



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 September 2012

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“I/A” ITEM NOTE

from:	General Secretariat of the Council
to:	Permanent Representatives Committee (Part II)/Council
Subject:	Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers (Recast) [First reading] - Political agreement

1. The Reception Conditions Directive sets standards for the reception of applicants for international protection.
2. On 9 December 2008, the Council received from the Commission a proposal for a recast of this directive¹. On 7 June 2011, this initial proposal was followed by an amended proposal². In the amended proposal, the Commission took into account the European Parliament's first reading Position on the initial proposal voted on 7 May 2009³ and the views expressed in Council.

¹ 16913/1/08 REV1
² 11214/11
³ 9333/09

3. On 16 July 2009, the European Economic and Social Committee adopted an Opinion on the initial Commission proposal¹. The Committee decided on 26/27 October 2011 not to draw up a new opinion on amended proposal. The Committee of the Regions adopted an Opinion on the initial proposal at its plenary session on 6/7 October 2009² and decided on 18 October 2011 not to issue an Opinion on the amended proposal but to inform the Council about its views in the form of a letter to the Secretary-General of the Council³.
4. In accordance with the provisions of the joint declaration on practical agreements for the co-decision procedure⁴, representatives of the Council, the Parliament and the Commission conducted informal contacts with a view to finding agreement. These contacts resulted in the text as it appears in annex.
5. The Permanent Representatives Committee endorsed annexed text at its meeting on 11 July 2012⁵. By letter of 21 September 2012, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament informed the Chair of the Permanent Representatives Committee that the LIBE Committee, in its orientation vote on 19 September 2012, also positively considered this text⁶. For that reason, the LIBE-Chair indicated he would recommend to the Members of the LIBE Committee and, subsequently, to the plenary, that the Council's first reading position be accepted without amendments in the European Parliament's second reading, subject to verification by the lawyer linguists of both institutions.

¹ SOC/332 - CESE 1209/2009

² CdR 90/2009 fin

³ 18840/11

⁴ JO C 145 du 30/06/2007, p. 5.

⁵ 12598/12

⁶ 13885/12

6. The Permanent Representatives Committee is accordingly asked to confirm the informal agreement achieved by adopting a political agreement on the amended recast of the Reception Conditions Directive as it appears in annex¹. After adoption of the political agreement, the text will be sent for lawyer-linguist revision so that the Council can adopt its first reading position as an "A" item at a forthcoming Council. Subsequently, Council's position at first reading will be communicated to the European Parliament with a view to approval without amendments in second reading.
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¹ In accordance with Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union, and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland are not taking part in the adoption of the recast of the Reception Conditions Directive. In accordance with the Protocol No 22 on the position of Denmark, Denmark also does not take part in its adoption and is not bound by it or subject to its application.

ANNEX

↓ 2003/9/EC

2008/0244 (COD)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
laying down ~~minimum~~ standards for the reception of asylum seekers**

(Recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union , and in particular point 2(f) of Article 78 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

↓ 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 seekers¹. In the interests of clarity, that Directive should be recast.

↓ 2003/9/EC recital 1 (adapted)

⇒ new

- (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 ☒ European Union ☒ ~~Community~~. ⇒ It should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. ⇐

¹ OJ L 31, 6.2.2003, p. 18.

↓ 2003/9/EC recital 2

⇒ new

- (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. ⇒ The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments foreseen in the Treaties, including Directive 2003/9/EC. ⇐
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↓ 2003/9/EC recital 3

~~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

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

↓ new

→ Council

- (4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme which set 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 instruments and to submit the second-phase instruments and measures to the Council and the European Parliament.
- (5) The European Council at its meeting of 10-11 December 2009 adopted the Stockholm programme which reconfirmed the commitment to establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures by 2012. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for asylum is made, are offered an equivalent level of treatment as regards reception conditions.

- (6) The resources of the European Refugee Fund and of the European Asylum Support Office, established by Regulation (EU) No 439/2010 of the European Parliament and of the Council¹, should be mobilised to provide adequate support to the Member States' efforts relating to the implementation of the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.
- (7) In the light of the results of the evaluations undertaken on the implementation of the first phase instruments, 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 and [...] as long as applicants are allowed to remain on the territory as 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 Charter of Fundamental Rights of the European Union, 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.

¹ OJ L 132, 29.5.2010, p.11.

↓ 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

- (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 should be laid down.

↓ 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

⇒ Council

- (13) ⇒ With a ◯ ⇒ [...] ◯ view ⇒ to ◯ ⇒ [...] ◯ 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 Directive [.../.../EU] [the Qualification Directive], it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

↓ 2003/9/EC recital 9 (adapted)

⇒ new

⇒ Council

- (14) ⇒ [...] ◯ ~~Reception of groups~~ ⇒ Reception of ⇒ persons ◯ ⇒ [...] ◯ ◯ with special
⇒ reception ⇐ needs should be ⇒ a primary concern of national authorities in order to
ensure that their reception is ⇐ specifically designed to meet ☒ their special reception ☒
~~these~~ needs.

↓ new

→ Council

- (15) 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 are 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. → [...] ← → 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 be able to have effective access to the necessary procedural guarantees such as judicial remedy before a national court.

- ⇒ (15a) With regards to administrative procedures related to the grounds for detention set out in Article 8(3), the notion of 'due diligence' at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that a real prospect exists that such verification can be carried out successfully in the shortest possible time. Detention shall not exceed the time reasonably needed to complete the relevant procedures. ↻
- ⇒ (15b) The grounds for detention set out in this Directive are without prejudice to other grounds for detention ⇒, including detention grounds in the framework of criminal proceedings, ↻ applicable in the national legal order unrelated to the third country national's or stateless person's application for international protection. ↻
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↓ 2003/9/EC recital 10 (adapted)
⇒ new

- (16) ~~Reception of a~~ 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. ⇐

↓ new

↻ Council

- (17) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographic location or the specific structure of the detention facility. However any derogation to these guarantees should be of a temporary nature and applied only under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances; they should be duly justified, taking into consideration the circumstances of each case including the level of severity of the derogation applied, its duration and its impact on the concerned individual.

↻ (17a) Detention of asylum seekers should be a measure of last resort and may be applied only after all non-custodial alternative measures to detention have been duly examined in order to better ensure the asylum seeker's physical and psychological integrity. Any alternative measure to detention must respect the fundamental human rights of asylum seekers. ↻

↓ 2003/9/EC recital 11

↻ Council

- (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.

➔ (18a). When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of the applicant if he/she is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State. Ⓞ

↴ new

➔ Council

[(19) 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. ➔ [...] Ⓞ

(20) To ensure that the material support provided to asylum seekers is in line with the principles set out in this Directive, it is necessary that Member States determine the level of such support on the basis of relevant ➔ [...] Ⓞ ➔ references Ⓞ ➔ This does not entail that the amount granted should be the same as for nationals. Member States may grant less favourable treatment to asylum seekers compared to nationals as specified in this Directive. Ⓞ .

↓ 2003/9/EC recital 12 (adapted)

⇒ new

- (21) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which ~~laying down cases 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 ⇐.
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↓ 2003/9/EC recital 13

- (22) The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.
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↓ 2003/9/EC recital 14

- (23) 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 (adapted)

- (24) ~~It is in the very nature of minimum standards that~~ Member States ~~↗~~ should ~~↖~~ 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

- (25) 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 ⇒ Directive [.../.../EU] [The Qualification Directive] ⇐ ~~the Geneva Convention for third country nationals and stateless persons.~~

↓ 2003/9/EC recital 17

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

↓ 2003/9/EC recital 18 (adapted)

⇒ Council

(27) 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 ☒ Union ~~☒ Community~~, the ☒ Union ~~☒ Community~~ may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty on European Union . 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.

⇒(27a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.☒

↓ 2003/9/EC recital 19

~~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

~~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.~~

↓ new

↻ Council

(28) In accordance with ↻ [...] ↻ Articles 1, 2 and ↻ ↻ Article ↻ 4a(1) of Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union, and to the Treaty on the Functioning of the European Union ↻, ↻ and without prejudice to ↻ [...] ↻ Article 4 of that Protocol, ↻ the United Kingdom is not taking part in the adoption of this Directive and ↻ ↻ [...] ↻ is not bound by it ↻ or subject to its application ↻ ↻ [...] ↻.

(29) In accordance with Article 1 of the said Protocol, Ireland is not taking part in the adoption of this Directive. Without prejudice to Article 4 of that Protocol, Ireland is therefore not bound by this Directive.

↓ 2003/9/EC recital 21

(30) 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 on the Functioning of the European Union ~~establishing the European Community~~, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application.

↓ 2003/9/EC recital 5

⇒ new

⇒ Council

(31) 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 ⇒, ⇒ ~~4~~, ⇒ 6, 7, ⇒ ~~and~~ 18 ⇒, 21, 24 and 47 ⇒ of the said Charter ⇒ and has to be implemented accordingly ⇒.

↓ new

- (32) 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.
- (33) 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.

↓ 2003/9/EC

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 point (h) of Article 2 of Directive [.../.../EU] [the Qualification Directive];

↓ 2003/9/EC (adapted)

⇒ new

↻ Council

~~(b)(e)~~ "applicant" ☒, "applicant for international protection" ☒ or "asylum seeker" ~~shall mean~~ ☒ 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 mean~~ ☒ 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~~ ☒ third country nationals ☒ ;

(ii) = the minor children of ~~the couple~~ ☒ couples ☒ referred to in the first indent point (i) or of the applicant ⇒ for international protection ⇐, 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

⇒ Council

⇒ [...] ⇐

- the father, mother ⇒ [...] ⇐ or ⇒ another ⇐ ⇒ [...] ⇐ adult responsible for the applicant ⇒ for international protection ⇐ whether by law or by the national practice of the Member State concerned ⇒ , when the latter is a minor and unmarried. ⇐

⇒ [...] ⇐

↓ 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;~~

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

↓ new

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

↓ 2003/9/EC (adapted)

⇒ new

~~(e)(h)~~ "unaccompanied minors" ~~shall mean~~ ☒ means ☒ ⇒ a minor ⇐ ~~persons below the age of eighteen~~ who arrive ☒ arrives ☒ in the territory of the Member States unaccompanied by an adult responsible for ~~them~~ him/her whether by law or by ⇒ the national practice of the Member State concerned ⇐ ~~custom~~, and for as long as they are ☒ he/she is ☒ not effectively taken into the care of such a person; it ~~shall include minors~~ ☒ includes a minor ☒ who ☒ is ☒ ~~are~~ left unaccompanied after ~~they have~~ ☒ he/she has ☒ entered the territory of Member States;

- (f)(i) "reception conditions" ~~shall mean~~ ☒ means ☒ the full set of measures that Member States grant to asylum seeker in accordance with this Directive;
- (g)(i) "material reception conditions" ~~shall mean~~ ☒ 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;
- (h)(k) "detention" ~~shall mean~~ ☒ 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;
- (i)(l) "accommodation centre" ~~shall mean~~ ☒ means ☒ any place used for collective housing of asylum seekers;=

↓ new

➡ Council

- (j) "representative" means a person or an organisation appointed by the competent bodies ➡ [...] Ⓒ in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the child's best interests and exercising legal capacity for the minor where necessary. Where an organisation ➡ is appointed Ⓒ ➡ [...] Ⓒ as a representative, it shall ➡ designate Ⓒ ➡ [...] Ⓒ a person responsible for carrying out the duties of ➡ this organisation Ⓒ ➡ [...] Ⓒ in respect of the minor, in accordance with this Directive;

- (k) "applicant with special reception needs" means a vulnerable applicant, in line with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.
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↓ 2003/9/EC (adapted)

⇒ new

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,~~ ⊗ ⇒ in the territorial waters 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 national law.~~
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↓ 2003/9/EC

⇒ new

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 thereof¹ 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 that emanating from
⇒ Directive [.../.../EU] [the Qualification Directive] ⇐ ~~the Geneva Convention for third-country nationals or stateless persons who are found not to be refugees.~~

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.

¹ OJ L 212, 7.8.2001, p. 12.

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 ⇐ ~~asylum 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.

↓ 2003/9/EC (adapted)

⇒ new

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 ⇒ understand or ⇐ ~~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 \Rightarrow for international protection \Leftarrow 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.

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 \Rightarrow international protection \Leftarrow ~~asylum~~ 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 \Rightarrow international protection \Leftarrow ~~asylum~~, 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.
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↓ new
⇒ Council

- ⇒ 6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on asylum seekers before granting the rights to which they are entitled under this Directive for the sole reason that they are applicants for international protection. ↻
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↓ 2003/9/EC
⇒ new

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 ⇨ for international protection ⇩.

~~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.~~

3.4. 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.

4.5. 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.

5.6. 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.

↓ new

→ Council

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 Directive [.../.../EU] [the Asylum Procedures Directive].
2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
3. → [...] → An → applicant may only be detained :
 - (a) in order to determine or verify his/her identity or nationality;
 - (b) in order to determine → [...] → the elements on which the application for international protection is based which could not be obtained in the absence of detention → in particular when there is a risk of absconding → ;
 - (c) in the context of a procedure, to decide on the right to enter the territory;

➔ (d) when he/she is detained ➔ subject to a return procedure under Directive 2008/115/EC ➔ in order to prepare the return and/or carry on the removal process and ➔ the Member State can substantiate on the basis of objective criteria, including that he/she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that ➔ [...] ➔ he/she makes ➔ the ➔ [...] ➔ application for international protection merely in order to delay or frustrate the enforcement of ➔ the ➔ [...] ➔ return ➔ decision ➔ [...] ➔ ; ➔

(➔ e ➔ [...] ➔) when protection of national security or public order so requires.

➔ (f) in accordance with ➔ Article 27 of ➔ Regulation (EC) No [...] / [...] [Dublin Regulation ➔ [...] ➔ . ➔

➔ [...] ➔ ➔ Grounds ➔ ➔ for detention ➔ shall be laid down in national law .

4. Member States shall ensure that rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

Article 9

Guarantees for detained asylum seekers

1. Detention shall be for as short a period as possible and shall only be maintained for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds set out in Article 8(3) shall be executed with due diligence. Delays in the administrative procedures that cannot be attributed to the asylum seeker shall not justify a continuation of detention.

2. Detention shall be ordered by judicial or administrative authorities. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention conducted ex officio and/or on the request of the applicant. The review of the lawfulness of detention shall be decided on as speedily as possible from the beginning of detention in the case of the ex officio review. In the case of a review on the request of the applicant, the lawfulness of the detention shall be subject to a review to be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law a [...] period within which the ex officio review and/or the review on request of the applicant shall be conducted.

Detained asylum seekers shall immediately be informed in writing of the reasons for detention and the procedures laid down in national law for challenging the detention order and the possibility to request free legal assistance and representation [...], in a language they understand [...] or are [...] reasonably supposed to understand. [...]

➔ [...] ➔ The applicant concerned shall be released immediately ➔ if the detention is not lawful .

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

➔ [...] ➔

4. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ➔ [...] ➔ ex officio ➔ and/ or on request by the asylum seeker concerned, in particular whenever it is of a prolonged duration or relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

5. ➔ In cases of ➔ [...] ➔ ➔ a review of the detention order ➔ provided for in paragraph 2, Member States shall ensure that asylum seekers have access to free legal assistance and representation ➔ . This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant. ➔ ➔

➔ Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the asylum seekers. ➔

➔ 6. Member States may also provide that free legal assistance and representation are granted: ➔

➔ (a) only to those who lack sufficient resources; and/or ➔

⇒ (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants for international protection. ☺

⇒ [...] ☺

⇒ [...] ☺

⇒ 7 ☺ ⇒ [...] ☺. Member States may also: ☺

⇒ (a) impose monetary and/or [...] time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to the provision of legal [...] assistance and representation; ☺

⇒ (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance [...] . ☺

⇒ 8 ☺ ⇒ [...] ☺. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant. ☺

⇒ 9 ☺ ⇒ [...] ☺. Procedures for access to legal assistance and representation in [...] ☺ such cases as referred to above [...] shall be laid down in national law. ☺ [...] ☺

Article 10

Conditions of detention

1. Detention shall take place as a rule in specialised detention facilities.
Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the asylum seeker in detention shall be kept separately from ordinary prisoners and the detention conditions provided in this Directive shall apply.

...

As far as possible, asylum seekers in detention shall be kept separately from other third country nationals who have not lodged an application for international protection.

When asylum seekers cannot be detained separately from other third country nationals, the Member State shall ensure that the detention conditions provided in this Directive apply.

2. Detained asylum seekers shall have access to open-air spaces.
3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees have the possibility to communicate with and visit applicants in conditions that respect privacy This also applies to an organisation which is working in the territory of the Member State concerned on behalf of the United Nations High Commissioner for Refugees pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned, have the possibility to communicate with and visit applicants in conditions that respect privacy [...]. Limits to access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely limited or rendered impossible.
5. Member States shall ensure that asylum seekers in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible when the asylum seeker is detained at a border or in a transit zone. This derogation shall not apply in [...] cases referred to in Article 43 of Directive [...] [the Asylum Procedures Directive].
- [...]

Article 11

Detention of vulnerable persons and persons with special reception needs

1. ➔ The health, including the mental health, of applicants ➔ in detention ➔ [...] ➔ who are vulnerable persons shall be of primary concern to national authorities. ➔ [...] ➔

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation including their health.

2. Minors ➔ shall only ➔ [...] ➔ [...] ➔ be detained ➔ [...] ➔ as a measure of last resort and ➔ after having established that other less coercive alternative measures cannot be applied effectively. It shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors ➔ [...] ➔ [...] ➔ . -

➔ Unaccompanied minors shall be detained only in ➔ exceptional ➔ circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible. ➔ [...] ➔

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration. ➔

➔ Unaccompanied minors shall not be kept in prison accommodation. ➔

⇒ Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. ◀

⇒ [...] ◀

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

⇒ [...] ◀

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

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.

Exceptions may also apply for the use of common spaces designed for recreational or social activities including the provision of meals.

5. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the fourth subparagraph of paragraph 2, paragraph 3 and the first subparagraph of paragraph 4, when the asylum seeker is detained at a border post or in a transit zone, with the exception of cases referred to in Article 43 of Directive [...] /EU] [the Asylum Procedures Directive].

↓ 2003/9/EC

⇒ new

Article 12 ~~8~~

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 13 ~~9~~

Medical screening

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

Article 14 ~~10~~

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 ~~international protection~~ ~~asylum~~ was lodged by ~~or on behalf of~~ ~~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

→ Council

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access ~~and participation~~ ~~[...]~~ to the national education system ~~as set out in paragraph 1~~ .

↓ 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 15 ~~14~~

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

⇒ Council

1. Member States shall ensure that applicants have access to the labour market no later than ⇒ [...] ⇐ ⇒ 9 ⇐ months following the date when the application for international protection was lodged ⇒ if a first instance decision by the competent authority has not been taken and this delay cannot be attributed to the applicant ⇐ .

⇒ [...] ⇐

↓ 2003/9/EC

⇒ new

↻ Council

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 law, while ensuring asylum seekers have effective access to the labour market.

↻ For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals. ↻ ⇐

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.

~~4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.~~

Article ~~16~~ 12

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~~ 14.

Article ~~17~~ 13

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)

2. Member States shall ensure that ~~make provisions on~~ material reception conditions provide an adequate ~~to ensure a~~ 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

⇒ new

Member States shall ensure that that standard of living is met in the specific situation of
⇒ vulnerable ⇐ persons ~~who have special needs~~, in accordance with Article ⇒ 21 ⇐ ~~17~~,
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

⇒ Council

5. Where Member States provide material reception conditions in the form of financial allowances and vouchers, the amount thereof shall be determined on the basis of the [...] level(s) established by the Member State concerned either by law or practice to ensure adequate standards of living for nationals [...]. Member States may grant less favourable treatment to asylum seekers [...] compared to nationals in this respect [...], in particular where material support is partially provided in kind or where the abovementioned [...] level(s), applied for nationals, aim to ensure a standard of living higher than what is prescribed for asylum seekers under this Directive.

↓ 2003/9/EC (adapted)

⇒ new

Article 18 ~~14~~

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 ⇐ ~~asylum lodged~~ ⇒ made ⇐ at the border ⇒ or in transit zones ⇐;

- (b) accommodation centres which guarantee an adequate standard of living;
- (c) private houses, flats, hotels or other premises adapted for housing applicants.

2. ⇒ Without prejudice to any specific conditions of detention as stipulated in Articles 10 and 11, ⇐ ☒ in relation to housing referred to in paragraph 1(a), (b) and (c), ☒ Member States shall ensure that ~~applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:~~

- (a) ☒ applicants are guaranteed ☒ protection of their family life;
- (b) ☒ applicants have ☒ the possibility of communicating with relatives, legal advisers ⇒ or counsellors ⇐, ☒ persons representing ☒ ~~and representatives of~~ the United Nations High Commissioner for Refugees (UNHCR) and ⇒ other relevant national, international and non-governmental organisations and bodies ⇐ ~~non governmental organisations (NGOs) recognised by Member States.~~

↓ 2003/9/EC article 14(7) (adapted)
⇒ new

(c) ⇒ Family members ⇐, legal ~~advisers~~ advisors or counsellors ~~of asylum seekers,~~ ☒ persons representing ☒ ~~and representatives of~~ the United Nations High Commissioner for Refugees ☒ (UNHCR) ☒ ☒ and ☒ ~~or~~ ⇒ relevant ⇐ non-governmental organisations ~~designated by the latter and~~ recognised by the Member State concerned ☒ are ☒ ~~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 ☒ these premises ⇐ ~~the centres and facilities~~ and of the asylum seekers.

↓ new

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

↓ 2003/9/EC (adapted)

⇒ new

⇒ Council

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

- ⇒ 4a. Member States shall ensure as far as possible that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the national practice of the Member State concerned. ☺

- ~~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.~~

~~5.4.~~ 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~~ ~~advisors~~ ⇨ or counsellors ⇩ of the transfer and of their new address.

~~6.5.~~ 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.

~~7.6.~~ 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 ⇨ , in accordance with Article 22 ⇩ ,

~~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,~~

~~the asylum seeker is in detention or confined to border posts.~~

These different conditions shall cover in any case basic needs.

Article ~~19~~ ~~15~~

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 ~~and serious mental disorders~~ [...].
2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

CHAPTER III

REDUCTION OR WITHDRAWAL OF ~~☒~~ MATERIAL ~~☒~~ RECEPTION CONDITIONS

Article ~~20~~ ~~16~~

Reduction or withdrawal of ~~☒~~ material ~~☒~~ reception conditions

1. Member States may reduce or ~~☐~~ in exceptional and duly justified cases ~~☐~~ withdraw ~~☒~~ material ~~☒~~ reception conditions ~~in the following cases:~~
 - ~~(a)~~ 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 ~~☐~~ a subsequent application as defined in Article 2(q) of [...]/.../EU [the Asylum Procedures Directive] ~~☐~~ ~~an application in the same Member State.~~ ~~☐~~ ~~☐~~ [...]~~☐~~

➔ [...] ⦿

~~⊗~~ In relation to cases (a) and (b), ~~⊗~~ ~~W~~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 ~~⊗~~ material ~~⊗~~ reception conditions ~~⊗~~ withdrawn or reduced ~~⊗~~;

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

~~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.~~

➔ 2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for asylum as soon as reasonably practicable after arrival in that Member State. ⦿

3. 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.

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

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 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 21 ~~17~~, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to ~~emergency~~ health care in accordance with Article 19 ~~and shall ensure a dignified standard of living for all asylum seekers~~.

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

CHAPTER IV

PROVISIONS FOR ⇒ VULNERABLE PERSONS ⇐ ~~PERSONS~~ ~~WITH SPECIAL NEEDS~~

Article ~~21~~ ~~17~~

General principle

~~1.~~ Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children ⇒, victims of trafficking, persons with serious ~~☉ [...] ☹~~ illnesses, ~~☉ [...] ☹☉ persons with mental disorders ☹ ☉ [...] ☹~~, ⇐ and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, ~~☉ such as victims of female genital mutilation, ☹~~ in the national legislation implementing ⇒ this Directive ⇐ ~~the provisions of Chapter II relating to material reception conditions and health care.~~

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

↓ new

→ Council

Article 22

→ [...] → **Assessment** of the special reception needs of vulnerable persons

1. → In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs. → [...]

→ [...] → This assessment shall be initiated within a reasonable → period of time after an application for international protection is made → and may be integrated into existing national → procedures . Member States shall ensure that these special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure → that the support provided to → applicants with special reception needs → in accordance with this Directive → takes into account their → [...] → special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The → [...] → assessment referred to → [...] → in paragraph 1 → needs not take the form of an administrative procedure. → [...]

- ⇒ 3. Only vulnerable persons, in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive. ↻
- ⇒ 4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive [...]/.../EU] [the Qualification Directive]. ↻
-

↓ 2003/9/EC

⇒ new

Article 23 ~~18~~

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 minor's physical, mental, spiritual, moral and social development. ⇐

↓ new

↻ Council

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 background ↻ ↻ [...] ↻;
 - (c) safety and security considerations, in particular where there is a risk of the minor 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) and to open-air activities.

↓ 2003/9/EC

4.2 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.

↓ 2003/9/EC article 14(3)

⇒ new

↻ Council

5. Member States shall ensure, ~~if appropriate~~, that minor children of applicants or applicants who are minors are lodged with their parents ↻, their unmarried minor siblings ↻ or with the adult ↻ [...] ↻ responsible for them whether by law or ~~by custom~~ ⇒ the national practice of the Member States concerned, provided this is in the best interests of the minors concerned ⇐.

↓ 2003/9/EC

⇒ new

↻ Council

Article 24 ~~19~~

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~~ ⇒ that a representative represents and assists the unaccompanied minor to enable him/her to benefit from the rights and comply with the obligations provided for in this Directive. ↻ The unaccompanied minor shall be informed immediately of the appointment of the representative. ⦿ The representative shall ↻ [...] ⦿ perform his/her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2) ↻ and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development mentioned in point b of that Article, a change of the person acting as representative shall only take place when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. ⦿ ↵

Regular assessments shall be made by the appropriate authorities ↻ , including as regards the availability of the necessary means for representing the unaccompanied minor ⦿ .

2. Unaccompanied minors who make an application for ⇒ international protection ⇐ ~~asylum~~ 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 ⇒ international protection ⇐ ~~asylum~~ 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, ⇒ if it is in their best interests, as prescribed in Article 23(2)⇐ .

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

⇒ Council

3. ⇒ Member States ~~⇒ [...]~~ ~~⇒ [...]~~ ~~Member States protecting the unaccompanied minor's best interest shall endeavour~~ ⇒ start ⇐ to trace, the members of ~~the~~ the unaccompanied minor's ~~his or her~~ family ⇒, where necessary with the assistance of international or of other relevant organisations, ⇐ as soon as possible ⇒ after an application for international protection is made whilst 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 circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety.

↓ 2003/9/EC

⇒ new

⇒ Council

4. Those working with unaccompanied minors shall have had ⇒ and shall continue to ⇐ ~~en~~ 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 ~~25~~ 20

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 ⇒ [...] ⇒ appropriate ⇒ medical and psychological treatment ⇐ ⇒ or care ⇐.
-

↓ new

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

↓ 2003/9/EC (adapted)

⇒ new

↻ Council

CHAPTER V

APPEALS

Article ~~26~~ 21

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 ↻ authority ⇐⇐ [...] ⇐ shall be granted.

↓ new

→ Council

2. → Member States shall ensure that free legal assistance and representation is → [...] → made available → on request → in cases of an appeal or a review before a judicial authority → [...] → referred to in paragraph 1 → , in so far as such aid is necessary to ensure effective access to justice → . This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant. →
- Free legal assistance and representation shall be provided by such persons as admitted or permitted under national law. → [...] →
- 3. Member States may also provide that free legal assistance and representation → [...] → are granted → : →
- (a) only to those who lack sufficient resources; and/or →
- (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants for international protection →
- Member States may provide that free legal assistance and representation not be → [...] → made available → if the → appeal or review → [...] → is considered by a → competent → → [...] → authority → [...] → to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered. →
- [...] →

↓ 2003/9/EC

→ Council

→ 4. → [...] → Member States may also: →

→ (a) impose monetary and →/or → time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to the provision of → [...] → legal assistance and representation: →

→ (b) provide that, as regards → fees and other costs → [...] →, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. →

→ Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant. →

→ 5. Procedures for access to legal assistance and representation in such cases as referred to above 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 27

Competent authorities

Each Member State shall notify the Commission 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 28 ~~23~~

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, by [1 year after the transposition deadline] at the latest.

↓ 2003/9/EC

Article 29 ~~24~~

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.

↓ 2003/9/EC (adapted)

⇒ new

CHAPTER VII

FINAL PROVISIONS

Article ~~30~~ 25

Reports

By ⇒ [two years after the transposition deadline as set out in the first subparagraph of Article 31(1) of this Directive] at the latest ⇐ ~~6 August 2006~~, 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 22~~ by ⇒ [.../.../...] ¹⇐ ~~6 February 2006~~.

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

¹ 36 months from the date of publication in the *Official Journal of the European Union*.

Article ~~31~~ 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 6 February 2005~~ Articles 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30 and Annex I by [...] ¹ at the latest . They shall forthwith ~~inform~~ communicate to the Commission ~~thereof~~ the text of those provisions .

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.

¹ 24 months from the date of publication in the *Official Journal of the European Union*.



Article 32

Repeal

Directive 2003/9/EC is repealed for the Member States bound by this Directive 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.

↓ 2003/9/EC (adapted)

Article ~~33~~ 27

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 2, 3, 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30 and Annex I shall apply from [day after the date set out in the first subparagraph of Article 31(1)]. ☒

Article 34 ~~28~~

Addressees

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

Done at [...]

For the European Parliament

The President

[...]

For the Council

The President

[...]

↓ new

→ Council

ANNEX I

Reporting form on the information to be submitted by Member States, as required under Article 28(2) of Directive [...]/.../EU. After the date referred to in Article 28(2) of this Directive this information shall be re-submitted to the Commission when there is a substantial change in the national law or practice that outdate the provided information.

1. On the basis of Articles 2(k) and 22 of Directive [...]/.../EU, please explain the different steps for the identification of persons with special reception needs, including the moment it is triggered and its consequences in relation to addressing such needs, in particular for unaccompanied minors, victims of torture, rape or other serious forms of psychological, physical or sexual violence and victims of trafficking.

2. Provide full information on the type, name and format of the documents provided for in Article 6 of Directive [...]/.../EU.

3. With reference to Article 15 Directive [.../.../EU], please indicate to the extent that any particular conditions are attached to labour market access for asylum seekers, and describe in detail such restrictions.

4. With reference to Article 2(g) of Directive [.../.../EU], please describe how material reception conditions 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.

5. Where applicable, with reference to Article 17(5) Directive [.../.../EU], please explain the point(s) of reference applied by national law or practice with a view to determining the level of financial assistance provided to asylum seekers. To the extent that there is a less favourable treatment of asylum seekers compared to nationals, explain the reasons in this respect.



ANNEX II [...]

Part A

Repealed Directive

(referred to in Article 32)

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 31)

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



☉ Council

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)	-
Article 2(b)	-
-	Article 2(a)
Article 2(c)	Article 2(b)
Article 2(d) introductory words	Article 2(c) introductory words
-	Article 2(c) point (i) introductory words
Article 2(d), point (i)	Article 2(c), point (i) first indent
Article 2(d), point (ii)	Article 2(c), point (i) second indent
-	Article 2(c), point (i) third indent
-	Article 2(c) point (ii) introductory words
-	Article 2(c) point (ii) first indent
-	Article 2(c) point (ii) second indent
-	Article 2(c) point (iii)
Article 2 (e), (f) and and (g)	-
-	Article 2(d)
Article 2(h)	Article 2(e)

Article 2(i)	Article 2(f)
Article 2(j)	Article 2(g)
Article 2(k)	Article 2(i)
Article 2(l)	Article 2(j)
-	Article 2(k)
-	Article 2(l)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6 (1) –(5)	Article 6(1)-(5)
-	Article 6(6)
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 words, paragraphs (a) and (b)	Article 18 (2) introductory words, paragraphs (a) and (b)
- <i>[old Article 14)7) adapted]</i>	Article 18 (2)(c)
Article 14(2) second subparagraph	Article 18 (4)
Article 14(3)	-
Article 14(4)	Article 18(5)
Article 14(5)	Article 18(6)
Article 14(6)	Article 18(7)
Article 14(8) introductory words, first indent	Article 18 (8) introductory words, paragraph (a)
Article 14(8) second indent	-
Article 14(8) third indent	Article 18(8) point (b)
Article 14(8) first subparagraph,	Article 18 (8) first subparagraph,
Article 14(8) third and fourth intend	Article 18(8) points (b) and (c)

Article 14(8) fourth indent	-
Article 14 (8) second subparagraph	Article 18(8) second subparagraph
Article 15	Article 19
Article 16 (1) introductory wording	Article 20(1) introductory wording
Article 16 (1) (a)	-
Article 16 (1) (a) first, second and third indent	Article 20(1) paragraphs (a), (b) and (c)
-	Article 20(1) point (d)
Article 16(1) second sub-paragraph	Article 20 second sub-paragraph
Article 16 (1) (b) first subparagraph	-
Article 16 (1) (b) second subparagraph	-
Article 16 (2)	-
Article 16 (3) to (5)	Article 20(2) to (4)
Article 17 (1)	Article 21
Article 17 (2)	-
-	Article 22
Article 18 (1)	Article 23(1)
-	Article 23(2) and (3)
Article 18 (2)	Article 23(4)
	Article 23(5)
Article 19	Article 24
Article 20	Article 25(1)
-	Article 25(2)
Article 21 (1)	Article 26 (1)

-	Article 26 (2)
Article 21 (2)	Article 26 (2)
Article 22	-
-	Article 27
Article 23	Article 28 (1)
-	Article 28 (2)
Article 24	Article 29
Article 25	Article 30
Article 26	Article 31
-	Article 32
Article 27	Article 33 first subparagraph
-	Article 33 second subparagraph
Article 28	Article 34
-	Annex I
-	Annex II
-	Annex III