COUNCIL DIRECTIVE 2003/88/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 65 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.
(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.
(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.

Having regard to the Treaty establishing the European Community, and in particular point (1)(b) of the first subparagraph of Article 65 thereof,

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.
(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, in so far as the family already existed in the country of origin, the following members of the applicant’s family who are present in the same Member State in relation to the application for asylum:

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.
Article 6

Documentation

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

2. 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.

3. 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.

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

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 the 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 to issue 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.
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.

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 5, 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.

Article 14
Modalties 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 asylum application for asylum lodged at the border;
   (b) accommodation centres that guarantee an adequate standard of living;
   (c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Member States shall ensure that applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:
   (a) protection of their family life;
   (b) the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) recognised by Member States.

Member States shall pay particular attention to the prevention of absconding 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 advisers or counsellors of asylum seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist the said asylum seekers. Limits on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum seekers.

8. 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.

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.

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

CHAPTER III
REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 16
Reduction or withdrawal of reception conditions

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
      — 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.

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

4. Decisions for reduction, withdrawal or refusal of reception conditions in line with this paragraph 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 individual evaluation of their situation.

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 to 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.
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.

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

3. Member States, 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.

4. 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.

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.

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.

Article 24

Staff and resources

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

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

CHAPTER VII

FINAL PROVISIONS

Article 25

Reports

By 6 August 2006, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report, including the statistical data provided for by Article 22 by 6 February 2006.

After presenting the 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 6 February 2005. 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 Union.

Article 28

Addressees

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


For the Council

The President

G. PAPANDREOU