



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR annotated comments on COUNCIL DIRECTIVE 2003/9/EC

of 27 January 2003

laying down minimum standards for the reception of asylum seekers*

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the European Parliament ²,

Having regard to the opinion of the Economic and Social Committee ³,

Having regard to the opinion of the Committee of the Regions ⁴,

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) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus maintaining the principle of non-refoulement.
- (3) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of asylum seekers.
- (4) The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy.

* For further background information and guidance on this topic, please refer to UNHCR, Reception Standards for Asylum Seekers in the European Union (July 2000); EC/GC/01/17, "Reception of asylum-seekers, including standards of treatment, in the context of individual asylum systems"; and Executive Committee (ExCom) Conclusion No. 93 (LIII).

¹ OJ C 213 E, 31.7.2001, p. 286.

² Opinion delivered on 25 April 2002 (not yet published in the Official Journal).

³ OJ C 48, 21.2.2002, p. 63.

⁴ OJ C 107, 3.5.2002, p. 85.

- (5) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the said Charter.¹
- (6) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.
- (7) Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.
- (8) The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.
- (9) Reception of groups with special needs should be specifically designed to meet those needs.
- (10) Reception of applicants who are in detention should be specifically designed to meet their needs in that situation.
- (11) In order to ensure compliance with the minimum procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.
- (12) The possibility of abuse of the reception system should be restricted by laying down cases for the reduction or withdrawal of reception conditions for asylum seekers.
- (13) The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.
- (14) Appropriate coordination should be encouraged between the competent authorities as regards the reception of asylum seekers, and harmonious relationships between local communities and accommodation centres should therefore be promoted.

UNHCR comment: UNHCR welcomes the attention given in the Directive to the need to promote harmonious relationships between asylum-seekers and the local communities receiving them. 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 asylum applicants, and facilitates local integration. This has also been recognised by the Executive Committee of UNHCR (ExCom) in its Conclusion No. 93 (LIII) paragraph (d).

¹ Cf. ExCom Conclusion No. 93 (LIII), para. (b)(i).

- (15) 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.
- (16) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that emanating from the Geneva Convention for third country nationals and stateless persons.
- (17) The implementation of this Directive should be evaluated at regular intervals.
- (18) Since the objectives of the proposed action, namely to establish minimum standards on the reception of asylum seekers in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (19) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 18 August 2001, of its wish to take part in the adoption and application of this Directive.
- (20) In accordance with Article 1 of the said Protocol, Ireland is not participating in the adoption of this Directive. Consequently, and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.
- (21) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive and is therefore neither bound by it nor subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

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

Article 2

Definitions

For the purposes of this Directive:

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

UNHCR comment: In UNHCR’s view, an application for asylum is not limited to a request for international protection under the Geneva Convention, but includes a request for international protection under subsidiary or complementary forms of protection. The question of which basic rights and benefits asylum-seekers deserve in order to live in dignity while the determination of their protection claims is pending should be based on their needs rather than on the grounds on which their claims are based. Adequate reception conditions should consequently be provided to any person requesting international protection, including those requesting other forms of protection.

- (c) “applicant” or “asylum seeker” shall mean 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;
- (d) “family members” shall mean, insofar as the family already existed in the country of origin, the following members of the applicant’s family who are present in the same Member State in relation to the application for asylum:
 - (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
 - (ii) the minor children of the couple referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

UNHCR comment: UNHCR is concerned about the restrictive definition of family members other than spouses and minor children under the Reception Conditions Directive. In contrast to the Temporary Protection Directive, other dependent members of the asylum-seeker's family are not covered by the definition in this Directive. In addition to being unmarried, minor children must also be dependent on the asylum-seeker. UNHCR is also concerned that respect for family unity in the Directive is made conditional on whether the family was established before flight from the country of origin or in the course of the asylum procedure in a Member State. In this respect, ExCom Conclusions No. 24 (XXXII) paragraph 5 and No. 88 (L) paragraph (b)(ii) recommend "the consideration of liberal criteria in identifying those family members who can be admitted, with a view to promoting a comprehensive reunification of the family".

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

UNHCR comment: UNHCR notes that the Temporary Protection Directive defines a "refugee" as a person 'within the meaning of Article 1(A)', which it considers the more appropriate formulation.

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

UNHCR comment: UNHCR wishes to point out that Paragraph 28 of the UNHCR Handbook on Procedures and Criteria for Determining refugee Status reads: "[a] person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined." In this sense, "refugee status" means the condition of being a refugee. In contrast, this provision uses the term "refugee status" to mean the protection, the set of rights, the benefits and the obligations that flow from the recognition of a person as a refugee, which would best be referred to as "asylum".

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

(g) "unaccompanied minors" shall mean persons below the age of eighteen who arrive in 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 shall include minors who are left unaccompanied after they have entered the territory of Member States;

UNHCR comment: The terminology commonly used is 'separated children'.

(i) "reception conditions" shall mean the full set of measures that Member States grant to asylum seekers in accordance with this Directive;

(j) "material reception conditions" shall 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;

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

UNHCR comment: In UNHCR's understanding, detention also includes confinement in airport or seaport transit zones where freedom of movement is substantially curtailed and where the only opportunity to leave this limited area is to leave the territory.

(l) "accommodation centre" shall mean any place used for collective housing of asylum seekers.

Article 3

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the **border** or in the **territory** of a Member State as **long as they are allowed to remain on the territory** as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law.

UNHCR comment: Adequate reception conditions should not be limited to the first instance procedure, but should also be provided to the asylum-seeker until the final outcome of the asylum application. UNHCR wishes to reiterate that appeals should, in principle, have suspensive effect and the right to stay therefore be extended until a final decision is reached on the application.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof² are applied.

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

UNHCR comment: UNHCR welcomes this provision, although it would have preferred if it were a mandatory requirement that all asylum-seekers, irrespective of the grounds on which their claims are based, benefit from adequate reception conditions.

Article 4

More favourable provisions

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

UNHCR comment: UNHCR welcomes the possibility given to Member States to maintain or introduce more favourable reception conditions for asylum-seekers. The standards as laid down in the Directive are considered minimum standards which could usefully be complemented and built upon by more detailed and extensive provisions in national law and practice.

² OJ L 212, 7.8.2001, p. 12.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

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

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

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

UNHCR comment: UNHCR generally welcomes this provision, however, considers it necessary to provide information to an asylum-seekers in a language he or she understands.

Article 6

Documentation

1. Member States shall ensure that, within 3 days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in the territory of the Member State while his or her application is pending or being examined.

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

UNHCR comment: UNHCR welcomes this provision and refers to ExCom Conclusions No. 91(LII) and No. 93 (LIII) paragraph (b)(v) for further guidance.

Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for asylum made at the border **or within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State**. In **specific cases**, during the examination of an application for asylum, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

UNHCR comment: The length of the procedure is a decisive factor which should be taken into account in the application of Article 6(1) of this Directive. As a rule, asylum-seekers should not be left destitute or without any legal status pending the final outcome of their claims. Effective access to reception conditions may be difficult, if not impossible, if the asylum-seeker is not provided with the necessary documentation. It is furthermore not clear to which procedure(s) the phrase "within the context of a procedure to decide on

the right of the applicant to enter the territory of a Member State “is referring. As considerable numbers of applicants may fall within the scope of such procedure(s), the concerns with regard to documentation should be addressed in national legislation.

3. The document referred to in paragraph 1 need not certify the identity of the asylum seeker.

4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory of the Member State concerned or at the border thereof.

UNHCR comment: UNHCR generally recommends that documentation certifying the status of asylum-seekers include also information on the holder’s entitlements and benefits. If such information is lacking, neither the asylum-seekers nor the service providers may be fully aware of these rights and benefits.

5. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7

Residence and freedom of movement

1. Asylum seekers **may** move freely within the territory of the host Member State or within an area assigned to them by that Member State. The **assigned area** shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

2. Member States **may** decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.

UNHCR comment: UNHCR is concerned that these provisions allow for exceptions and a wide measure of interpretation by Member States. UNHCR notes that Article 7(2) permits Member States to limit the freedom of movement of asylum-seekers to a specific area of their national territory, if this is necessary to enable applications for asylum to be processed swiftly. UNHCR recommends that the relevant national legislation also takes into account the following factors for determining the area or location where applicants may be requested to reside during the asylum procedure:

- ◆ the presence of NGOs, legal aid providers, language training facilities and, where possible, an established community of the asylum-seekers’ national or ethnic group;
- ◆ the possibilities for harmonious relations between the asylum-seekers and the surrounding communities;
- ◆ the need for supplementary financial support to cover the cost which the asylum-seekers will incur when they have to travel to the assigned area.

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

UNHCR comment: IN UNHCR’s understanding, detention may include confinement within a narrowly bounded or restricted location, where freedom of movement is substantially curtailed. In UNHCR’s view, detention should be resorted to as an exceptional measure and should be applied in accordance with international standards (see, in particular, ExCom Conclusion No. 44 (XXXVII)). National legislation would also benefit from the inclusion of provisions on the conditions of detention in order to ensure humane treatment with respect for the inherent dignity of the person (see, for example, the 1988 United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment). UNHCR also recommends that national legislation incorporates the standards described in the 1999 UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-seekers, including the minimum procedural guarantees for asylum-seekers in detention. Standards on the conditions of detention should

specifically address the following issues:

Asylum-seekers should generally not be detained in places designated for criminal justice purposes. Men and women should not be detained together, except in family situations. Special efforts should be made to avoid the detention of nursing mothers and women in the later stages of pregnancy. When single women are detained or otherwise accommodated at border points or airports, their physical safety and security should be ensured.

Children should not be detained; this principle applies to unaccompanied minors. Where possible, children should be released into the care of family members who already have residency within the asylum country. Where this is not possible, the competent authorities should make alternative care arrangements, such as residential homes or foster care placements. If no alternative can be applied and States do detain children, this should be as a measure of last resort, and for the shortest period of time.

Given the negative effects of detention on the psychological well-being of those detained, active consideration of possible alternatives should precede any decision to detain unaccompanied elderly persons, survivors of torture or trauma, or persons with a mental or physical disability.

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

5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 4 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

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

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

Article 8

Families³

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

UNHCR comment: Family unity and privacy should be respected also in situations of detention or reception at borders, including airports. Please also see comments to Article 2(d).

Article 9

Medical screening

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

³ Cf. ExCom Conclusion No. 93 (LIII), para. (b)(iv).

UNHCR comment: In UNHCR's view such medical screening should not include mandatory HIV screening of applicants.⁴

Article 10

Schooling and education of minors

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

UNHCR comment: Separate facilities for the education of children within reception centres may contribute to marginalisation. Where education is provided in separate facilities, it should be for a limited period.

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

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

UNHCR comment: UNHCR welcomes this provision in as far as it explicitly refers to secondary education.

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

UNHCR comment: When joining local schools, children will require induction into the new education system, and additional support to meet their particular linguistic and psycho-social needs. All asylum-seekers should be entitled to basic training in the language of the Member State, since knowledge of the language may facilitate good relations with the local population.⁵

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State may offer other education arrangements.

Article 11

Employment

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

2. If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant.

⁴ See UNHCR Policy regarding Refugees and Acquired Immune Deficiency Syndrome (AIDS), Geneva, December 1998.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

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

UNHCR comment: It is UNHCR's view that it is in the interest of Member States and to the benefit of asylum-seekers that they be granted access to the labour market when the length of the asylum procedure exceeds a period of perhaps six months, depending on the nature of the application and the procedure (manifestly unfounded cases in accelerated procedures vs. regular procedures). It is widely accepted that dependence on the State is reduced when asylum-seekers are working. UNHCR's Executive Committee has recognised that reception arrangements can be mutually beneficial where they are premised on the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with the requisite opportunities to do so.⁶ Access to the labour market furthermore removes incentives for informal employment. UNHCR therefore is concerned that this provision permits considerable scope for exceptions and restrictive application by Member States.

Article 12

Vocational training

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

UNHCR comment: UNHCR is concerned that this provision allows substantial scope for exceptions and adjustment by Member States. Access to vocational training may be a necessary step in maximizing the prospects of future employment. UNHCR therefore recommends that asylum-seekers be granted access to vocational training as soon as reasonably possible.

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

Article 13

General rules on material reception conditions and health care

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

2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.

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

⁵ See European Council on Refugees and Exile, *Position on the Reception of Asylum Seekers* (1997), paras. 46 and 48.

UNHCR comment: While UNHCR welcomes the provisions in paragraphs 1 and 2, it would have preferred the language of the original draft proposal which referred to the obligation of Member States 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”, which reflects Article 11(1) of the ICESCR on the right of all individuals to an adequate standard of living.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

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

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

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

UNHCR comment: UNHCR has reservations with regard to the proposed voucher system due to the observed prejudices and discrimination against asylum-seekers who are obliged to use vouchers for shopping.

Article 14

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:

- (a) premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border;
- (b) accommodation centres which guarantee an adequate standard of living;

UNHCR comment: UNHCR generally welcomes this provision. However, insofar as accommodation is provided in collective centres, it should be for the shortest possible duration. Housing asylum-seekers in collective centres during the initial months following their arrival has the advantage of facilitating efficient dissemination of information and the provision of advice and guidance. At later stages, private accommodation is often more suitable, as prolonged periods of stay in collective centres could lead to marginalisation.

Families should be housed together even for short periods, while single men and women should be housed separately. Accommodation in centres should respect privacy and provide for the basic necessities of life (including sanitary and health facilities).

Access to an independent/impartial arbitrator for resolving complaints and disputes should be made

⁶ ExCom Conclusion No. 93 (LIII), para. (b)(vii).

available.

As a rule, centres should be as small as economically feasible. Residents should be allowed to participate in the management of material resources and aspects of life in the centre. In order to allow for the respect of cultural and religious customs, asylum-seekers should be given the necessary means to prepare their own food.

Furthermore, where practicable, the delivery of basic services to asylum-seekers should not be self-contained, but integrated into existing community services. This should be supplemented, as required, by targeted support structures that address the special needs of asylum-seekers (e.g., language training, orientation and cultural awareness programmes, social and legal counselling, community development etc.)

As soon as unsuccessful asylum-seekers are served with deportation orders, they should be transferred to a different housing facility in order to avoid possible difficulties for community life in the centre.

Asylum-seekers who have the opportunity to stay with relatives or friends should not be required to live in collective accommodation centres but enabled to stay with their relatives or friends.

(c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Member States shall ensure that applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:

(a) protection of their family life;

(b) the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) recognised by Member States.⁷

Member States shall pay particular attention to the prevention of assault within the premises and accommodation centres referred to in paragraph 1(a) and (b).

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

4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers of the transfer and of their new address.

5. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work.

6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

7. Legal advisors or counsellors of asylum seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by

⁷ Cf. ExCom Conclusion No. 93 (LIII).

the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist the said asylum seekers. Limits on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum seekers.

8. Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when :

- an initial assessment of the specific needs of the applicant is required,
- material reception conditions, as provided for in this Article, are not available in a certain geographical area,
- housing capacities normally available are temporarily exhausted,
- the asylum seeker is in detention or confined to border posts.

These different conditions shall cover in any case basic needs.

UNHCR comment: Reception facilities at borders, including airports, should include all necessary assistance and the provision of basic necessities of life, including food, shelter and basic sanitary and health facilities. Even for a short stay, family unity and privacy should be respected.

Article 15

Health care

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

UNHCR comment: UNHCR generally welcomes this provision but considers that minimum standards incorporated into national legislation should also contain the following:

- Counselling on reproductive health matters;
- Confidentiality requirements for medical examination and psychological counselling, in particular concerning voluntary HIV testing and results;
- Availability of psychological care and counselling free of charge;
- Training and sensitisation for relevant authorities and medical personnel dealing with patients of different cultural backgrounds.

2. Member States shall provide necessary medical or other assistance to applicants who have special needs.

UNHCR comment: Particular attention should be paid to survivors of trauma or torture, in particular to cases involving traumatised children. Medical or other assistance would need to be taken care of by specialists.

CHAPTER III

REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 16

Reduction or withdrawal of reception conditions

UNHCR comment: UNHCR regrets this provision and has expressed its concern that the Directive allows for the withholding of all benefits (except emergency health care) from asylum-seekers who have not complied with reporting or other requirements. Where there are problems of real abuse of States' asylum systems, these can and should find their effective redress within established asylum procedures. Moreover, UNHCR reiterates that the core content of human rights applies to everyone in all situations⁸, including asylum-seekers who may have infringed specific regulations in relation to the processing of their claims. Measures to reduce or withhold reception conditions may also affect the applicant's family members, including children, and may be inconsistent with the provisions of the Convention on the Rights of Child. In UNHCR's opinion, adequate reception conditions are also a necessary component of fair asylum procedures. Asylum-seekers who find themselves in situations of poverty or destitution tend not to be in the physical or psychological condition needed to pursue adequately their asylum applications. Overall, UNHCR considers that if a reduction in the level of reception conditions has to be made, this should take place only in situations of emergency or *force majeure* and for a short time period.

1. Member States may reduce or withdraw reception conditions in the following cases:

(a) where an asylum seeker

- abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or
- does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or

UNHCR comment: As noted above, the situation described in this paragraph should be addressed in the context of the asylum procedure and not through changes in reception conditions. In cases in which it can be concluded that an applicant for asylum is no longer pursuing his or her asylum application the asylum procedure can be discontinued by the competent authorities.

- has already lodged an application in the same Member State.

When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the reception conditions;

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

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

seeker for a refund.

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

UNHCR comment: UNHCR is concerned that this provision may constitute an obstacle for asylum-seekers to have access to fair asylum procedures. Asylum-seekers may lack basic information on the asylum procedure and be unable to state their claims formally or intelligibly without adequate guidance (including legal advice and representation). These difficulties would be exacerbated where asylum-seekers arrive with insufficient means and are denied assistance through the rigid application of the “reasonably practicable” criteria.

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

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

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

CHAPTER IV

PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

Article 17

General principle

1. Member States shall take into account the specific situation of **vulnerable persons** such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.

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

UNHCR comment: UNHCR welcomes this provision and wishes to highlight the need for early identification of asylum-seekers with special needs and vulnerabilities.

⁸ See ICESCR, Article 11(1).

Article 18

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.
2. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

Article 19

Unaccompanied minors

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

UNHCR comment: UNHCR welcomes this provision. When dealing with separated children, authorities in Member States should endeavour to be guided by the 1997 UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Minors Seeking Asylum.

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

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

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

UNHCR comment: Special attention should be paid to the risk of trafficking of children, in particular of separated female children. Special accommodation arrangements, counselling and protection arrangements are necessary for them.

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

5. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

UNHCR comment: UNHCR welcomes this provision. Tracing of family members of separated children should always be undertaken at a very early stage.

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

UNHCR comment: UNHCR welcomes this provision.

Article 20

Victims of torture and violence

Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts.

UNHCR comment: Mechanisms to identify survivors of torture and violence are required at the earliest possible stage of an asylum procedure, including – where appropriate and feasible - at entry points. Treatment of such persons should be entrusted to specialised medical personnel and institutions.

CHAPTER V

APPEALS

Article 21

Appeals

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

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

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 22

Cooperation

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

Article 23

Guidance, monitoring and control system

Member States shall, with due respect to their constitutional structure, ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

UNHCR comment: UNHCR welcomes this provision.

Article 24

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.

2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

UNHCR comment: While UNHCR welcomes this provision, it regrets that previously proposed provisions aimed at improving the efficiency of the reception systems, such as the need for improving exchange and co-ordination between different relevant actors, have been deleted.

CHAPTER VII

FINAL PROVISIONS

Article 25

Reports

By*, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report,

* One year after the date provided for in Article 26(1).

including the statistical data provided for by Article 22 by ** .

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

Article 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *** . They shall forthwith inform the Commission thereof.

When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

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

Article 27

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 28

Addressees

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

Done at

For the Council
The President

** 18 months after the date provided for in Article 26(1).

*** 24 months after the date of entry into force of this Directive.