/9/EC	6 February 2005

ANNEX III

CORRELATION TABLE

Directive 2003/9/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a) to (c)	Article 2(a) to (c)
Article 2(d) introductory wording and points (i) and (ii)	Article 2(d) introductory wording and points (i) and (ii)
-	Article 2(c) points (iii), (iv) and (v)
Article 2 (e) and (f)	-
Article 2 (g)	Article 2 (g)
-	Article 2(h)
Article 2(h)	Article 2(i)
Article 2(i)	Article 2(j)
Article 2(j)	Article 2(k)
Article 2(k)	Article 2(l)
Article 2(l)	Article 2(m)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6 (1) first subparagraph	Article 6 (1) first subparagraph
Article 6 (1) second subparagraph	Article 6 (1) third subparagraph
Article 6 (2) to (5)	Article 6 (2) to 6 (5)
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(3)	-
Article 7(4) to (6)	Article 7(3) to (5)
-	Article 8

-	Article 9
-	Article 10
-	Article 11
Article 8	Article 12
Article 9	Article 13
Article 10 (1)	Article 14 (1)
Article 10 (2)	Article 14 (2) first subparagraph
-	Article 14 (2) second subparagraph
Article 10 (3)	Article 14 (3)
Article 11 (1)	-
-	Article 15 (1)
Article 11 (2)	Article 15 (2)
Article 11 (3)	Article 15 (3)
Article 11 (4)	-
Article 12	Article 16
Article 13 (1) to (4)	Article 17 (1) to (4)
Article 13 (5)	-
-	Article 17 (5)
Article 14 (1)	Article 18 (1)
Article 14 (2) introductory wording and first subparagraph	Article 18 (2) introductory wording and first subparagraph
-	Article 18 (2) second subparagraph
Article 14 (2) second subparagraph	Article 18 (2) third subparagraph
Article 14 (3) to (7)	Article 18 (3) to (7)
Article 14 (8) introductory wording	Article 18 (8) introductory wording
Article 14 (8) first subparagraph first indent	Article 18 (8) first subparagraph point (a)
Article 14 (8) first subparagraph second indent	-

Article 14 (8) first subparagraph third and fourth intend

Article 14 (8) second subparagraph

Article 15

Article 16 (1) introductory wording

Article 16 (1) (a)

Article 16 (1) (a) first, second and third indent

Article 16 (1) (b) first subparagraph

-

Article 16 (1) (b) second subparagraph

Article 16 (2)

Article 16 (3) to (5)

Article 17 (1)

Article 17 (2)

-

Article 18 (1)

-

Article 18 (2)

Article 19

Article 20

-

Article 21 (1)

-

Article 21 (2)

Article 22

-

Article 18 (8) first subparagraph point (b) and (c)

Article 18 (8) second subparagraph

Article 19

Article 20 (1) introductory wording

-

Article 20 (1) point a, b and c

-

Article 20 (2) first subparagraph

Article 20 (2) second subparagraph

-

Article 20 (3) to (5)

Article 21 (1) first subparagraph

Article 21 (1) second subparagraph

-

Article 21 (2)

Article 22 (1)

Article 22 (2) and (3)

Article 22 (4)

Article 23

Article 24 (1)

Article 24 (2)

Article 25 (1)

Article 25 (2) first subparagraph

Article 25 (2) second subparagraph

-

Article 26

Article 23

-

Article 24

Article 25

Article 26

-

Article 27

-

Article 28

—

—

-

Article 27 (1)

Article 27 (2)

Article 28

Article 29

Article 30

Article 31

Article 32 first subparagraph

Article 32 second subparagraph

Article 33

Annex I

Annex II

Annex III