



EUROPEAN COMMISSION

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2008/0244 (COD)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down standards for the reception of asylum seekers

(Recast)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

As announced in the Policy Plan on Asylum¹, on 9 December 2008 the Commission presented a proposal amending Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers² (hereafter – the Reception Conditions Directive). The proposal was prepared on the basis of the evaluation of the application of the current Directive in Member States and after a wide consultation process with Member States, UNHCR, NGOs and other relevant stakeholders.

On 7 May 2009 the European Parliament adopted its position³ on the Commission proposal which approves the great majority of the proposed amendments. The proposal was discussed in the Council mainly under the Czech and the Swedish Presidencies but negotiations have been difficult and no position was reached on the text in the Council.

By presenting the modified proposal, the Commission intends to use its right of initiative to boost up the work towards achieving a true Common European Asylum System (CEAS). The Commission is convinced that such a system, being both fair and efficient, will benefit Member States and refugees alike.

The Commission has a political responsibility to facilitate negotiations and to provide real opportunities so that the Union respects its commitment set out in the Stockholm Programme to achieve the CEAS by 2012. The adoption of the new Long Term Residence Directive which now covers beneficiaries of international protection gave a strong impetus towards this direction.

The Commission also adopts at the same time its modified proposal for the Asylum Procedures Directive.

Reception conditions should ensure a dignified standard of living and be comparable throughout the Union, irrespective of where an asylum application has been made. To achieve these objectives, the Commission has continued to gather knowledge on how to consolidate the best national practices and how to make them easy to implement across the EU.

The modified proposal brings together the knowledge and experience built up during the negotiations and in consultations with other stakeholders such as UNHCR and NGOs, into a simplified and more coherent reception system in line with fundamental rights.

¹ COM(2008) 360.

² OJ L 31, 6.2.2003, p. 18.

³ OJ C 212 E, 5.8.2010, p. 348.

In particular, it introduces clearer concepts and more simplified rules and grants Member States more flexibility in integrating them into their national legal systems. It also better enables Member States to address possible abuses of their reception systems and it attends to their concerns on the financial and administrative implications of some of the proposed measures. At the same time, the modified proposal maintains high standards of treatment in line with fundamental rights. This is particularly the case in relation to detention; severe restrictions on the right to free movement shall only be applied when necessary and proportionate and should be accompanied by necessary legal guarantees. The particular situation of vulnerable persons must always be a primary concern. Reception standards should also be further harmonised to address secondary movements to the extent that they are a relevant cause of this phenomenon.

The modified proposal should be viewed together with the modified proposal on the Asylum Procedures Directive. That proposal, *inter alia*, aims to improve the efficiency and quality of national asylum systems which should reduce Member States' reception cost by enabling them to deliver decisions quicker.

The modified proposal also relates to the Regulation establishing the European Asylum Support Office (EASO) adopted on 19 May 2010, thus after the adoption of the initial proposal on the Reception Conditions Directive. The EASO could provide practical support and expertise to Member States for implementing the provisions of the Directive and for identifying best practices. It could also support those Member States that face particular pressures in their reception systems by identifying the most cost-effective ways to implement the envisaged measures through the pooling of good practices and the structured exchange of high-level practices. Indeed, for the first time since its adoption, the EASO will provide this kind of assistance to Greece with the deployment of asylum support teams to assist in addressing urgent needs in their asylum procedure.

1.2. General context

The 2008 proposal and the present modified proposal are part of a legislative package in the area of asylum aiming to establish a CEAS by 2012.

In particular, in 2008, together with the proposal amending the Reception Conditions Directive, the Commission also adopted proposals amending the Dublin and EURODAC Regulations. In 2009, the Commission adopted proposals amending the Asylum Procedures and the Qualification Directives. In 2010, the Regulation establishing European Asylum Support Office was adopted which aims to increase operational cooperation between Member States and facilitate the implementation of common rules in the area of asylum.

This legislative package is in line with the European Pact on Immigration and Asylum adopted on 16 October 2008 which reconfirmed the objectives of The Hague Programme, and called on the Commission to present proposals for establishing, in 2012 at the latest, a single asylum procedure comprising common guarantees. In the same framework, the Stockholm Programme adopted by the European Council in its meeting of 10-11 December 2009 underlined the need establish "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. More specifically, the Stockholm Programme provides 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**.

An Impact Assessment⁴ was conducted as part of the preparation of the previous proposal. The modified proposal is based on the same principles as the previous proposal. In addition it aims to simplify and clarify certain provisions to make their implementation easier. For this reason, the Impact Assessment conducted for the previous proposal continues to apply to the modified proposal.

1.3. Consistency with other policies and objectives of the Union

This proposal is fully in line with the Tampere European Council Conclusions of 1999, The Hague Programme of 2004, the 2008 European Pact on Immigration and Asylum and the Stockholm Programme of 2009 in relation to the establishment of the CEAS.

The proposal is also consistent with the objectives of the Europe 2020 strategy since it ensures appropriate access to employment for asylum seekers. Asylum seekers who make an economic contribution cease to require additional support from national welfare systems, and thus make a positive, even if often temporary, contribution to growth.

2. CONSULTATION OF INTERESTED PARTIES

As part of the preparatory work for the previous proposal, the Commission presented a Green Paper, conducted several experts' meetings, including with the UNHCR and civil society partners, commissioned an external study, and collected data in response to several detailed questionnaires.

The Commission also adopted an Evaluation Report on the application of the Directive which identified a number of deficiencies in Member States' laws and policies.

Following the adoption of the initial proposal in December 2008 discussions were conducted at the technical level in the Council, mainly under the Czech and Swedish Presidencies. The discussions revealed that many Member States opposed specific provisions of the proposal because of the particularities of their asylum and/or legal systems. In this respect it was feared that adaptations would require substantial financial efforts and administrative readjustments and would impede the effectiveness of the asylum procedure.

During the discussions, Member States had the opportunity to explain the potential implementation problems that they could encounter regarding specific provisions. It became apparent that, in order to avoid incorporating multiple exceptions for specific Member States and thus jeopardising the overall coherence of the proposed system, there was an opportunity for the Commission to revisit the proposal to propose a

⁴ SEC(2008) 2944.

more comprehensive solution to the issues voiced, while safeguarding the added value of the text. Clarifying and simplifying the proposed provisions to make their implementation easier for Member States should give a renewed impetus to the discussions. The Commission therefore announced in the Justice and Home Affairs Council of 8 November 2010 that it would present a modified proposal for this Directive as well as for the Asylum Procedures Directive before the start of the 2011 Polish Council Presidency.

The proposed amendments included in the position of the European Parliament, adopted on 7 May 2009, are to a large extent taken on board in the modified proposal. The modified proposal also takes due regard to the opinion of the European Economic and Social Committee⁵ and the Committee of the Regions⁶ and to the results of consultations with other stakeholders such as UNHCR and NGOs working in the area of fundamental rights.

As part of the preparatory work for this modified proposal, the Commission conducted a series of bilateral technical consultation meetings with stakeholders including national administrations in January–April 2010, where constraints and reservation on the Commission's initial proposal were explained in detail.

The modified proposal also takes into account the discussions in the framework of the Ministerial Conference on the quality and efficiency in the asylum process, organised by the Belgian Presidency on 13-14 September 2010. The conference *inter alia* focused on the issue of addressing the needs of vulnerable asylum applicants.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The main objective of this modified proposal is to further **clarify** and provide more **flexibility** to the proposed reception standards so that they can be easier built into the national legal systems. At the same time it maintains the key elements of the 2008 proposal, namely ensuring adequate and comparable reception conditions throughout the EU. It also continues to guarantee full respect of fundamental rights as it is informed by developing case law of the Court of Justice of the European Union and the European Court of Human Rights. This is especially the case as regards the right to freedom of movement and respect of dignity.

Finally, the proposal enhances the consistency within the CEAS legislative package, in particular with the modified proposal on the Asylum Procedures Directive. Where necessary, it also includes amendments resulting from the negotiations on the Qualification Directive and the Dublin Regulation to ensure coherence in respect of horizontal issues.

The modified proposal mainly addresses the following issues:

⁵ OJ C 317, 23.12.2009, p. 110.

⁶ OJ C 79, 27.3.2010, p. 58.

3.1.1. Making implementation easier for Member States

The modified proposal grants Member States more latitude in the implementation of some of the proposed measures in comparison to the 2008 proposal, which addresses concerns on potentially high financial implications and administrative constraints and costs. This is achieved by proposing **better defined** legal notions, more **simplified** reception standards and devices, and **more adaptable rules** that could be more easily built into national practices.

These amendments concern in particular, guarantees for detained asylum seekers, reception conditions in detention facilities, deadlines for access to the labour market, level of health care provided for persons with special reception needs and identification mechanisms for such needs, access to material support and the reporting obligations aimed to ensure better monitoring of the Directive's key provisions.

The modified proposal also better ensures that Member States have the tools to address cases where reception rules are **abused and/or become pull factors**. In particular, the modified proposal allows more cases of withdrawal of material support, provided that necessary guarantees are applied and that the situation of particularly vulnerable persons is respected.

3.1.2. Clear and strict rules on detention

It is necessary to establish strict and exhaustive EU rules to ensure that detention is not arbitrary and that fundamental rights are respected in all cases. The Commission is concerned about the wide use of detention of asylum seekers while the EU asylum acquis is silent on this issue. The modified proposal therefore retains the general approach of the 2008 proposal on the issue of detention. In particular, detention may only occur under prescribed grounds and only if it is in line with the principles of proportionality and necessity, after an individual examination of each case. Necessary guarantees shall be available such as access to an effective remedy and free legal assistance where necessary. Reception conditions in detention must also respect human dignity. The proposed amendments are fully in line with the EU Charter of Fundamental Rights and recent case law of the ECtHR in its interpretation of Article 3 of the Convention.

At the same time more flexibility for some of the proposed detention rules and clarification of different notions has been introduced in order to facilitate their implementation, and to accommodate certain particularities of Member States' different legal systems (e.g. concerning access to free legal assistance and the possibility of the administrative authorities to issue a detention order). The modified proposal also introduces more adaptable conditions of detention in relation geographical areas where it is practically difficult to always ensure the full set of guarantees proposed, namely border posts and transit zones. Several amendments were also introduced, in line with EU rules on detention applicable for third country nationals subject to a return decision to ensure, where appropriate, a more consistent approach on detention rules of third country nationals.

Discussions in the Council revealed that in certain circumstances it is in the best interests of unaccompanied minors to be kept in detention facilities, in particular to

prevent abductions which reportedly do occur in open centres. In this respect, the modified proposal allows the detention of unaccompanied minors, only if it is established that it is in their best interests, as defined in the proposed Directive, and that alternative non-detention measures will not be effective. Moreover it has to be ensured through an individual examination of the situation that detention will not harm their health and well-being. Moreover, detention may only be applied if the necessary reception conditions can be offered in the specific detention facility (access to leisure activities, including in open air etc.). This proposed provision is in line with the ECtHR case law.

3.1.3. *Ensuring dignified standards of living*

- Addressing special reception needs has been identified as one of the areas where current national standards are very problematic. Identifying special reception needs not only has a bearing on access to appropriate treatment, but could also affect the quality of the decision-making process. The modified proposal aims to ensure that national measures are put in place for the swift identification of the special reception needs of vulnerable persons and the continuous support and monitoring of individual cases. Particular attention is placed on the special reception needs of particularly vulnerable groups such as minors and victims of torture. At the same time the modified proposal introduces a simplified format of this identification process and a clearer link between vulnerable persons and persons with special reception needs.

The proposal does not include reference to equal treatment with nationals concerning access to health care, taking note of the position of the European Parliament and strong reservations in the Council.

- The evaluation of the implementation of the current Directive noted deficiencies in relation to the level of material support Member States provide to asylum applicants. Although the current Directive stipulates the obligation of ensuring adequate standards of treatment, it has been difficult in practice to define the required level of support. It is therefore necessary to introduce points of reference that could better "quantify" this obligation and can also be effectively applied by national administrations.

During Council negotiations and recent consultations with Member States it became clear that relevant points of reference are actually envisaged under national law or practices in this respect, although they are quite divergent. Taking note of this fact, the modified proposal allows flexibility and does not aim to establish a single EU point of reference but allows the applications of different national benchmarks in this respect provided that they are measurable and can facilitate the monitoring of the level of support provided to applicants.

3.1.4. *Enhancing self-sufficiency of asylum seekers*

Access to employment could prevent exclusion from the host society and promote self-sufficiency among asylum seekers. Mandatory unemployment on the other hand imposes costs on the State through the payment of additional social welfare

payments and could encourage illegal working⁷. In this respect, facilitating access to employment is beneficial both for asylum applicants and the host Member State.

A higher degree of flexibility is allowed by the modified proposal concerning access to the labour market, in line with the provisions on the duration of the examination of an asylum application set out in the Asylum Procedures Directive modified proposal.

3.2. Legal basis

The modified proposal is based on Article 78(2)(f) of the Treaty on the Functioning of the European Union (TFEU), which calls for the establishment of "standards" for the reception of asylum seekers.

3.3. Territorial application

The proposed Directive will be addressed to the Member States. Application of the Directive to the United Kingdom and Ireland will be determined in accordance with the provisions of Protocol No 21 annexed to the TFEU.

In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TFEU, Denmark is not bound by the Directive nor is subject to its application.

3.4. Subsidiarity Principle

Title V of the TFEU on the Area of Freedom, Security and Justice confers certain powers on these matters to the European Union. These powers must be exercised in accordance with Article 5 of the Treaty on European Union, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union.

The current legal base for Union action is established in Article 78 TFEU. This provision states that the Union is to "develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties". Article 78(2)(f) states that the European Parliament and the Council acting in accordance with the ordinary procedure shall adopt measures for a common European asylum system comprising "standards concerning the conditions for the reception of applicants for asylum or subsidiary protection".

Due to the transnational nature of the problems related to asylum and refugee protection, the EU is well placed to propose solutions in the framework of the CEAS, in particular concerning standards for reception applicable throughout the Union.

⁷ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions 'Study on the links between legal and illegal migration' - COM(2004) 412.

Although an important level of harmonization was reached by the adoption of the directive in 2003, further EU action is necessary in order to attain higher and more harmonised standards on reception conditions.

3.5. Proportionality Principle

The impact assessment on the amendment of the Reception Conditions Directive, conducted as part of the preparatory work for the previous proposal, assessed each option with regard to the problems identified so as to represent an ideal proportion between practical value and efforts needed and concluded that opting for EU action does not go beyond what is necessary to achieve the objective of solving those problems. The present modified proposal retains the guiding principles of the previous proposal, while introducing additional flexibility for Member States, thus further contributing to the respect of the principle of proportionality.

3.6. Impact on fundamental rights

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

Ensuring higher and more equal standards of reception will have an overall strong positive impact for asylum seekers from a fundamental rights point of view. In particular, the right to liberty provided in Article 6 of the Charter will be reinforced by underlining that a person shall not be detained for the sole reason that he/she has registered an application for international protection; similarly, the proposal also provides that detention should only be allowed in exceptional cases prescribed under the Directive and only if it is in line with the principles of necessity and proportionality with regard both to the manner and to the purpose of such detention. Access to an effective remedy is also ensured, according to Article 47 of the Charter.

The rights of minors will be better reflected in the text by including a relevant definition, clarifying the principle of the child's best interests in line with Article 24 of the Charter, and restricting possibilities of detention. Moreover, the specific situations of vulnerable groups will be more adequately addressed by ensuring that their needs are timely identified and access to appropriate treatment is available. Facilitating access to the labour market could assist asylum seekers in becoming more self-sufficient and will facilitate their integration to the hosting Member State. Furthermore, the proposal will reinforce the principle of non-discrimination as provided in Article 21 of the Charter by ensuring that asylum seekers are not unjustifiably treated less favourably in comparison to nationals. Finally, the imposition of a reporting requirement on essential provisions of the Directive linked with fundamental rights principles will ensure better monitoring of their implementation at EU level. In this respect it should be underlined that Member States are obliged to implement and apply the provisions of this Directive in line with fundamental rights embodied in the Charter.

↓ 2003/9/EC

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(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 Committee⁸,

Having regard to the opinion of the Committee of the Regions⁹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

↓ new

(1) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers¹⁰. 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

⁸ OJ C , , p. .

⁹ OJ C , , p. .

¹⁰ OJ L 31, 6.2.2003, p. 18.

governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. ⇐

↓ 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

- (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 Council¹¹, 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.
- (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.

↓ 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.

¹¹ OJ L 132, 29.5.2010, p.11.

↓ new

- (13) In view of ensuring equal treatment amongst all applicants for international protection as well as in order to guarantee consistency with current EU asylum acquis, in particular with 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

- (14) ⇒ The immediate identification and monitoring 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

- (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 Article 31 of the Geneva Convention relating to the Status of Refugees of 28 July 1951. In particular, Member States should not impose penalties on asylum seekers on account of illegal entry or presence and any restrictions to movement should be necessary. In this respect, detention of asylum seekers should only be possible under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard both to the manner and to the purpose of such detention. Where an asylum seeker is held in detention he/she should be able to have effective access to the necessary procedural guarantees such as judicial remedy before a national court.

↓ 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

- (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.

↓ 2003/9/EC recital 11

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

- (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. These rules should be consistent with the rules on the duration of the examination procedure as stipulated in Directive [.../.../EU/] [Asylum Procedures Directive].

- (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 and measurable points of reference.
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↓ 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.

↓ 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.
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↓ 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.
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↓ 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.~~
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↓ 2003/9/EC recital 17

- (26) The implementation of this Directive should be evaluated at regular intervals.
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↓ 2003/9/EC recital 18 (adapted)

- (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.
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↓ 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

(28) In accordance with 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 paragraph 2 of that Article, so long as the United Kingdom has not notified its wish to accept this measure, in accordance with Article 4 of that Protocol, it is not bound by it and continues to be bound by Directive 2003/9/EC.

(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

(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 ⇒, 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

~~(b)(c)~~ "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) when the applicant is an adult; ⊗

~~(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, 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

- the married minor children of couples referred to in the first indent of point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, provided they are not accompanied by their spouses and it is in their best interests to consider them as family members;

(ii) when the applicant is an unmarried minor:

- the father, mother, regardless of whether the applicant was born in or out of wedlock or adopted as defined under the national law, or the adult responsible for the applicant whether by law or by the national practice of the Member State concerned ;

- the minor siblings of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, provided they are unmarried or married but not accompanied by their spouses and it is in their best interests to be considered family members;

(iii) when the applicant is a married minor, the persons referred to in point (ii) provided the applicant is not accompanied by his/her spouse and it is in the best interests of the applicant or his/her siblings to consider the persons referred to in point (ii) as family members.

↓ 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

(j) "representative" means a person or an organisation appointed by the competent bodies to act as a legal guardian 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 acts as a representative, it shall appoint a person responsible for carrying out the duties of the legal guardian 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.

↓ 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 ⇐ ~~asylum~~ according to the national law.

↓ 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 thereof¹² 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.

¹² 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 ~~asylum with the competent authority~~ ⇒ international protection ⇐, 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 ⇒ for international protection ⇐ 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 ⇒ international protection ⇐ ~~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 ⇒ international protection ⇐ ~~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.

↓ new

6. Member States shall not impose any 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.

↓ 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 ~~4.3~~ 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

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. Without prejudice to Article 11 and to detention in the framework of criminal proceedings, an applicant may only be detained:
 - (a) in order to determine or verify his/her identity or nationality;
 - (b) in order to determine, within the context of a preliminary interview, the elements on which the application for international protection is based which could not be obtained in the absence of detention;
 - (c) in the context of a procedure, to decide on the right to enter the territory;
 - (d) when protection of national security or public order so requires.

These grounds 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, it 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 there is no decision within 72 hours, the asylum seeker concerned shall be released immediately.
3. Detention shall be ordered in writing. The detention order shall state the reasons in fact and in law on which it is based and the procedures laid down in national law for challenging it, in a language the asylum seeker understands or is reasonably supposed to understand. It shall immediately be provided to the detained asylum seeker.
4. Detention shall be reviewed by a judicial authority at reasonable intervals of time, either ex officio 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 an appeal or review of the detention order, Member States shall ensure that asylum seekers have access to free legal assistance and representation, where they cannot afford the costs involved and in so far as it is necessary to ensure their effective access to justice.

Legal assistance and representation shall include, at least, the preparation of the required procedural documents and representation before the judicial authorities.

Legal assistance and representation may be restricted to legal advisers or counsellors specifically designated by national law to assist and represent asylum seekers.

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

Article 10

Conditions of detention

1. Detention shall only take place in specialised detention facilities.

Asylum seekers in detention shall be kept separately from other third country nationals who have not lodged an application for international protection unless it is necessary to ensure family unity and the applicant consents thereto.
2. 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 applicants and to have access to detention facilities. 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 applicants and have access to detention facilities. 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.
6. In duly justified cases and for a reasonable period which shall be as short as possible Member States may derogate:
 - (a) from the first subparagraph of paragraph 1 where accommodation in specialised detention facilities is temporarily not available and, as a consequence, Member States are obliged to resort to prison accommodation, provided that asylum seekers in detention are kept separately from ordinary prisoners; unaccompanied minors shall not, however, be kept in prison accommodation;
 - (b) from paragraph 5 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].

Article 11

Detention of vulnerable persons and persons with special reception needs

1. In all cases, vulnerable persons shall not be detained unless it is established that their health, including their mental health, and well-being, will not significantly deteriorate as a result of the detention.

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 not be detained unless it is established in an individual case that it is in the minor's best interests, as prescribed in Article 23(2).

Detention of minors shall be a measure of last resort, after having established that other less coercive alternative measures cannot be applied effectively. It shall be for as short a period as possible and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

Detention of unaccompanied minors shall be resorted to only in particularly exceptional cases.

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

Minors shall have access to open-air spaces.

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

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access and integration to the national education system.

↓ 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 ~~11~~

Employment

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

↓ new

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

Member States may extend that time limit for a period not exceeding a further six months, in the cases provided for in points (b) and (c) of Article 31(3) of Directive [...]/.../EU [the Asylum Procedures Directive].

↓ 2003/9/EC
⇒ new

2. ~~If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant ⇒, in accordance with their national law, while ensuring asylum seekers have effective access to the labour market. ⇐.~~
3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.
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~~ 11.

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

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 point(s) of reference established by the Member State concerned either by law or practice to ensure adequate standards of living for nationals, such as the minimum level of social welfare assistance. Member States may grant less favourable treatment to asylum applicants compared to nationals in this respect, where it is duly justified.

↓ 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

4. Member States shall ☒ take appropriate measures to prevent ⇐ ~~pay particular attention to the prevention of~~ assault ⇒ and gender based violence including sexual

assault, ⇐ within the premises and accommodation centres referred to in paragraph 1(a) and (b).

~~3. Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.~~

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 ⇨ or post traumatic 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 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. ☒, or ☒~~

☒ ~~(d)~~ has concealed financial resources and has therefore unduly benefited from material reception conditions. ☒

☒ 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. 3.~~ Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.
- ~~3. 4.~~ Decisions for reduction, withdrawal or refusal of ~~☒~~ material ~~☒~~ reception conditions or sanctions referred to in paragraphs 1, ~~2~~ and ~~3~~ ~~2~~ 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~~.
- ~~4. 5.~~ Member States shall ensure that material reception conditions are not withdrawn or reduced before a ~~negative~~ decision is taken ~~☒~~ in accordance with paragraph 3 ~~☒~~.

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 physical illnesses, mental illnesses, or post-traumatic disorders, ~~⇐~~ and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, 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

Article 22

Identification of the special reception needs of vulnerable persons

1. Member States shall establish mechanisms with a view to identifying whether the applicant is a vulnerable person and, if so, has special reception needs, also indicating the nature of such needs. Those mechanisms shall be initiated within a reasonable time after an application for international protection is made. 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 adequate support for persons with special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The identification mechanisms 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

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 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

5. 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~~ ⇒ the national practice of the Member States concerned, provided this is in the best interests of the minors concerned ⇐.

↓ 2003/9/EC

⇒ new

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 representative shall have the necessary expertise in the field of childcare and shall perform his/her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2). ⇐

Regular assessments shall be made by the appropriate authorities.

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

3. ⇒ Member States shall establish mechanisms for tracing the family members of an unaccompanied minor. ⇐ ~~They~~ ~~Member States protecting the unaccompanied minor's best interest~~ shall endeavour ⇒ start ⇐ to trace, the members of ~~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

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

Article 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 rehabilitation services that should allow for obtaining medical and psychological treatment ⇐.
-

↓ 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

CHAPTER V

APPEALS

Article ~~26~~

Appeals

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

↓ new

2. In relation to the cases referred to in paragraph 1, Member States shall ensure that asylum seekers have access to free legal assistance and representation, where they cannot afford the costs involved and in so far as it is necessary to ensure their effective access to justice.

Legal assistance and representation shall include at least preparation of the required procedural documents and representation before the judicial authorities.

Legal assistance and representation may be restricted to legal advisers or counsellors specifically designated by national law to assist and represent asylum seekers.

↓ 2003/9/EC
⇒ new

- ~~2.~~ Procedures for access to legal assistance ⇒ and representation ⇐ in such cases shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

~~Article 22~~

~~Cooperation~~

~~Member States shall regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions and provide full information on the type, name and format of the documents provided for by Article 6.~~

↓ new

Article 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] 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 ⇒ [.../.../...] ⇐ ~~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.

↓ 2003/9/EC (adapted)

Article ~~31~~ 26

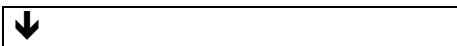
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive by 6 February 2005~~ ☒ Articles [...] [The articles which have been changed as to the substance by comparison with the earlier Directive] and Annex I by [...] at the latest ☒. They shall forthwith

~~inform~~ ☒ communicate to ☒ the Commission ~~thereof~~ ☒ the text of those provisions and a correlation table between those provisions and this Directive ☒.

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

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

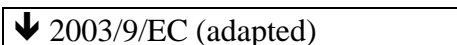


Article 32

Repeal

Directive 2003/9/EC is repealed for the Members 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.



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 [...] [*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~~ 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
[...]

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.

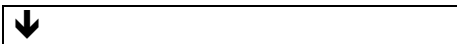
1. On the basis of Articles 2(k) and 22 of Directive [.../.../EU], please explain the different steps for the identification of persons with special reception needs, including the moment it is triggered and its consequences in relation to addressing such needs, in particular for unaccompanied minors, 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)

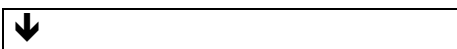
Council Directive 2003/9/EC

(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



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 3

Article 4

Article 5

Article 6 (1) –(5)

-

Article 6 (2) to (5)

Article 7(1) and (2)

Article 7(3)

Article 7(4) to (6)

-

-

-

-

Article 8

Article 9

Article 10(1)

Article 10(2)

-

Article 10 (3)

Article 11(1)

-

Article 11(2)

Article 11(3)

Article 11(4)

Article 2(j)

Article 2(k)

Article 2(l)

Article 3

Article 4

Article 5

Article 6(1)-(5)

Article 6(6)

Article 6(2) to 6 (5)

Article 7(1) and (2)

-

Article 7(3) to (5)

Article 8

Article 9

Article 10

Article 11

Article 12

Article 13

Article 14(1)

Article 14(2) first subparagraph

Article 14(2) second subparagraph

Article 14(3)

-

Article 15(1)

Article 15(2)

Article 15(3)

-

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

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Article 34

Annex I

Annex II

Annex III