Minimum standards for the reception of asylum seekers (recast) ***I

P6_TA(2009)0376


(2010/C 212 E/51)

(Codecision procedure – recast)

The European Parliament,

— having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0815),

— having regard to Article 251(2) and Article 63(1)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0477/2008),

— having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts (1),

— having regard to the letter of 4 April 2009 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 80a(3) of its Rules of Procedure,

— having regard to Rules 80a and 51 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0285/2009),

A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2008)0244


(Text with EEA relevance)

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 Committee (  1 ),

Having regard to the opinion of the Committee of the Regions (  2 ),

Acting in accordance with the procedure laid down in Article 251 of the Treaty (  3 ),

Whereas:

(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 seekers (  4 ). In the interests of clarity, that Directive should be recast.

(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.

(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.

(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.

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

(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 concluded. 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 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.

(  1 ) OJ C […], […], p. […].
(  2 ) OJ C […], […], p. […].
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.

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.

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.

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.

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 should be laid down.

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.

With a view to ensuring equal treatment among all applicants for international protection as well as in order to ensure 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 granted (1), it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

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.

The immediate identification and monitoring of persons with special needs should be a primary concern of national authorities in order to ensure that their reception conditions are specifically designed to meet their special needs.

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 the international legal obligations of the Member States, and particularly 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 on 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 principles of necessity and proportionality with regard both to the manner and to the purpose of such detention. Where asylum seekers are held in detention they should have a right to a judicial remedy before national court.

Applicants who are in detention should be treated with full respect for human dignity and their reception conditions should be specifically designed to meet their needs in that situation. In particular, Member States should ensure compliance with Article 37 of the 1989 UN Convention on the Rights of the Child.

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(18) In order to ensure compliance with minimum procedural safeguards 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.

(19) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which 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.

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

(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.

(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.

(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 those applicable under Directive 2004/83/EC.

(24) In order to cover any improvements in minimum standards for the reception of asylum seekers, there should be a proportionate increase in the funds made available by the European Union in order to cover the costs of such improvements, especially in the case of Member States which are facing specific and disproportionate pressures on their national asylum systems, owing in particular to their geographical or demographic situation.

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

(26) Since the objective of this Directive, 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 at Community level, the Community may adopt measures in accordance with the principle 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 that objective.

(27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the Charter). In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 24 and 47 of the Charter and should be implemented accordingly.

(28) 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.

(29) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of this 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) ‘application for international protection’ means an application for international protection as defined in Article 2(g) of Directive 2004/83/EC;

(b) ‘applicant’ or ‘asylum seeker’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(c) ‘family members’ 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 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 foreigners;

(ii) the minor children of couples referred to in point (i) above or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

(iii) the married minor children of couples referred to in point (i) above or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law and provided they are not accompanied by their spouses, where it is in their best interests to reside with the applicant;

(iv) the father, mother or guardian of the applicant, when the applicant is a minor and unmarried, or when the applicant is a minor and married but not accompanied by his/her spouse and 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 applicant is a minor and unmarried, or when the applicant or his/her siblings are minors and married but not accompanied by their spouses and it is in the best interests of one or more of them that they reside together;

(vi) dependent adults with special needs;

(d) ‘procedures’ and ‘appeals’, means the procedures and appeals established by Member States in their national law;
(e) ‘minor’ means a third-country national or stateless person below the age of 18 years;

(f) ‘unaccompanied minor’ means a minor who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;

(g) ‘reception conditions’ means the full set of measures that Member States apply to asylum seekers in accordance with this Directive;

(h) ‘material reception conditions’ 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 expense allowance;

(i) ‘detention’ 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) ‘accommodation centre’ 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 international protection 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 international protection according to the applicable national law.

2. This Directive shall not apply to 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 thereof (1) are applied.

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than those applicable under Directive 2004/83/EC.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and close relatives of asylum seekers who are present in the same Member State when they are dependent on the asylum seeker or for humanitarian reasons insofar as those 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 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 in a language that the applicants understand or may reasonably be presumed 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.

No additional documents shall be required in order to secure access to the rights and benefits conferred on asylum seekers under this Directive.

If the holder of the document referred to in the first subparagraph 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 an asylum seeker is in detention and during the examination of an application for 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 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 or at the border of the Member State concerned.

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 ensuring 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 policy or, when necessary, for the swift processing and effective monitoring of his or her application.

3. 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.

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

5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence referred to in paragraphs 2 and 3 and/or the assigned area referred to 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.

6. 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.

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 of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (1).

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may confine 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 confined 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 international protection 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 or public policy 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.

Article 9

Guarantees for detained asylum seekers

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

Such procedures should be completed with all due dispatch. Delays in the 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 that 72 hour period, 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 which they understand or may reasonably be presumed to understand.

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

Detention shall never be unduly prolonged.

6. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with Article 15(3) to (6) of Directive 2005/85/EC.

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

Article 10

Detention conditions

1. Member States shall not detain asylum seekers in prison accommodation. Detention shall only take place in specialised detention facilities.

Asylum seekers in detention shall be held 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 visiting rights, with legal representatives, family members, social workers and religious visitors. The United Nations High Commissioner for Refugees (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 held in detention have access to appropriate medical treatment and psychological counselling where appropriate.
4. Member States shall ensure that asylum seekers in detention are immediately provided with up-to-date information on the rules which apply in the facility and set out their rights and obligations in a language which they understand or may reasonably be presumed 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 interests, as prescribed in Article 23(2) and only after taking into consideration the findings of the individual examination of their situation in accordance with paragraph 5 of this Article.[1]

Unaccompanied minors shall never be detained.

2. Where minors are detained they shall have the possibility to engaging in leisure-activities, including play and recreational activities appropriate to their age, and open-air activities.

3. Detained families shall be provided with separate accommodation ensuring adequate privacy.

4. Where female asylum seekers are detained, Member States shall ensure that they are accommodated separately from male asylum seekers, unless they 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 and independent 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.

Article 12

Families

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

Article 13

Medical screening

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

Article 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.

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 be ensured as soon as possible once the application for international protection has been lodged by or on behalf of the minor and, in any event, shall not be postponed for more than three months from the date on which the application for international protection was lodged.

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.

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 offer other educational arrangements in accordance with national law and practice.

Article 15

Employment

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

2. 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 an ordinary procedure has suspensive effect, until such time as a negative decision on the appeal is issued.

Article 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 15.

Article 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 international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which ensures their subsistence and protects their physical and mental health.

Member States shall ensure that such a standard of living is provided in the specific situation of persons who have special needs, in accordance with Article 22, 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 ensure 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 those basic needs were being met, 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 the three elements.

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 laid down in this Article.

Article 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 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 UNHCR and non-governmental organisations recognised by Member States.

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 centres referred to in paragraph 1(a) and (b).

Member States shall take appropriate measures to prevent 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, that minor children of applicants or applicants who are minors are housed with their parents or with the adult family member responsible for them whether by law or by custom provided that it 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 which 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 UNHCR or non-governmental organisations designated by UNHCR and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist asylum seekers. Restrictions 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 lay down rules for material reception conditions which are 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,

(b) housing capacity normally available is temporarily exhausted,

(c) the asylum seeker is in detention or confined to border posts.

Such different conditions shall cover in any case basic needs.

Article 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 the necessary medical or other assistance to applicants who have special needs, including appropriate mental health care when required.

Article 20

Victims of torture

Member States shall ensure that victims of torture are quickly directed to a care centre appropriate to their situation.

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 21

Reduction or withdrawal of material reception conditions

1. Member States may reduce material reception conditions where an asylum seeker:

(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.

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 reintroduction of the grant of some or all of
the material reception conditions reduced.

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.

3. Member States may determine the sanctions applicable to serious breaches of the rules of the accom-
modation centres as well as to seriously violent behaviour.

4. Decisions for the reduction or withdrawal 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 22, 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.

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

Article 22

General principle

1. Member States shall take into account the specific situation of persons with special needs in the
national legislation implementing this Directive. Vulnerable persons such as minors, unaccompanied minors,
disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking,
victims of female genital mutilation, 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.

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 adequate support for persons with special needs
throughout the asylum procedure and shall provide for appropriate monitoring of their situation.

Article 23

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing
the provisions of this Directive applicable to 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).

4. 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 or degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care and qualified counselling are provided when needed.

Article 24

Unaccompanied minors

1. Member States shall take measures to ensure the necessary representation of unaccompanied minors by legal guardians. A guardian shall be appointed to advise and protect the child and to ensure that all decisions are taken in the child’s best interests. A guardian should have the necessary expertise in the field of childcare so as to ensure that the interests of the child are protected and that the child’s legal, social, health, psychological, material and educational needs are appropriately met. Agencies or individuals whose interests could potentially conflict with those of the child shall not be eligible to become guardians. Regular assessments shall be made by the appropriate authorities.

2. Unaccompanied minors who make an application for international protection shall, from the moment when they are admitted to the territory to the moment when they are obliged to leave the territory of the Member State in which the application for 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 facilities 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.
3. Member States shall establish procedures in national legislation for tracing the family members of an unaccompanied minor. They shall start to trace the members of the unaccompanied minor’s family as soon as possible after an application for international protection is lodged, while protecting his/her best interests. 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 exchange of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety.

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

Article 25

Victims of torture and violence

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

2. Those working with victims of torture, rape or other serious acts of violence shall have received and shall 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 which they obtain in the course of their work.

CHAPTER V

APPEALS

Article 26

Appeals

1. Member States shall ensure that decisions relating to the grant, withdrawal of or reduction in 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 national law. At least in the last instance the right to an appeal or a review, in fact and in law, to or by a judicial body, shall be granted.

2. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with Article 15(3) to (6) of Directive 2005/85/EC.

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 27

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.
Article 28
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.

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

Article 29
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 30
Reports

By [...] 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 28(2) by [...].

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 31
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with 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 communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or 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 covered by this Directive.
Article 32

Repeal

Directive 2003/9/EC is repealed with effect from [day after the date set out in the first subparagraph of Article 31(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.

Article 33

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 31(1)].

Article 34

Addressees

This Directive is addressed to the Member States.

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 28(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 asylum seeker or a family member as defined in Article 2(c) of Directive […]/…/[EC].

2. On the basis of Article 22 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 of Directive […/…/EC], indicate the total number of asylum seekers 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) of 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.

ANNEX II

Part A

Repealed Directive
(referred to in Article 32)

(OJ L 31, 6.2.2003, p. 18)

Part B

Time-limit for transposition into national law
(referred to in Article 31)

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### ANNEX III

#### Correlation table

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