



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.4.2001
COM(2001) 181 final

2001/0091 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**laying down minimum standards on the reception of applicants for asylum
in Member States**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. MINIMUM STANDARDS ON THE RECEPTION OF APPLICANTS FOR ASYLUM IN MEMBER STATES: A FURTHER STEP AHEAD TOWARDS THE COMMON EUROPEAN ASYLUM SYSTEM

According to the Conclusions of the Presidency at the Tampere European Council in October 1999, a Common European Asylum System is to include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status. This is to be supplemented with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. In addition, the Conclusions make clear that, in the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. Finally, the European Council, in Tampere, urged the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

On 28 September 2000, the Council adopted a Decision (2000/596/EC) establishing a European Refugee Fund as a solidarity measure to promote a balance in the efforts made by Member States in receiving and bearing the consequences of receiving refugees and displaced persons.

On 11 December 2000, the Council adopted a Regulation (2725/2000/EC) concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention on the State responsible for examining applications for asylum lodged in one of the European Union Member States.

In addition to the proposals for the abovementioned acts approved by the Council, the Commission has adopted:

- On 24 May 2000, a proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons based on solidarity between Member States;
- On 20 September 2000, a proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status;
- On 22 November 2000, a Communication on a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.

As indicated in the scoreboard to review progress on the creation of an area for freedom, security and justice in the European Union, approved by the Council on 27 March 2000, the Commission is now, in early 2001, proposing a Council Directive on minimum standards on the reception of applicants for asylum in Member States.

This proposal has been drafted on the basis of a number of preparatory activities and background materials.

The Commission commissioned a Study, delivered at the beginning of November 2000, “on the legal framework and administrative practices in the Member States of the European Union regarding reception conditions for asylum seekers, displaced persons and other persons seeking international protection”.

In June 2000, the French delegation presented a discussion paper on conditions for the reception of asylum seekers that was followed by the adoption of Conclusions by the December Council.

At the end of July 2000, the United Nations High Commissioner for Refugees published an important study on the same issue.

In December 2000, the Commission thought it appropriate to have bilateral consultations with Member States, on the basis of a discussion paper concerning the future Community instrument on reception conditions for applicants for asylum in the European Union. As well as the Member States, the Commission specifically consulted the UNHCR and some of the more relevant non-governmental organisations.

The December Council Conclusions, the Reception Conditions Study and the written and oral comments expressed on the Commission’s discussion paper have been the ‘foundation’ material that has been used to draft this proposal. The UNHCR Study, The Danish Refugee Council Fourth Report on Legal and Social Conditions for asylum seekers and Refugees in Western European Countries, the existing soft law (principally the 1997 Council Resolution on unaccompanied minors who are nationals of third countries) have also been taken into account. Finally, attention has been paid to the draft joint action on conditions for reception of asylum seekers, tabled by the Spanish Presidency in 1995 but never approved.

2. THE OBJECTIVES OF THE PROPOSAL

With this proposal for a Directive, the Commission is pursuing the following aims:

1. Implementing point (1)(b) of the first paragraph of Article 63 of the Treaty, paragraph 36(b)(V) of the Vienna Action Plan, Conclusion 14 of the Tampere European Council and the second part of the paragraph on a fair and efficient asylum procedure of the Scoreboard presented to the Council and the Parliament in March 2000;
2. Setting out the minimum standards of reception conditions for applicants for asylum in the European Union, normally sufficient to ensure them a dignified standard of living;
3. Identifying the different reception conditions available to applicants for asylum at the various stages or types of asylum procedures as well as for groups with special needs including minors, and cases for their exclusion, reduction and review;
4. Outlining the possible actions to improve the efficiency of the national reception systems;
5. Limiting secondary movements of applicants for asylum influenced solely by the diversity of the applicable rules on reception conditions;
6. Ensuring that applicants for asylum are afforded comparable living conditions in all Member States as, according to the Dublin Convention, they do not have the right to choose the Member State that should examine their application.

3. AN OVERVIEW OF THE STANDARDS IN THE PROPOSAL

This proposal is composed of five main sets of rules:

- (a) The first group of provisions concerns the most general provisions of the proposal, including its objective and scope as well as the definitions of the concepts that are relevant for a clear understanding of the proposal.
- (b) The second set of rules focuses on the reception conditions that should be granted, in principle, at all stages and in all kinds of asylum procedures (information, documentation, freedom of movement, housing, food, clothing, daily expenses allowance, unity of the family, health care, schooling for minors). In addition, the consideration that no-one should be deprived of ordinary living conditions for too long is the basis for the provisions to the effect that Member States should not on a general basis deny certain reception conditions when applicants for asylum are not responsible for the length of the procedure and they have been in the procedure for a long period of time (access to labour market and vocational training).
- (c) A third group of rules sets the requirements (or minimum standards) of some reception conditions (material reception conditions and health care) which Member States are required to ensure. The approach suggested in the proposal is flexible enough to allow each Member State to retain considerable room for manoeuvre when implementing these minimum standards. The general approach is that the living conditions of applicants for asylum must always be dignified but that they should be improved as long as applications can be considered admissible and not manifestly unfounded or the procedure in place is too long. When asylum applicants belong to groups with special needs, or when they are in detention, reception conditions should be designed to meet their specific needs.
- (d) The fourth group of rules includes the provisions for reducing or withdrawing access to some or all reception conditions as well as the possibility of review before a court of a decision on reduction or withdrawal of reception conditions. These rules are meant to ensure that the reception system is not abused. However, as the reduction or withdrawal of reception conditions can affect the standard of living of applicants and their ability to effectively pursue procedural guarantees, it is of the utmost importance that decisions on these issues are subject to review.
- (e) Finally, the proposal outlines several rules to ensure its complete implementation as well as the improvement of the national reception systems. If the final aims of the future directive are to be met, the instruments that are put in place to reach these aims have to be checked, revised and adjusted to be sure they are going to produce the expected results. This has to be done at different levels. At *national level*, there is the need for guiding, monitoring and controlling the system and for the possibility of improving it and remedying sources of inefficiency. In addition, it is important that a national contact point is designated and that appropriate measures are enacted to establish direct cooperation and an exchange of information between the competent authorities. At *Community level*, it is important to assess whether the purposes of this Directive are met or if there is room for improvement. The reporting system envisaged in this proposal should meet this need. Finally, as far as the general attitude of public opinion towards applicants for asylum is concerned, it is clear that the political and social perception of asylum-related issues by public opinion in general and by local communities in particular plays a major role in the quality of life of applicants for asylum. This Directive does not impose detailed

obligations on Member States but sets the aims to be pursued (to promote harmonious relationships between the local communities and the reception and accommodation centres that are located in their territory).

The Commission, for its part, envisages to introduce a Contact Committee. The Contact Committee will facilitate the transposition and the subsequent implementation of the Directive through regular consultations on all practical problems arising from its application. It will help avoid duplication of work where common standards are set. In addition, the Committee will facilitate consultation between the Member States on standards for reception of applicants for asylum that they may lay down at national level. This would greatly help the construction of a Common European Asylum System as envisaged by the Conclusions of the Presidency at the Tampere European Council in October 1999. Lastly, the Committee will advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary.

4. THE CHOICE OF LEGAL BASIS

The choice of legal basis is consistent with the amendments made to the Treaty establishing the European Community by the Amsterdam Treaty, which entered into force on 1 May 1999. Point (1)(b) of the first paragraph of Article 63 of the EC Treaty provides that the Council shall adopt measures on asylum in accordance with the Geneva Convention of 28 July 1951, the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties within the area of minimum standards on the reception of asylum seekers in Member States. Article 63 is accordingly the proper legal basis for a proposal to establish minimum standards for reception conditions for applicants for asylum in Member States.

Title IV of the EC Treaty is not applicable to the United Kingdom and to Ireland, unless those Member States decide otherwise in accordance with the procedure laid down in the Protocol on the position of the United Kingdom and Ireland annexed to the Treaties. Title IV is likewise not applicable to Denmark, by virtue of the Protocol on the position of Denmark annexed to the Treaties.

5. SUBSIDIARITY AND PROPORTIONALITY: JUSTIFICATION AND VALUE ADDED

Subsidiarity

The insertion of the new Title IV (Visas, asylum, immigration and other policies related to free movement of persons) in the Treaty establishing the European Community demonstrates the will of the High Contracting Parties to confer powers in these matters on the European Community. But the European Community does not have exclusive powers here. Consequently, even with the political will to implement a common policy on asylum and immigration, it must act in accordance with Article 5 of the EC Treaty, i.e. the Community may take action only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. The proposed Directive satisfies these criteria.

The establishment of an area of freedom, security and justice entails the adoption of measures relating to asylum. The specific objective of this initiative is to lay down minimum standards on reception conditions for applicants for asylum in Member States. The standards laid down in this proposal must be capable of being applied through minimum conditions in all the Member States. Minimum Community standards have to be laid down by the kind of action proposed here. They will help to limit secondary movements of asylum applicants as resulting from disparities in reception conditions in Member States. Henceforth, applicants for asylum will be less inclined than before to decide on their country of destination on the basis of the reception conditions there. The continued absence of standards on reception conditions would have a negative effect on the effectiveness of other instruments relating to asylum. Conversely, once minimum standards on reception conditions are in place, the operation of, *inter alia*, an effective system for determining which Member State is responsible for considering an asylum application is fully justified. Applicants for asylum who cannot choose in complete freedom where to lodge their application should be granted the same minimum standards in reception in any Member State of the European Union. The idea of a single Member State responsible for examining an application for asylum becomes fairer to applicants for asylum if the same minimum standards in reception conditions are granted to them in all Member States. At the same time, minimum standards in reception conditions could limit the importance of one of the factors that determine secondary movements within the Union and, in this way, would help to establish the effectiveness of the mechanisms according to which the responsible Member State is chosen. To establish common minimum standards in reception conditions for applicants for asylum is a fundamental tool to make national asylum systems more effective and a Common European Asylum System more concrete.

Proportionality

The form taken by Community action must be the simplest form allowing the proposal to attain its objectives and to be implemented as efficiently as possible. In this spirit, the legal instrument chosen is a directive, which allows minimum standards to be laid down, while leaving national authorities the choice of the most appropriate form and methods for implementing it in their national welfare system and general context. The proposal concentrates on a set of minimum standards that are strictly necessary for the coherence of the planned action without laying down standards relating to other aspects of asylum. On several occasions different models are proposed allowing Member States to choose the one that is most appropriate to the national situation. In other cases, the proposal sets deadlines corresponding to those set in the proposal for a directive on minimum standards on common asylum procedures (COM(2000) 578) to ensure consistency within the Common European Asylum System. Finally, several rules require Member States only to comply with certain aims (e.g. they are asked to integrate considerations specific to the protection of persons having special needs in the national rules concerning their psychological and health care and material reception conditions) but leave Member States completely free to choose the means used to achieve this aim. The proposal, therefore, does not go beyond what is necessary to achieve the objective of the Directive.

COMMENTARY ON ARTICLES

Chapter I: Subject matter, definitions and scope

Article 1

This Article defines the purpose of the Directive. The reception conditions for applicants for asylum in the Member States are subject to the minimum standards laid down in the Directive.

Article 2

This Article contains definitions of the various concepts and terms used in the provisions of the proposal.

- (a) Throughout the proposal, the term “Geneva Convention” refers to the Convention relating to the status of refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967. All Member States are parties to both without any temporal or geographical limitations.
- (b) “Application for asylum” is defined with reference to the definition of a refugee in the Geneva Convention. Any request by a third country national or a stateless person for protection at the border or on the territory of the Member States shall be understood to fall within the terms of the Geneva Convention, unless the person explicitly requests another form of protection where a Member State has a separate procedure for that purpose. The reference to the notions of third country nationals and of stateless persons excludes European Union citizens who make an application for asylum from the focus of this Directive.
- (c) The situation of being an applicant for asylum is defined in relation to the process for reaching a final decision to determine refugee status. Each adult member of the family may be an applicant for asylum as, in accordance to the Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, even where applicants have made an application also on behalf of their accompanying family members, each adult among them will have to be informed in private of the right to make a separate application for asylum.
- (d) The concept of “family members” is the same as the one in Article 13 of the proposal for a Directive on minimum standards for temporary protection. That Article concerns the conditions for maintaining family unity for the duration of the temporary protection. It seems appropriate to apply the same concept in this Directive, as the status of asylum applicants is also, by definition, temporary.
 - (i) This subparagraph concerns spouses or unmarried partners (who may be of the same sex). The provision on unmarried partners is applicable only in Member States where unmarried couples are treated for legal purposes in the same way as married couples. This provision generates no actual harmonisation of national rules on the recognition of unmarried couples; it merely allows the principle of equal treatment to operate. To prevent possible abuse, unmarried partners must be in a stable relationship, backed up by evidence of cohabitation or by reliable testimony.

- (ii) This subparagraph concerns the children of a married or unmarried couple, who are themselves unmarried and dependent, whether or not they are minors. No distinction is made in the treatment of children born outside marriage, of a previous marriage or who are adopted. Unmarried children who are not minors are therefore covered if they are dependent, either because they are objectively unable to meet their own needs or because of their state of health.
- (iii) This subparagraph concerns family members not already covered if they are dependent on the other members of the family. They must therefore be objectively unable to meet their own needs or may have serious health problems or have undergone particularly traumatic experiences. They can be grandchildren, grandparents, great-grandparents or other adults dependent on the other members of the family.
- (e) The notion of accompanying family members is defined in relation to the definition of family members set out in paragraph (d) and to the fact that they are present in the host country in relation to the application for asylum. This is to exclude from the family unification, under this Directive, family Members that are in the host country for different reasons (e.g. work) or that are in another Member State or in a third country.
- (f) A “refugee” is a person who fulfils the requirements of Article 1(A) of the Geneva Convention.
- (g) Following the wording of Article 63(1) of the EC Treaty, the term “refugee status” is understood to be 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.
- (h) The procedures referred to through out the proposal are laid down in the Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status;
- (i) The concept of “unaccompanied minor” is drawn from the definition in the Council Resolution of 26 July 1997 on unaccompanied minors who are nationals of third countries.
- (j) The concept of “reception conditions” covers the full set of measures that Member States enact in accordance with this Directive (procedural measures are, therefore, excluded), in favour of applicants for asylum in connection with the examination of their application.
- (k) The term material reception conditions covers all the items of material assistance that Member States grant to applicants for asylum, i.e. housing, food, clothing, daily expenses allowances.
- (l) “Detention” covers any confinement of an applicant for asylum by a Member State within a restricted area where the applicant’s freedom of movement is substantially curtailed.
- (m) The characteristics that identify a place as an accommodation centre are the following: it has to be a place where only applicants for asylum and their accompanying family members may be housed and it has to be for collective accommodation (and therefore does not include single flats or hotel rooms). The longer is the stay envisaged the wider should be the number of services and facilities that are made available to the applicants and their accompanying family members.

- (n) For a place to be a detention centre it is sufficient that it be used for housing applicants and their accompanying family members in a situation where their freedom of movement is substantially curtailed. Therefore also premises set up for the specific purpose to house applicants and their accompanying family members during the examination of their application within the context of a procedure to decide on their right to legally enter the territory of a Member State as well as accommodation centres in situations where applicants for asylum and their accompanying family members are not allowed, in principle, to leave the centre, can be defined as detention centres under the meaning of the Directive.

Article 3

This Article concerns the scope of the Directive.

- (1) By using the term “third country nationals and stateless persons” instead of “persons”, this paragraph makes clear that the provisions of the Directive apply only to third country nationals and stateless persons and not to EU nationals. With respect to the latter category, the ordinary relevant provisions on welfare and freedom of movement concerning EU nationals apply.

Under this paragraph the provisions of the Directive also apply when decisions are taken on the admissibility and/or the substance of an asylum application in the context of a procedure to decide on the right of applicants to legally enter the territory of a Member State. Reception conditions for third country nationals and stateless persons that are in the so-called border procedures are therefore fully covered by this proposal.

- (2) The Directive does not apply to third country nationals and stateless persons who submit their requests for diplomatic or territorial asylum to the representations of Member States. Neither the granting of diplomatic asylum (usually in the applicant’s country of origin) nor the (preliminary) screening of territorial asylum (usually in a third country) when requests are submitted to representations in Member States imply that applicants can enjoy the minimum standards for reception connected to applications for asylum at the border or on the territory of Member States.
- (3) Under this paragraph Member States may also apply the Directive to reception conditions for third country nationals or stateless persons making an application for kinds of protection other than that emanating from the Geneva Convention. Discussions already held at different levels within the Council, concerning the scope of the future Community instrument, had made clear that different options were available. This proposal suggests that the option according to which the decision concerning the applicability of the Community instrument to other forms of protection is entirely left to the discretion of each Member State, should be chosen. It is closer to the intentions of the Amsterdam Treaty and to the concept of a phased approach for establishing a Common European Asylum System referred to in the Tampere Conclusions. In addition it is consistent with the proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. In any case, the presumption laid out in Article 2(b) of this proposal allows an application of the rules of this Directive as wide as possible.

Article 4

This proposal for a Directive focuses only on minimum standards on reception of applicants for asylum. The relevant provisions of the Amsterdam Treaty should not be understood as precluding the Member States from granting more than the agreed minimum standards in this field (in general or for specific groups: it may be the case of applicants that are relatives of European Union Citizens). This Article accordingly allows Member States to grant applicants for asylum more favourable conditions insofar as they are compatible with the minimum standards laid down in this Directive.

Chapter II: General provisions on reception conditions

Article 5

This Article concerns information to be given to applicants for asylum.

This paragraph, in line with the conclusions adopted by the 30 November/1 December 2000 Council, concerns the information that should be given to applicants for asylum on their rights and benefits which they may claim and the obligations they have to comply with. It is necessary to set a clear deadline after which the obligation to inform is in place and the time when an asylum application is lodged seems to be a fair deadline. The obligation to inform is a pre-requisite for applicants for asylum to be able to claim what they are entitled to and to respect the duties they are asked to comply with. They must also be informed about organisations or persons that provide specific legal assistance and organisations that might be able to help them in relation to the available reception conditions, as these organisations may be instrumental to ensuring practical access of applicants for asylum to legal assistance and reception. This paragraph, therefore, is the necessary corollary of Article 9(1) of the proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (“Member States shall ensure that all applicants for asylum have the opportunity to contact in an effective manner organisations or persons that provide legal assistance at all stages of the procedure”). Finally, this paragraph explicitly requires applicants for asylum to be informed of the existence of organisations that can help them to solve problems connected to the actual access to health care.

- (1) In accordance to the Directive on minimum standards in Member States for granting and withdrawing refugee status, even where an applicant has made an application also on behalf of his accompanying family members, each adult among them will have to be informed in private of the right to make a separate application for asylum.
- (2) The need to give applicants the same kind of information in any place their asylum application may be filed and the need for them to keep this information suggests that it must be provided in writing, in a form that is understandable even by persons that usually do not have a legal background and, as far as possible (as it is not possible to provide written information in all existent languages), in a language the applicants for asylum understands.
- (3) Language courses help applicants for asylum to understand the society that is hosting them. Voluntary return schemes can play an important role in solving some of the problems connected to the return of rejected asylum applicants to their country of origin. Therefore it seems appropriate that when these opportunities are available applicants for asylum are made aware of them.

Article 6

This Article meets the demands of the Council's conclusions regarding the documentation of applicants for asylum.

- (1) This paragraph requires Member States to provide applicants and each of the adult accompanying family members with a document certifying their status as applicants for asylum or as adult family member accompanying an asylum applicant. The reference of the Council's conclusions to "any other form of evidence" was not technical enough to be integrated in the text. Applicants for asylum in Member States may be allowed to stay in the territory without enjoying freedom of movement there or they may be granted freedom of movement. Accordingly, in the latter case, Member States should ensure that the abovementioned document certifies that they are legally in the territory of the Member State in which the application was lodged or is being examined. Finally, the document in question may be used as well to simplify the situation of applicants and accompanying family members who need access to health care or who have been granted access to the labour market by certifying their specific entitlements in these fields
- (2) This paragraph ensures that unaccompanied minors are granted the document provided for by paragraph 1.
- (3) This paragraph concerns the period of time during which applicants must be provided with the documents mentioned in the previous paragraphs. It must be the same as the period of time during which applicants are allowed to stay in the country.
- (4) This paragraph allows an exception from this Article in case of border and airports procedures. These procedures are usually very quick, and while they are running, applicants are usually considered not to be in the territory of the Member State that is considering the application to enter its territory.
- (5) This rule can help Member States to solve a practical problem. Normally applicants for asylum are not granted freedom of movement through Member States. But it may be necessary to provide applicants for asylum with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7

- (1) The issue of freedom of movement has proved to be one of the most difficult ones to find an agreement upon during the discussions held in Council on reception conditions for applicants for asylum. The conclusions adopted by the Council meeting of 30 November and 1 December 2000 endorse the principle of freedom of movement within the territory of the Member State in which the application was lodged or is being examined but leave open some options as far as the limits to this freedom of movement are concerned. The first paragraph of this Article endorses the principle of the freedom of movement of applicants for asylum and their accompanying family members in the national territory of a Member State or in a restricted area of it and states that the freedom is granted with the limits set out in the following paragraphs.
- (2) The second paragraph, which rules out the detention of applicants for asylum simply because they are applicants, is both the logical consequence of the principle of the freedom of movement and the consistent counterpart of the relevant provision of the proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.

- (3) This paragraph enables Member States to decide that applicants and their accompanying family members must live in a restricted area of the national territory (the area of national territory where applicants are requested to live must not be as limited as in detention situations). It has been considered that limits on freedom of movement that do not go as far as excluding the substance of this right (detention situations) should be allowed as far as they are necessary for the purpose of implementing this Directive or in order to enable asylum applications to be processed swiftly. It is for Member States to prove that these limits are necessary in relation to the aims of implementing this Directive or in order to enable asylum applications to be processed swiftly. These limits to the freedom of movement of applicants for asylum are compatible with the interpretation of Protocol n. 4 of the European Convention on Human Rights given by the jurisprudence of the European Commission of Human Rights. In any case limits to the exercise of the freedom of movement affect the quality of life of applicants for asylum so that, as far as possible, substitutes for these limits (e.g. obligation to register every day at the reception centre) should be put in place.
- (4) As a safeguard in relation to the limits referred to in paragraph 3, provision needs to be made for the possibility of making an exception for serious reasons. All decisions on requests for temporary permission to leave must be taken individually, objectively and impartially, and reasons must be given if they are negative to enable a review as accurate as possible.
- (5) In conformity with the Charter of fundamental rights (Article 47) and in line with the case law of the Court of Justice, this paragraph ensures that the limits laid down in accordance with paragraph 3 and the negative decisions taken in accordance with paragraph 4 can be reviewed from a judicial body (including an administrative judicial body such as the *Conseil d'Etat* in France), at least in the last instance.
- (6) Applicants who are free to choose their place of residence may be required to inform the relevant authorities of their current address and notify any change of address to those authorities.

Article 8

According to the conclusions of the Council meeting of 30 November and 1 December 2000 on reception conditions: “the host State should ensure either that its competent reception authorities provide accommodation, including lodging, food and basic daily expenses, or payment of an allowance, supplemented if need be depending on the composition of the family”. This article meets the indications of the Council conclusions on this issue and makes reference to Chapter III where its regulation is laid down.

Article 9

This Article addresses the issue of the family unity in the light of the Council’s conclusion on the same issue. It is made conditional on the applicant’s desire to remain united with his or her family (e.g. by means of tracing activities, confined if necessary to the territory of the host Member State). The purpose of this provision is to solve the problems caused where family members arrive in the host country at the same time or at different times (assuming the asylum procedure is still pending for all the applicants) and for different reasons are housed in different places.

Article 10

This Article concerns the issue of health care. It meets the indications of the Council conclusions concerning this issue (“Asylum seekers' access to appropriate medical treatment to meet their immediate needs should be guaranteed”) and makes reference to Chapter IV where its regulation is laid down.

Article 11

This Article concerns medical screening for applicants for asylum. It is necessary to ensure that the competent bodies that carry out the screening use methods that are safe and respect human dignity. The Commission shares the view of some of the NGOs consulted according to which at least tuberculosis should be tested for as it is one of the most frequent infectious diseases detected in third country nationals arriving in the European Union.

Article 12

- (1) This paragraph concerns the schooling and education of minor children of applicants for asylum and minor applicants. The possibility of schooling for minors is one of the reception conditions that should be harmonised in the Member States. Reference is made to the concept of “minors” without specific reference to “school age”, as this age varies from one Member State to another, and the United Nations Convention on the Rights of the Child does not make the schooling of minors conditional on their age.

In principle they should be given free access at least to the public education system (private sector may be excluded) up to the moment an expulsion order can be enforced. The purpose of the reference to the public education system is to allow private schools to be excluded from this obligation. This provision lays down one of the rules that illustrate the special attention to minors that characterise the proposal as whole.

Once the minor has started school, he or she should be allowed to continue it as far as possible and, therefore, until such time as the actual enforcement of a deportation order makes it impossible. This paragraph allows continued education to a child who has reached 18 in situations where other pupils (nationals) could continue.

- (2) This paragraph allows access to schooling to be delayed by up to 65 working days for reasons connected with the dispersal policy operated by some Member States or with the stage of the school year when this Directive becomes applicable to a specific minor.
- (3) The purpose of this paragraph is to ensure, as soon as possible, education of children when minors cannot go to ordinary school because of a lack of knowledge of the language of the host country. In this case they must be offered language courses. Their parents or guardians should be made aware of the importance, for minors too, of acquiring host country language skills.

Article 13

This Article is about access to the labour market. To leave complete discretion on whether or not to grant the right to work would not favour the similarity of national systems and would be against both the general aims of this proposal and the conclusion on reception conditions adopted by the Council on 30 November and 1 December 2000. This Article seems a reasonable compromise that meets the mandate of the Council (some harmonisation on this

issue) as well as the need of applicants for asylum and their accompanying family members to lead a normal life, without imposing on Member States the obligation to grant the right to work. Member States remain, therefore, in full control of the internal labour market, as they can decide the kind of work asylum applicants may apply for, the amount of time per month or per year they are allowed to work, the skills they should have, etc. As in this case the relevant factor is the length of the procedure, no distinction is made, within the admissibility procedure, between Dublin Convention cases and other cases. The rationale behind this rule does not change according to the specific causes of the length of the procedure when it cannot be directly related to the will of the applicant for asylum. Finally, this Article is consistent with the choice made in paragraph 4 of Article 15, substantially allowing Member States to grant applicants for asylum the right to work as soon as they may think it is appropriate.

- (1) As a minimum standard the Commission proposes that Member States be required to put in place rules that do not exclude the access of applicants for asylum and their accompanying family members from the labour market, six months after they have lodged their application.
- (2) Once Member States have granted access to the labour market, they should not withdraw it for the sole reason that an appeal with suspensive effect is pending. To avoid an interruption of work activities in cases when applicants are allowed to stay in the country waiting for a decision on their appeal is a reasonable response to their needs and to the interest of Member States (applicants may become destitute or slip into the illegal market).
- (3) Member States may make an exception from paragraph 1 when negative behaviour of the applicants (e.g. the applicant hides himself for a certain period) is ascertained, in accordance with Article 22. Accordingly, to file an appeal against a negative decision cannot be ever considered negative behaviour.

Article 14

This Article deals with the issue of vocational training and is based upon the same considerations expressed with reference to Article 13.

- (1) This paragraph is based on the same considerations expressed with reference to the issue of access to labour market in paragraph 1 of Article 13. In addition, it is relevant to say that the Community's Equal Initiative to overcome different kinds of discrimination in the labour market makes specific reference to asylum seekers. Vocational training may include activities that allow applicants to retain their skills.
- (2) This paragraph is based upon the same considerations expressed with reference to paragraph 2 of Article 13.
- (3) This paragraph is based upon the same considerations expressed with reference to paragraph 3 of Article 13.

Chapter III: Material reception conditions

Article 15

This Article is about identifying who is going to benefit from the material reception conditions and the period during which such conditions are provided. It is, as well, about the minimum standards of material reception conditions. The Commission suggests that, in principle, applicants for asylum and their accompanying family members are provided with material reception conditions during regular, admissibility and accelerated procedures. The following are arguments that support this option:

- The exclusion of the provision of any form of material reception conditions to those persons applying for asylum in a Member State might be in breach of international legal rules laid down in several human rights instruments, notably the International Covenant on Economic, Social and Cultural Rights as well as the EU Charter of Fundamental Rights.
 - The option is fully in line with the objectives of this proposal as set out at heading 2 of this Explanatory Memorandum. The full exclusion of all material reception conditions for certain categories of applicants would be difficult to reconcile with the aims of ensuring them a dignified standard of living and a good standard of reception conditions for applicants for asylum throughout the European Union as well as with the aim of limiting secondary movements of applicants for asylum influenced solely by the diversity of the applicable rules on reception.
 - Other options could lead to situations where great numbers of people would be out on the street with access limited to a safety valve provided by civil society, the churches etc. (in Member States where this safety valve exists).
- (1) This paragraph includes the principle that applicants for asylum and their accompanying family members should be granted material reception conditions during regular, admissibility, and accelerated procedures. The general aim of this Directive could be endangered in absence of a higher degree of similarity in Member States on this specific issue. Once Member States have granted material reception conditions (or, as an alternative, the possibility to work) during regular, admissibility or accelerated procedures, these reception conditions (or the possibility to work) should also be granted during appeals with suspensive effect or if the applicants are allowed to wait in the Member State in which the application was lodged or is being examined for the decision on the appeal.
 - (2) This paragraph reproduces, with reference to material reception conditions, the general principles provided for by Article 25 of the Universal Declaration of Human Rights. The material reception conditions provided must ensure a standard of living adequate for the health and the well being of the applicants and of their accompanying family members (e.g.: while providing housing, Member States should ensure the separation between men and women, save in the case of families whose unity must be preserved as far as possible should be ensured). Member States shall ensure, in providing material reception conditions, the protection of the applicants and their accompanying family members' fundamental rights. This rule refers, in particular, to the rights enshrined in the European Convention on Human Rights (e.g. Article 9 of the Convention includes the right to manifest one's religion and Member States should make possible the exercise of this right by ensuring access to a place to pray).

Member States are required to adapt the general standard provided for in the first subparagraph to the specific situation of persons who have special needs (e.g. specific form of housing may be needed for elderly or disabled people while properly equipped areas for study and recreational activities are necessary in case minors are housed in a centre) in accordance with Article 23 (individual assessment of the special need) and in relation to the situation of persons that are in detention (e.g. it is necessary to ensure access to open air areas as well as to premises for leisure activities).

Finally, this paragraph sets the rule that the current standard must be improved in relation to the length of the procedure. It is assumed that the longer the procedure the more the needs that must be addressed to ensure the well being of the applicants increase.

- (3) Member States may choose to grant material reception conditions either in kind or in the form of financial allowances or in vouchers. This provision is flexible enough to allow Member States to choose the way of providing material reception conditions that are most suitable according to their internal situation.
- (4) This paragraph is based on the principle that it is possible for Member States to limit their obligation to grant material reception conditions if they give applicants for asylum the possibility to become financially independent, by giving them access to the labour market. Member States must, in these cases, provide applicants with material reception conditions for a minimum of three months, as applicants for asylum need time to find a job. To ensure decent living conditions while applicants are looking for a job, Member States must continue granting them a food allowance and access to basic social care (e.g. social care available for homeless people), as long as they are not financially independent.

Article 16

- (1) This paragraph focuses on models of housing that can be chosen by Member States. It is clear from current experience in Member States that there is no single actor that should be chosen at Community level as far as management of housing is concerned. It is useful to preserve the present set of options that allow Member States to easily adjust the reception to different (local) situations. The models of accommodation are an exhaustive list but they may be combined.
 - (a) premises set up for the specific purpose of housing applicants and their accompanying family members during the examination of their application within the context of a procedure to decide on their right to legally enter the territory of a Member State (these premises may be located in airports, sea ports, border posts or in their vicinity but may also be elsewhere);
 - (b) housing in accommodation centres;
 - (c) housing in private houses, flats or hotels is the type of housing that may typically be granted in emergency situations, when places are not available in accommodation centres or there are only few applicants in a specific area;
 - (d) this subparagraph provides for the situation when applicants are made independent with reference to their housing, by the grant of a financial allowance or vouchers enabling them to seek their own place.

- (2) This paragraph lays down some specific requirements of any housing for applicants for asylum: access to emergency health and psychological care and health care that cannot be postponed; protection of family life (family members must be kept together as far as possible) and privacy, availability of means of communication with the outside world (i.e. at least the concrete possibility to communicate with relatives, legal advisers, UNHCR and relevant NGOs representatives); and protection from sexual assault within the premises referred to in paragraphs 1(a) and 1(b) (separation between men and women who do not belong to the same family).
- (3) According to this paragraph children are to be lodged with their parents or with the adult family member responsible for them by law or by custom. The same should apply where the adult family member responsible for them was living in the country before the minor's arrival. The adult concerned does not have to be an applicant himself. Minors should be allowed to stay with the adult concerned for the duration of their stay in the Member State in which the application was lodged or is being examined. This rule may be disregarded only in exceptional circumstances (e.g. sudden mass influx of applicants for asylum), for a brief period of time.
- (4) As transfers of applicants from one facility to another may be distressful for applicants, a transfer should be resorted to only when necessary in relation to the examination of the application or for security reasons. In these cases, if the asylum procedure is to function properly, applicants must be given the actual opportunity to inform their legal advisers of the transfer and of their new place of accommodation.
- (5) The specific needs of applicants for asylum and their accompanying family members require persons working in the accommodation centres to be specifically trained or have a specific background. As applicants themselves or their family who are still in the country of origin may be the target of retaliatory measures, the persons working with them must be bound by the confidentiality duty.
- (6) It is in the interest of the authorities and of the organisations running the centres as well of the applicants that relationships within these centres are as harmonious as possible. It is suggested, therefore, as an important means of ensuring that relationships remain harmonious and so that applicants retain some responsibility for their own well-being, that applicants may be involved in managing the material resources and non-material aspects of life in the centre through a representative advisory board or council. Member States, for the same purpose, should give them joint responsibility wherever possible.
- (7) Applicants for asylum need to be in contact with their legal advisers or counsellors in order to have the full possibility to give their contribution to examination of their applications. These advisers should, therefore, have access to all housing facilities where applicants are accommodated. In addition, the United Nations High Commissioner for Refugees and the relevant non-governmental organisations have a specific interest in having access to all housing facilities. This principle can be restricted only in case the security of the facilities or of the applicants is endangered. As Member States may decide to disperse applicants on the national territory, it must be ensured that the areas where applicants are required to stay are actually accessible to the mentioned persons and organisations. It is an implicit minimum requirement that the housing provided should be in such areas.

- (8) This paragraph concerns housing for applicants for asylum who make their requests at airports or seaports or at border posts and go through a “border” procedure. When they are required to wait for 12 hours or more for a decision on their right to enter the territory of Member States, they must be granted housing in the premises specifically set up for this purpose. This rule may be disregarded only in exceptional circumstances (e.g. sudden mass influx of applicants for asylum), for a brief period of time.

Article 17

This Article concerns the total amount of the allowances or vouchers to cover material reception conditions of applicants for asylum. It does not introduce additional allowances for applicants for asylum.

- (1) To meet the aims of this proposal, it is necessary to ensure in all Member States an equivalent level of support (financial, in vouchers, in kind) for the material reception conditions available for applicants for asylum (in relation to housing, food, clothing, daily expenses). As it was not possible to identify an objective parameter indicating the minimum value of such support this paragraph introduces a general clause meant to exclude that the level of support in any Member State can go below what is necessary to avoid that applicants and their accompanying family members fall into poverty. The content of this general clause will be outlined by each Member State in relation to its welfare system and the living costs on its national territory.

Experience in this field has demonstrated that applicants for asylum who are allowed to stay with relatives or friends and who are in situations that would entitle them to obtain all the allowances mentioned in the proposal, may become an heavy burden on the persons accommodating them if they cannot contribute to the expenses connected with their accommodation. Accordingly, the second subparagraph provides that Member States may grant applicants in this situation 50% of the financial amount referred to in the first subparagraph.

- (2) The allowance for daily expenses may be excluded when applicants for asylum are in detention as, in this situation, it may be not necessary in relation to the aim of ensuring the well being of the applicants and their accompanying family members.

Article 18

This Article is about an independent office which can hear complaints and settle disputes concerning the requirements of accommodation set out in Articles 15, 16 and 17. The thinking behind this is that provision for formal review of complaints concerning the requirements of accommodation is unlikely to be always effective or necessary and that it is important to ensure harmonious relations within the centres and provide for a remedy in the event of abuse. Applicants should have the practical possibility of reporting abuses in the centres without disclosing their names to the management of the centres. The existence of this office does not exclude the possibility, for applicants and their accompanying family members, to take proceedings before a court, at least when their fundamental rights might have been infringed.

Article 19

This Article concerns the financial contribution applicants for asylum may be asked to provide if they are provided with material reception conditions.

- (1) This paragraph allows Member States to require applicants who can afford it to contribute to the cost of their material reception conditions. The purpose is to meet the Council's concern regarding the requirement of "inadequate" resources of the applicants for asylum. In any case Member States should ensure that applicants for asylum have the possibility of being housed as even applicants with sufficient financial means might find it impossible to find suitable housing. Decisions on applicants' contribution should be taken individually, objectively and impartially and reasons must be given if they are negative in order to make possible their review as accurate as possible.
- (2) In conformity with the Charter of fundamental rights (Article 47) and in line with the case law of the Court of Justice, this paragraph ensures that the decisions taken according to paragraph 1 can be reviewed by a judicial body (including an administrative judicial body such as the *Conseil d'Etat* in France) at least in the last instance.

Chapter IV: Health and psychological care

Article 20

- (1) This paragraph sets the standards for health and psychological care during regular and appeal procedures. The options available in this field included the possibility of granting applicants for asylum the same level of care as nationals throughout the procedure or of granting different levels of care according to a variety of factors. The proposal suggests that the level of health and psychological care that applicants and their accompanying family members should be provided with, as a minimum standard, should be primary health care, psychological care and health care that cannot be postponed. Primary health care is care provided by the general practitioner and excludes specialist care that should be granted only when it cannot be postponed (dental care should be considered under this provision). The assessment of care that cannot be postponed should be done by the doctor together with the authority that will pay for it. This care should be provided depending on the different procedural situations listed in the paragraph.
- (2) This paragraph introduces a rule for the specific protection of the applicants and their accompanying family members who are pregnant women, minors or mentally ill persons, disabled or victims of rape or other forms of gender related violence.
- (3) This paragraph is about health care that prevents aggravation of existing illness. This paragraph requires Member States to introduce or retain provisions concerning the access of applicants and their accompanying family members to this kind of care.
- (4) In cases mentioned in paragraph 1 Member States may require applicants who can afford to do so to contribute to the expense of their health and psychological care or to cover it. Decisions to provide health and psychological care not free of charge shall be taken individually, objectively and impartially and shall be motivated.

- (5) Member States shall ensure that applicants may apply for a review of the decisions referred to in paragraph 4 that, at least in the last instance, must be from a judicial body (including an administrative judicial body such as the *Conseil d'Etat* in France). Member States shall ensure that they have access to legal assistance too.

Article 21

- (1) Emergency health and psychological care and health care that cannot be postponed is currently given to all applicants for asylum in all Member States. This paragraph confirms this practice with reference to admissibility and accelerated procedures and during the examination of an application within the context of a procedure to decide on the applicants' right to legally enter the territory of a Member State, starting from the time when an application for asylum is made. When a third country national or stateless person cannot be considered anymore an asylum seeker (e.g. when he has received a final negative decision on his application), the issue of his health care is governed by the relevant Community or National rules, in relation to his legal situation (beneficiary of other forms of protection, illegal migrant, etc.).
- (2) This paragraph introduces a rule for the specific protection of the applicants and their accompanying family members who are pregnant women, minors or mentally ill persons, disabled or victims of rape or other forms of gender related violence. Their special requirements must be met during the procedures mentioned in paragraph 1.
- (3) This paragraph is about health care that prevents aggravation of existing illness. This paragraph requires Member States to introduce or retain provisions concerning the access of applicants and their accompanying family members to this kind of care. In observance of the principle that the living conditions of applicants for asylum should in all cases be dignified, but they should be improved when applications are considered admissible and not manifestly unfounded, the provisions laid down in pursuant to this paragraph may be different from the provisions laid down in accordance with Article 20, paragraph 3.
- (4) According to this paragraph, when the time limit for a decision in admissibility or accelerated procedures expires without a decision having been taken, Member States are to ensure that applicants and their accompanying family members have access to primary health care and to health care that cannot be postponed, that is the health care that is granted during regular procedure. This provision applies to applicants that are waiting for a decision in accordance with the Dublin Convention.
- (5) This paragraph introduces the same rule as the one laid down in paragraph 4 when the deadline for a decision on an appeal against a negative decision in admissibility and accelerated procedures has expired and a decision has not yet been taken.
- (6) This paragraph concerns the financial cost of emergency care. It responds to the Council conclusion regarding asylum applicants' lack of "sufficient means". Member States are allowed to require applicants who can afford it to contribute to the expense of their health and psychological care or to cover it. Decisions on applicants' contributions must be taken individually, objectively and impartially and reasons must be given for negative decisions in order to make their possible their review as accurate as possible.

- (7) This paragraph ensures that the negative decisions taken according to paragraph 6 can be reviewed, at least in the last instance, by a judicial body (including an administrative judicial body such as the *Conseil d'Etat* in France) and that applicants have access to legal assistance.

Chapter V: Reduction or withdrawal of reception conditions

Article 22

This Article deals with causes of reduction or withdrawal of reception conditions following negative behaviour of the applicants. It applies only if Member States wish to enforce it.

- (1) This paragraph introduces a list that has to be considered exhaustive, of causes of reduction or withdrawal of reception conditions.
- (a) The purpose of this subparagraph is to penalise negative behaviour by the applicants that show their lack of interest in the asylum procedure. Applicants who disappear without reasonable cause or do not comply with reporting duties or with requests to provide information, or fail to appear for personal interviews concerning the asylum procedure for at least 30 working days, clearly show that they do not intend to cooperate with the decision-making authority or intend to hide themselves without reasonable cause. The deadline of 30 working days is the same laid down by paragraph 2 of Article 16 of the proposal for a Directive on minimum standards on procedures in Member States for granting or withdrawing refugee status, according to which 'If an applicant for asylum has disappeared, the determining authority may discontinue the examination of the application if, without reasonable cause, the applicant has not complied with reporting duties or requests to provide information or to appear for an personal interview for at least 30 working days'. This provision is not meant to cover the lack of identity documents as the lack of identity documents cannot in itself be interpreted as negative behaviour by the applicants for asylum.
- (b) Applicants who withdraw their applications are no longer applicants within the meaning of this Directive and are therefore no longer entitled to its benefits. To withdraw an application is considered legitimate behaviour but shows that the application was lodged without sufficient attention.
- (c) The purpose of this subparagraph is to take into account the negative behaviour by the applicants who have concealed their financial resources and therefore, unduly benefited from the material reception conditions.
- (2) This paragraph introduces limited sanctions in the event of inappropriate behaviour in places where applicants are housed.
- (3) This paragraph introduces a limited sanction for adults who prevent minors under their care from attending school or individual classes in ordinary school programmes. This rule is designed as an instrument to promote the full respect of the right of the child to attend public schools.

- (4) These grounds for reduction or withdrawal must be based solely on the personal conduct of the person concerned (applicants and their accompanying family members, different from the person concerned, uphold their reception conditions). Decisions must be based on the principle of proportionality (as the consequences of a negative decision are very serious in the life of the applicant for asylum, the behaviour that is being penalised has to be particularly relevant). Decisions mentioned in paragraphs 1, 2 and 3 should be taken individually, objectively and impartially and reasons must be given if they include reduction or withdrawal of reception conditions in order to make their review as accurate as possible.
- (5) In conformity with the Charter of fundamental rights (Article 47) and in line with the case law of the Court of Justice this paragraph ensures that the decisions taken according to paragraph 1, 2 and 3 can be reviewed from a judicial body (including an administrative judicial body such as the *Conseil d'Etat* in France), at least in the last instance. As withdrawal, reduction or denial of reception conditions is a very relevant decision in relation to the applicants' quality of life during the procedure, it seems appropriate and in line with the Council Conclusions that applicants are given, in these cases, access to legal assistance that should be free of charge when they cannot afford it.
- (6) This paragraph excludes the enforcement of the rules in this Article relating to emergency health and psychological care and health care that cannot be postponed, that can never be reduced or withdrawn.

Chapter VI: Provisions for persons with special needs

Article 23

- (1) This Article introduces a general clause in favour of persons with special needs. Without being exhaustive (any other category of persons with special needs should be taken into account: e.g. transgender persons that prove to be very difficult to accommodate with men or with women while often needing specific psychological support) it lists the groups that in the practices of Member States and in the relevant studies have been regarded as having special needs in relation to accommodation and psychological and health care. It was felt necessary to specify for single women, that they usually have "special needs" if they come from countries where they are subject to substantial legal gender-related discrimination, as it cannot be assumed that a single woman, *per se*, has special needs that have to be met.
- (2) The special needs of individuals belonging to these groups must be assessed on an individual basis.

Article 24

This Article concerns the specific needs of minors.

- (1) According to Article 3 of the United Nations Convention on the Right of the Child of 1989, "In all actions concerning children ... the best interests of the child shall be a primary consideration". This mandatory principle is restated in this paragraph so that it can be used as a tool for the interpretation of all the provisions of this proposal for a Directive that concern minors.

- (2) Minors are often the victims of many specific forms of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or suffered from armed conflicts. Member States are required to provide minors that have been victimised with rehabilitation services, appropriate mental health care and qualified psycho-social counselling, when it is necessary.

Article 25

This Article concerns the specific needs of unaccompanied minors.

- (1) Member States are required to provide as soon as possible for the necessary representation of the unaccompanied minor applying for asylum to ensure that the minor's needs are duly met in the enforcement of the provisions of this Directive. Finally, in view of the minor's vulnerability and potential for abuse, the principle of regular assessments by the appropriate welfare authorities of the actual situation of the minor is provided for.
- (2) This paragraph contains rules to be understood as an explicit enforcement of the principle of safeguarding the best interests of the child in relation to reception conditions. Member States are required to provide unaccompanied minors who lodge an application for asylum with one of the listed forms of housing from the moment they are admitted to the territory to the moment they have to leave the country in which the application was lodged or in which the application is being examined. In addition, it is provided that siblings must be kept together (this rule may be disregarded only in exceptional circumstances as the sudden mass influx of applicants for asylum, for a brief period of time) and changes of their residence should be kept to a minimum.
- (3) This paragraph concerns tracing activities and the principle of confidentiality applicable to them, as far as they are in the best interest of the child.
- (4) To properly meet the needs of unaccompanied minors during asylum procedures, Member States must ensure that staff working with unaccompanied minors receive appropriate training on their needs.

Article 26

This Article is about victims of torture and organised violence.

According to the conclusions of the Council meeting of 30 November and 1 December 2000 regarding reception conditions: "The host Member State should provide special medical help for asylum seekers who have been the victims of torture, rape or other serious acts of violence". This paragraph provides for special medical help and adds to the mentioned categories the victims of organised violence and of gender related violence, to ensure that people traumatised by exposure to ethnic cleansing are covered by the provision.

Chapter VII: Actions to improve the efficiency of the reception system

Article 27

This Article concerns cooperation among Member States, and between them and the Commission.

- (1) This paragraph requires Member States to appoint a national contact point and take the appropriate measures to establish direct cooperation, including the exchange of visits, and an exchange of information between the competent authorities. This kind of activities can be easily funded under the European Refugee Fund.
- (2) This paragraph concerns the information and data to be transmitted to the Commission in order to allow it to perform its duties in relation to the enforcement of the Directive and its possible future improvements.

Article 28

This Article, taking into account the Council's conclusions concerning NGOs suggests a more comprehensive approach to include coordination between the competent authorities and all other actors involved at national or local level in the reception of applicants for asylum.

Article 29

The general attitude of public opinion towards applicants for asylum and the political and social perception of asylum-related issues by public opinion in general and by local communities in particular, play a major role in the quality of life that can be enjoyed by applicants for asylum.

This Article requires the Member States to introduce provisions to ensure that appropriate measures are taken to promote harmonious relationships between local communities and accommodation centres located in them with a view to preventing acts of racism, sex discrimination and xenophobia against applicants for asylum.

Article 30

This Article is about guidance, monitoring and control of the reception system by Member States. To ensure that applicants for asylum are provided with comparable living conditions in all Member States and to limit the secondary movements of applicants resulting from the variety of conditions for their reception it is essential that Member States establish a system for permanent guidance, monitoring and control of levels of reception conditions for applicants for asylum.

The first paragraph requires Member States to lay down rules on the guidance, monitoring and control of the level of reception conditions in accordance with this Directive to ensure certain aims. No model is suggested for the system of guidance, monitoring and internal control of the adequate level of the reception conditions. Except for the activities mentioned in the second paragraph, it is for the Member States to choose how they comply with the aims set here.

The second paragraph provides the legal basis to establish the office provided for by Article 18 (in any case Member States are free to decide that an existent independent office, such as an *Ombudsman*, should be in charge of the review provided for by Article 18). In addition it specifies some of the activities Member States should put in place in order to ensure the effectiveness of the reception system.

Article 31

This Article is about staff and material resources.

- (1) This paragraph is based on the consideration that applicants for asylum are a group of people with a specific background and needs. It must be ensured that authorities and other organisations implementing this Directive have received the necessary basic training with respects to their needs.
- (2) This paragraph requires Member States to allocate the necessary resources in connection with the national provisions enacted to implement this Directive to ensure that these provisions can be enforced.

Chapter VIII: Final provisions

Article 32

A standard non-discrimination provision is introduced. The wording is based on Article 3 of the Geneva Convention, Article 13 of the EC Treaty and Article 21 of the Charter of Fundamental Rights of the European Union. This provision is without prejudice of obligations descending from international instruments such as the European Convention on Human Rights and Fundamental Freedoms (Article 14).

Article 33

This Article is about reports. The Commission is instructed to draw up a report on the Member States' application of the Directive, in accordance with its role of enforcing provisions adopted by the institutions under the Treaty. It is also given the task of proposing possible amendments to the Directive.

A first report must be submitted no later than two years after the deadline for transposition of the Directive in the Member States. The Member States should send the Commission all the information that is appropriate for drawing up this report, including the statistical data provided for by paragraph 2 of Article 27 and the results of the actions provided for by Article 29.

After presenting the report the Commission must draw up a report on the application of the Directive at least every five years.

Article 34

This Article is a standard provision in Community law, providing for effective, proportionate and dissuasive penalties. It leaves Member States with the discretionary power to lay down penalties for infringements of the national provisions adopted pursuant to this Directive.

Article 35

The Member States are required to transpose the Directive by 31 December 2002.

Article 36

This Article lays down the date when the Directive enters into force.

Article 37

The Directive is addressed only to the Member States.

Proposal for a

COUNCIL DIRECTIVE

**laying down minimum standards on the reception of applicants for asylum
in Member States**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

- (1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, 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* and ensuring that nobody is sent back to persecution.
- (3) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of applicants for asylum.

¹ OJ C
² OJ C
³ OJ C
⁴ OJ C

- (4) 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 right to asylum of applicants for asylum and their accompanying family members, and to promote the application of Articles 1 and 18 of the Charter of Fundamental Rights of the European Union.
- (5) In accordance with Article 2 and Article 3(2) of the Treaty, this Directive, as regards its objectives and contents, aims to eliminate inequalities, and to promote equality, between men and women.
- (6) Minimum standards for the reception of applicants for asylum that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.
- (7) The harmonisation of conditions for the reception of applicants for asylum should help to limit the secondary movements of applicants for asylum influenced by the variety of conditions for their reception.
- (8) The living conditions of applicants for asylum should in all cases be dignified, but they should be improved when applications are considered admissible and not manifestly unfounded.
- (9) The number and the quality of reception conditions should be increased in relation to long lasting procedures in so far the length of the procedure is not caused by negative behaviour by applicants for asylum.
- (10) Reception of groups with special needs should be specifically designed to meet those needs.
- (11) Reception of applicants who are in detention should be specifically designed to meet their needs in that situation.
- (12) In order to ensure compliance with the minimum procedural guarantees consisting in the opportunity to contact organisations or persons that provide legal assistance, there should be effective access to such organisations and persons wherever housing is given.
- (13) Legal advisers or counsellors for applicants for asylum, the United Nations High Commissioner for Refugees and the relevant non-governmental organisations should have access to all places where applicants for asylum are housed.
- (14) The possibility of abuse of the reception system should be restricted by laying down causes for the reduction or withdrawal of reception conditions for applicants for asylum.
- (15) The efficiency of national reception systems and co-operation among Member States in the field of reception of applicants for asylum should be secured.
- (16) The political and social perception of asylum-related issues by public opinion in general and by local communities in particular plays a major role in the quality of life that can be enjoyed by applicants for asylum. Harmonious relationships between those communities and accommodation centres should therefore be promoted.

- (17) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for third country nationals and stateless persons who ask for international protection from a Member State.
- (18) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that emanating from the Geneva Convention for third country nationals or stateless persons who are found not to be refugees.
- (19) The Member States should provide for penalties in the event of infringement of the national provisions adopted pursuant to this Directive.
- (20) The implementation of this Directive should be evaluated at regular intervals.
- (21) In accordance with the principles of subsidiarity and proportionality set out in Article 5 of the Treaty, the objective of the proposed action, namely to establish minimum standards on the reception of applicants for asylum in Member States, cannot be attained by the Member States and, by reason of the scale and effects of the proposed action can therefore only be achieved by the Community. This Directive confines itself to the minimum required to achieve that objective and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER, DEFINITIONS AND SCOPE

Article 1

Subject matter

The purpose of this Directive is to establish minimum standards on the reception of applicants for asylum in Member States.

Article 2

Definitions

For the purposes of this Directive:

- (a) “*Geneva Convention*” means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as supplemented by the New York Protocol of 31 January 1967;
- (b) “*Application for asylum*” means a request by a third country national or a stateless person for international protection from a Member State which can be understood to be on the grounds that that person is a refugee within the meaning of Article 1(A) of 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;

- (c) “*Applicant*” or “*applicant for asylum*” means a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken. A final decision is a decision in respect of which all possible remedies under Council Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status]⁵ have been exhausted;
- (d) “*Family members*” means, in so far as the family already existed in the country of origin, the following members of the applicant’s family:
 - (i) the spouse or unmarried partner in a stable relationship, if the legislation of the Member State where the application has been lodged or is being examined treats unmarried couples in the same way as married couples;
 - (ii) the children of the couple referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and without distinction according to whether they were born in or out of wedlock or adopted;
 - (iii) other members of the family if they are dependent on the applicant or have undergone particularly traumatic experiences or require special medical treatment;
- (e) “*Accompanying family members*” means the family members of the applicant who are present in the same Member State in relation to the application for asylum;
- (f) “*Refugee*” means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;
- (g) “*Refugee status*” means 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;
- (h) “*Regular procedure*”, “*accelerated procedure*”, “*admissibility procedure*” and “*appeal procedure*” mean the procedures provided for by Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status];
- (i) “*Unaccompanied minors*” means persons below the age of eighteen who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of Member States;
- (j) “*Reception conditions*” means the full set of measures that Member States grant to applicants for asylum in accordance with this Directive;
- (k) “*Material reception conditions*” mean the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;
- (l) “*Detention*” means confinement of an applicant for asylum by a Member State within a restricted area, such as prisons, detention centres or airport transit zones, where the applicant’s freedom of movement is substantially curtailed;

⁵ COM(2000) 578 final.

- (m) “*Accommodation centre*” means any place used only for collective housing of applicants for asylum and their accompanying family members;
- (n) “*Detention centre*” means any place used for housing, in a detention situation, applicants for asylum and their accompanying family members; it includes accommodation centres where the applicants’ freedom of movement is restricted to the centres.

Article 3

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or on the territory of a Member State and to their accompanying family members.

It shall also apply where examination of an application for asylum takes place within the context of a procedure to decide on the right of the applicant to enter legally the territory of a Member State.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.
3. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for third country nationals or stateless persons who are found not to be refugees.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants for asylum in so far as they are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform applicants for asylum as well as adult accompanying family members, immediately after they have lodged their application, of benefits to which they are entitled and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information about organisations or persons that provide specific legal assistance and organisations that might be able to help them in relation to the available reception conditions, including health care to which they are entitled.

2. Member States shall ensure that each adult accompanying family member of an applicant is informed in private of the right to make a separate application for asylum
3. 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.
4. Applicants shall be informed of language courses and voluntary return schemes when they are available for them.

Article 6

Documentation

1. Member States shall ensure that, immediately after an application is lodged, the applicant and each adult accompanying family member is provided with a document issued in their own name certifying their status as an applicant for asylum or as an adult family member accompanying an applicant for asylum. If the holder is free to move within all or a part of the national territory, the document shall also certify that the holder is legally in the territory of the Member State in which the application has been lodged or is being examined. Information on the holder's entitlement to health and psychological care and position in relation to the labour market may be included in the document.
2. Member States shall ensure that unaccompanied minors are provided with a document equivalent to that referred to in paragraph 1.
3. Member States shall ensure that the documents referred to in paragraphs 1 and 2 are valid or renewed until a decision on the application for asylum is notified. Member States shall provide for the possibility of renewing the validity of the document for the duration of the appeal procedure if the applicant lodges an appeal or an automatic review takes place that suspends the negative decision or if the applicant obtains a provisional ruling granting suspensive effect.
4. Member States may exclude the application of this Article during the examination of an application within the context of a procedure to decide on the right of the applicant to legally enter the territory of a Member State.
5. Member States may provide applicants for asylum with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7

Freedom of movement

1. Member States shall grant applicants and their accompanying family members individual freedom of movement within their territory or in a specific area of it under the conditions set out in this Article.

2. Member States shall not hold applicants for asylum in detention for the sole reason that their applications for asylum need to be examined. However, Member States may hold an applicant for asylum in detention for the purpose of taking a decision in the cases described in Article [...] of Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status].
3. Member States may only limit the freedom of movement of applicants and their accompanying family members to a specific area of their national territory where it is necessary for implementing this Directive or in order to enable applications for asylum to be processed swiftly.
4. In cases referred to in paragraph 3 Member States shall provide for the possibility for applicants for asylum and their adult accompanying family members to receive temporary permission to leave the area of the territory in which they live for relevant personal, health and family reasons or for reasons relating to the examination of their application. Decisions on requests for temporary permission to leave shall be taken individually, objectively and impartially and reasons shall be given if they are negative.
5. Member States shall ensure that applicants have the right to bring proceedings before a court against the limitations on freedom of movement imposed in accordance with paragraph 3 and the decisions provided for by paragraph 4 and that they have access to legal assistance which is free of charge when applicants cannot afford it.
6. Member States may require applicants who are free to choose their place of residence to inform the relevant authorities of their current address and notify any change of address to those authorities as soon as possible.

Article 8

Material reception conditions

Member States shall ensure that applicants and their accompanying family members are provided with material reception conditions, in accordance with the provisions of Chapter III.

Article 9

Families

Member States shall take appropriate measures to maintain the unity of the family as present within their territory, if applicants and their accompanying family members are provided with housing by that Member State and applicants so request.

Article 10

Health Care

Member States shall ensure that applicants for asylum and their accompanying family members have access to health and psychological care, in accordance with the provisions of Chapter IV.

Article 11

Medical screening

Member States may require medical screening for applicants. Member States shall ensure that the competent bodies that carry out the screening use methods that are safe and respect human dignity.

Article 12

Schooling and education of minors

1. Member States shall ensure that minor children of applicants for asylum and applicants for asylum who are minors have access to the education system under the same conditions as nationals for so long as a deportation order against them or their parents cannot actually be enforced.

The Member States may limit such access to the state education system only.

Minors shall be younger than the age of legal majority in the Member State in which the application has been lodged or is being examined. Member States shall not refuse continued secondary education only by reason of the person concerned having reached the age of majority.

2. Access to the education system shall not be postponed for more than 65 working days after the application has been lodged by the minor or the minor's parents.
3. Member States shall ensure that minors referred to in paragraph 1 are offered language courses if a lack of knowledge of the language of that Member State makes normal schooling impossible.

Article 13

Employment

1. Member States shall not forbid applicants and their accompanying family members to have access to the labour market for more than six months after their application has been lodged. Member States shall lay down the conditions for the access to the labour market after such a period.
2. Access to the labour market shall not be withdrawn for the sole reason that an application has been rejected if an appeal with suspensive effect has been lodged or a decision has been obtained allowing the applicant to remain in the Member State in which the application has been lodged or is being examined for the time an appeal against a negative decision is examined.
3. Access to the labour market may be excluded when negative behaviour of the applicant is ascertained, in accordance with Article 22.

Article 14

Vocational Training

1. Member States shall not forbid applicants and their accompanying family members to have access to vocational training for more than six months after their application has been lodged. Member States shall lay down the conditions for the access to vocational training after such a period.
2. Access to vocational training shall not be withdrawn for the sole reason that an application has been rejected if an appeal with suspensive effect has been lodged or a decision has been obtained allowing the applicant to remain in the Member State in which the application has been lodged or is being examined for the time an appeal against a negative decision is examined.
3. Access to vocational training may be excluded when negative behaviour of the applicant is ascertained, in accordance with Article 22.

CHAPTER III

MATERIAL RECEPTION CONDITIONS

Article 15

General rules

1. Member States shall ensure that material reception conditions are available to applicants and their accompanying family members:
 - (a) during the regular, admissibility and accelerated procedures up to the moment a negative first instance decision is notified;
 - (b) during the appeal procedures, when an appeal against a negative decision has suspensive effect, up to the moment a negative decision on the appeal is notified;
 - (c) when they have obtained a decision allowing them to remain at the border or on the territory of the Member State in which the application has been lodged or is being examined for the time their appeal against a negative decision is examined.
2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health and the well being of applicants and their accompanying family members as well as the protection of their fundamental rights.

Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 23, as well as in relation to the situation of persons who are in detention.

Member States shall ensure that this standard is determined with regard to the length of the procedure.

3. Material reception conditions may be provided in kind, or in the form of financial allowances or of vouchers.
4. Member States may reduce or withdraw material reception conditions three months after applicants and their accompanying family members have been allowed access to the labour market. In these cases, as far as they are not financially independent, Member States shall grant them a food allowance and access to basic social care.

Article 16

Housing

1. Housing shall be granted in one or a combination of the following forms:
 - (a) in premises set up for the specific purpose of housing applicants and their accompanying family members during the examination of an application within the context of a procedure to decide on the right of the applicants to legally enter the territory of a Member State;
 - (b) in accommodation centres;
 - (c) in private houses, flats or hotels;
 - (d) grant of a financial allowance or vouchers sufficient to enable applicants to find independent housing.
2. Member States shall ensure to applicants and their accompanying family members provided with the housing referred to in paragraphs 1(a), (b) and (c):
 - (a) access to emergency health and psychological care and to health care that cannot be postponed;
 - (b) protection of their family life and privacy;
 - (c) the possibility of communicating with the outside world, including at least relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and the relevant non-governmental organisations (NGOs).

Member States shall ensure that applicants and their accompanying family members are protected from sexual assault within the premises referred to in paragraphs 1(a) and (b).

3. Member States shall ensure 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. Minor children of applicants or applicants who are minors, who have adult family members responsible for them already living in the Member State in which the application has been lodged or is being examined shall be allowed to stay with their family members, for the duration of their stay in the country.
4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary in relation to the examination of the application or for security reasons. Member States shall provide for the possibility for applicants to inform their legal advisers of the transfer and of their new place of housing.

5. Persons working in accommodation centres shall be specifically trained or have a specific background in relation to the characteristics and the specific needs of applicants for asylum and their accompanying family members. They shall be bound by the confidentiality principle.
6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through a representative advisory board or council which should be gender balanced.
7. Member States shall ensure that legal advisers or counsellors of applicants for asylum and the representatives of the UNHCR and the relevant NGOs have access to all housing facilities. Limits on such access may only be imposed on grounds relating to the security of the facilities and of the applicants.
8. The housing referred to in paragraph 1(a) shall be available for applicants and their accompanying family members when they must wait for 12 hours or more for a decision on their right to enter the territory.

Article 17

Total amount of allowances or vouchers

1. Member States shall ensure that the total amount of the allowances or vouchers to cover material reception conditions is sufficient to avoid applicants and their accompanying family members falling into poverty.

In cases where applicants, being entitled to those allowances or vouchers, are allowed to stay with relatives or friends, Member States may nonetheless grant them 50% of the allowances or vouchers to which they are entitled pursuant to national law in application of this Directive.

2. Member States may decide not to pay an allowance for daily expenses, when applicants for asylum are in detention.

Article 18

Complaints and disputes concerning the material reception conditions

Member States shall ensure that applicants and their accompanying family members have access to an independent office that can hear complaints and resolve disputes concerning the material reception conditions provided for by Articles 15, 16 and 17.

Article 19

Financial contribution

1. Member States may require applicants who can afford to do so to contribute to the cost of their material reception conditions or to cover it. Decisions to provide material reception conditions not free of charge shall be taken individually, objectively and impartially and reasons shall be given.

2. Member States shall ensure that applicants have the right to bring proceedings before a court against the decisions referred to in paragraph 1 and that they have access to legal assistance.

CHAPTER IV

HEALTH AND PSYCHOLOGICAL CARE

Article 20

Health and psychological care during regular procedures

1. Member States shall ensure that applicants and their accompanying family members have access to primary health care provided by a general practitioner, psychological care and health care that cannot be postponed :
 - (a) during the regular procedure up to the moment a negative first instance decision is notified;
 - (b) during the appeal procedures, when an appeal against a negative decision in a regular procedure has suspensive effect, up to the moment a negative decision on the appeal is notified;
 - (c) when applicants and their accompanying family members have obtained a decision allowing them to remain at the border or on the territory of the Member State in which the application has been lodged or is being examined for the time their appeal against a negative decision in a regular procedure is examined.
2. In the circumstances referred to in paragraph 1, Member States shall meet the special needs of applicants and their accompanying family members who are pregnant women, minors, mentally ill persons, disabled persons or victims of rape or other forms of gender related violence.
3. In the circumstances referred to in paragraph 1, Member States shall lay down the conditions of access of applicants and their accompanying family members to health care that prevents aggravation of existing illness.
4. In the circumstances referred to in paragraph 1 Member States may require applicants who can afford to do so to contribute to the cost of their health and psychological care or to cover it. Decisions to provide health and psychological care not free of charge shall be taken individually, objectively and impartially and reasons shall be given.
5. Member States shall ensure that applicants have the right to bring proceedings before a court against the decisions referred to in paragraph 4 and that they have access to legal assistance.

Article 21

Health and psychological care during other procedures

1. Member States shall ensure that applicants and their accompanying family members have access to emergency health and psychological care and health care that cannot be postponed during admissibility and accelerated procedures, and during the examination of their application within the context of a procedure to decide on their right to legally enter the territory of a Member State.
2. In the circumstances referred to in paragraph 1 Member States shall meet the special needs of the applicants and their accompanying family members who are pregnant women, minors, mentally ill persons, disabled persons or victims of rape or other forms of gender related violence.
3. In the circumstances referred to in paragraph 1, Member States shall lay down the conditions of access of applicants and their accompanying family members to health care that prevents aggravation of existing illness.
4. Member States shall ensure that if a decision to dismiss the application as inadmissible or manifestly unfounded has not been taken 65 working days after an application is lodged, the applicant and accompanying family members have the same access to health care as during the regular procedure.
5. Member States shall ensure that if a decision on the appeal has not yet been taken 65 working days after notice of appeal is given in admissibility and accelerated procedures, the applicant and accompanying family members have the same access to health care as during the regular procedure.
6. Member States may require applicants who can afford to do so to contribute to the cost of their health and psychological care or to cover it. Decisions to provide health and psychological care not free of charge shall be taken individually, objectively and impartially and reasons shall be given.
7. Member States shall ensure that applicants have the right to bring proceedings before a court against the decisions referred to in paragraph 6 and that they have access to legal assistance.

CHAPTER V

REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 22

Reduction or withdrawal of reception conditions following negative behaviour

1. Member States may reduce or withdraw the reception conditions in the following cases:
 - (a) if an applicant for asylum has disappeared or, without reasonable cause, has not complied with reporting duties or requests to provide information or to appear for personal interviews concerning the asylum procedure for at least 30 working days. When the missing applicant is traced or voluntarily reports to the relevant authority after that period, a reasoned decision based on the reasons for the disappearance shall be taken on the reinstatement of the grant of some or all of the reception conditions. Reception conditions depending on the length of the procedure shall not be granted.
 - (b) if an applicant withdraws the application;
 - (c) if an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions;
 - (d) if an applicant is regarded as a threat to national security or there are serious grounds for believing that the applicant has committed a war crime or a crime against humanity or if, during the examination of the asylum application, there are serious and manifest reasons for considering that grounds of Article 1 (F) of the Geneva Convention may apply with respect to the applicant.
2. Member States may reduce or withdraw material reception conditions in the following cases:
 - (a) if an applicant or an accompanying family member has repeatedly behaved in a violent or threatening manner towards persons performing duties in the running of an accommodation centre or to other persons staying at the centres;
 - (b) if an applicant or an accompanying family member does not comply with a decision requiring them to stay at a place determined by the relevant authority.
3. Member States may reduce material reception conditions when an applicant prevents minors under that applicant's care from attending school or single classes in ordinary school programmes.
4. Decisions for reduction or withdrawal of reception conditions referred to in paragraphs 1, 2 and 3 shall be based solely on the personal conduct of the person concerned and on the principle of proportionality. Member States shall ensure that such decisions are taken individually, objectively and impartially and reasons shall be given.
5. Member States shall ensure that applicants have the right to bring proceedings before a court against decisions provided for by this Article and that they have access to legal assistance that shall be free of charge when applicants cannot afford it.

6. Emergency health care and health care that cannot be postponed shall not be reduced or withdrawn.

CHAPTER VI

PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

Article 23

General principle

1. Member States shall take into account the specific situation of persons who have special needs as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single women subject, in their country of origin, to substantial legal gender related discrimination, single parents with minor children and victims of sexual abuse or exploitation, in the national legislation implementing the provisions of Chapters III, IV and V relating to material reception conditions, psychological and health care.
2. Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.

Article 24

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.
2. Member States shall ensure access to rehabilitation services to minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflicts. To facilitate recovery and reintegration, appropriate mental health care shall be developed and qualified psycho-social counselling shall be provided when it is needed.

Article 25

Unaccompanied minors

1. Member States shall ensure that, as soon as possible, a guardian for each unaccompanied minor is appointed who shall ensure that the minor's needs are duly met in the implementation of the provisions of this Directive. Regular assessments shall be made by the appropriate welfare authorities.
2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they have to leave the Member State in which the application has been lodged or is being examined, be placed, in the following order of priority

- (a) with adult family members;
- (b) with a foster family;
- (c) in centres specialised in accommodation for minors;
- (d) in other accommodation with a suitable situation for minors.

Siblings shall be kept together. Changes of unaccompanied minors' residence shall be limited to a minimum.

3. If it is in the best interest of the child, Member States shall endeavour to trace the members of the family of unaccompanied minors as soon as possible. In cases where there may be a threat to the life or integrity of a minor or its 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 jeopardising their safety.
4. Those working with unaccompanied minors shall receive appropriate training on their needs.

Article 26

Victims of torture and organised violence

Member States shall ensure that, if necessary, victims of torture, or organised violence, rape, other gender related violence or other serious acts of violence are accommodated in special centres for traumatised persons or have access to special rehabilitation programmes. Special mental health care shall be provided for persons suffering from post-traumatic stress when it is needed.

CHAPTER VII

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 27

Cooperation

1. With a view to the administrative co-operation required to implement this Directive, Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it to the other Member States. Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct co-operation, including the exchange of visits, and an exchange of information between the competent authorities.
2. Member States shall, regularly and as quickly as possible, inform the Commission on the data concerning the number of persons, segregated 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.

Article 28

Coordination

Member States shall ensure co-ordination between the competent authorities and other actors, including NGOs, involved at national or local level in the reception of applicants for asylum in accordance with this Directive.

Article 29

Local communities

Member States shall ensure that appropriate measures are in place to promote harmonious relationships between local communities and the accommodation centres that are located in their territory with a view to preventing acts of racism, sex discrimination and xenophobia against applicants for asylum.

Article 30

Guidance, monitoring and control system

Member States shall provide for rules on the guidance, monitoring and control of the level of reception conditions to ensure:

- (a) comparable standards of reception conditions within the national reception system;
- (b) comparable standards of facilities in different centres;
- (c) adequate training of the relevant staff.

Those rules shall include provisions on the office referred to in Article 18 and on regular inspections and the adoption of guidelines on standards of reception conditions and measures to remedy to possible deficiencies of the reception system.

Article 31

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 and their accompanying family members.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

CHAPTER VIII

FINAL PROVISIONS

Article 32

Non-discrimination

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

Article 33

Reports

By 31 December 2004 at the latest the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up that report, including the statistical data provided for by Article 27(2) and the results of the actions provided for by Article 29, by 30 June 2004 at the latest.

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

Article 34

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 35 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 35

Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

When the Member States adopt 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 reference is to be made.

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

Article 36

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 Communities*.

Article 37

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): JUSTICE AND HOME AFFAIRS

Activity(ies): Asylum and Immigration

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DIRECTIVE ON MINIMUM STANDARDS ON THE RECEPTION OF APPLICANTS FOR ASYLUM IN MEMBER STATES

1. BUDGET LINE(S) + HEADING(S)

A0 7030(meetings)

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): EUR million for commitment

2.2. Period of application:

2001(June)-2006

2.3. Overall multi-annual estimate on expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

EUR million *(to 3rd decimal place)*

	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure *(see point 6.1.2)*

Commitments							
Payments							

Subtotal (a)+(b)							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments	0.029	0.029	0.029	0.029	0.029	0.029	0.175
--------------------------	-------	-------	-------	-------	-------	-------	-------

TOTAL (a)+(b)+(c)							
Commitments	0.029	0.029	0.029	0.029	0.029	0.029	0.175
Payments	0.029	0.029	0.029	0.029	0.029	0.029	0.175

2.4. Compatibility with the financial programming and the financial perspective

Proposal compatible with the existing financial programming

2.5. Financial impact on revenue¹:

No financial implications (involves technical aspects regarding implementation of a measure)

Note: All details and observations pertaining to the method of calculating the effect on revenue should be included in a separate annex.

EUR million (to 1 decimal place)

		Prior to action (Year n-1)	Situation following action					
Budget line	Revenue		Year n	n+1	n+2	n+3	n+4	n+5
	(a) Revenue in absolute terms							
	(b) Change in Revenue	Δ						

(Please state each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line)

¹ For further information see a separate guidance paper.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA participation	Participation applicant countries	Heading Financial Perspective
Comp/ Non-comp	Diff/ Non-diff	YES/ NO	YES/NO	YES/NO	No

4. LEGAL BASIS

Article 63 of the EC Treaty, point 1(b) of first paragraph

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention²

5.1.1. Objectives pursued

The aim of the Directive is to establish minimum standards at Community level for the reception of applicants for asylum in Member States.

The proposal is one of the Community initiatives on asylum related issues for the purpose of achieving a common European asylum system. The November 2000 Communication of the Commission on asylum, states that the need to harmonise reception conditions is tied up with two main objectives (offering asylum-seekers an equivalent level of living conditions throughout the Community and avoiding secondary movement) and that at a second stage it will be necessary to consider whether, if the objective considered have been attained, it is also necessary to embark on further stages of standardisation of national reception

5.1.2. Measures taken in connection with ex ante evaluation

Not applicable

5.1.3. Measures taken following ex post evaluation

Not applicable

5.2. Actions envisaged and arrangements for budget intervention

With respect to this Directive, the Commission intends to establish a Contact Committee.

The reasons to establish this Committee are the following. Firstly, the Committee is to help the Member States implement the minimum standards in a forward-looking and coordinating spirit. Secondly, it is to be the forum for Member States that wish to go jointly beyond the minimum standards at this stage of the harmonisation process. Thirdly, it is to set aside the impediments and create the necessary conditions for achieving the objective set by the European Council in Tampere.

² For further information see a separate guidance paper.

Thus, the Committee could promote further approximation of asylum policy in the future and it could pave the way forward from minimum standards on reception to more similar reception systems if this will be understood to be a necessary or useful step toward a common European asylum system.

In the period before 31 December 2002 the Contact Committee will meet three times a year to prepare transposal of the Directive and henceforth two or three times a year to facilitate consultation between Member States on additional standards, etc.

5.3. Methods of implementation

Not applicable

6. FINANCIAL IMPACT

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Commitments in EUR million (to the 3rd decimal place)

Breakdown	Year N	N + 1	N + 2	N + 3	N + 4	N + 5 and subs. years	Total
Action 1							
Action 2							
Etc.							
TOTAL							

6.1.2. *Technical and administrative assistance, support expenditure and IT expenditure (Commitment appropriations)*

	Year N	N + 1	N + 2	N + 3	N + 4	N + 5 and subs. years	Total
1. Technical and administrative assistance							
(a) Technical assistance offices							
(b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2. Support expenditure							
(a) Studies							
(b) Meetings of experts							
(c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)³

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.).

Commitments in EUR million (to the 3rd decimal place)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
	1	2	3	4=(2X3)
<u>Action 1</u> - Measure 1 - Measure 2 <u>Action 2</u> - Measure 1 - Measure 2 - Measure 3 Etc.				
TOTAL COST				

If necessary explain the method of calculation

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

7.1. Impact on human resources

Types of post	Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
	Number of permanent posts	Number of temporary posts		
Permanent officials or Temporary staff	A B C			<i>If necessary, a fuller description of the tasks may be annexed.</i>
Other human resources				
Total				

³ For further information see a separate guidance paper.

7.2. Overall financial impact of human resources

Type of human resources	Amount EUR	Method of calculation *
Officials		
Temporary staff		
Other human resources (give budget line)		
Total		

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount EUR	Method of calculation
Overall allocation (Title A7)		
A0701 – Missions		
A07030 – Meetings		
A07031 – Compulsory committees ⁽¹⁾		
A07032 – Non-compulsory committees ⁽¹⁾		
A07040 – Conferences		
A0705 – Studies and consultations		
... Other expenditure (state which)		
Information systems (A-5001/A-4300)		
Other expenditure - Part A (state which)		
Total	29 250	3 meetings/year at average cost of EUR 9 750 (15 x EUR 650) per meeting

The amounts are total expenditure for twelve months.

⁽¹⁾ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	EUR 29 250
II.	Duration of action	6 Years
III.	Total cost of action (I x II)	EUR 175 500

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

Not applicable

8.2. Arrangements and schedule for the planned evaluation

Not applicable

9. ANTI-FRAUD MEASURES

Not applicable