Basic information

2001/0091(CNS) CNS - Consultation procedure Directive	Procedure completed
Asylum: reception of applicants, minimum standards Repealed by 2008/0244(COD) See also 2008/2235(INI) **Subject** 7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	HERNÁNDEZ MOLLAR Jorge Salvador (PPE-DE)	29/05/2001

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs, Human Rights, Common Security, Defense	VOLCIC Demetrio (PSE)	12/09/2001
JURI Legal Affairs and Internal Market	MEDINA ORTEGA Manuel (PSE)	26/06/2001
EMPL Employment and Social Affairs	FLAUTRE Hélène (V/ALE)	05/07/2001

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2482	2003-01-27
Justice and Home Affairs (JHA)	2423	2002-04-25
Justice and Home Affairs (JHA)	2455	2002-10-14
Justice and Home Affairs (JHA)	2469	2002-11-28

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
03/04/2001	Legislative proposal published	COM(2001)0181	Summary
14/06/2001	Committee referral announced in Parliament		
09/04/2002	Vote in committee		Summary
09/04/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0112/2002	
25/04/2002	Decision by Parliament	T5-0202/2002	Summary
25/04/2002	Debate in Parliament		
14/10/2002	Debate in Council		
27/01/2003	Act adopted by Council after consultation of Parliament		
27/01/2003	End of procedure in Parliament		
06/02/2003	Final act published in Official Journal		

Technical information

Procedure reference	2001/0091(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2008/0244(COD) See also 2008/2235(INI)
Legal basis	EC Treaty (after Amsterdam) EC 063
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/14793

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0112/2002	09/04/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0202/2002 OJ C 131 05.06.2003, p. 0017-0119 E	25/04/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2001)0181 OJ C 213 31.07.2001, p. 0286 E	03/04/2001	Summary

Follow-up document	COM(2007)0745	26/11/2007	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0214/2001 OJ C 107 03.05.2002, p. 0085	15/11/2001	
EESC	Economic and Social Committee: opinion, report	CES1482/2001 OJ C 048 21.02.2002, p. 0063	28/11/2001	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2003/0009
OJ L 031 06.02.2003, p. 0018-0025 Summary

Asylum: reception of applicants, minimum standards

2001/0091(CNS) - 26/11/2007 - Follow-up document

The purpose of this report, is to give an overview of the transposition and application of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and to identify issues that may pose problems. Its findings have contributed to the preparation of the Green Paper on the Future of Asylum Policy. To recall, the Directive applies to all EU Member States other than Ireland and Denmarkand was designed to harmonise the laws of the Member States concerning the reception conditions applicable to asylum seekers. It contributes to the establishment of an EU-wide level playing field in the area of asylum and helps to reduce the secondary movement of asylum seekers. The Directive is one of the "building blocks" of the first phase of the Common European Asylum System.

Transposition:

Member States had to transpose the Directive by 6 February 2005. Following expiry of the deadline for transposition, infringement procedures were opened against all those Member States, which had not fully communicated their transposition measures. As a result of this the Commission addressed 19 letters of formal notice and 10 reasoned opinions. The decision to bring the cases before the Court of Justice was taken against 6 Member States. Three cases were withdrawn, one was settledand two are still pending.

Implementation of specific provisions:

Scope of application: Virtually no problems were detected with regard to whom the Directive applies to. The vast majority of Member States decided to apply the Directive to persons applying for subsidiary protection. Minor difficulties were detected concerning the timeframe for applying the Directive. A serious problem, however, did arise concerning the application of provisions relating to premises hosting asylum seekers.

Procedural rules: The Directive requires that Member States provide asylum seekers with written information in a language they can understand, concerning their benefits and obligations under the Directive and on the organisations providing legal or any other kind of assistance. Asylum seekers are duly informed in the vast majority of Member States.Only a few Member States failed to (DE) or only partly failed (AT) to transpose this provision into their laws. Some problems were detected in some Member States (CY, SI, DE and MT), where the information given on organisations providing assistance to asylum seekers does not seem to be sufficient. Given the importance of this provision, the Commission encourages the Member States to make use of financial assistance under the European Refugee Fundin order to increase the number of languages in which the information is made available.

Documentation: Although the Directive obliges Member States to issue asylum seekers with a document stating their name and status within three days of their asylum application in fact most of the Member States have failed to transpose this provision into their national laws. Some have not introduced any provisions of this kind in their legislation (DE, NL, HU, EL, ES). Others have introduced a clear deadline in the legislation but do not comply with it in practice (IT, SE, UK, FR). All Member States issue appropriate documentation to non-detained asylum seekers. However, both the form and the content of the document vary considerably.

Procedure for withdrawal of reception conditions: According to Article 16, if a decision is taken to withdraw reception conditions, the Directive contains certain procedural rules including the right to appeal against a negative decision and the right to free legal assistance during the appeal. No major problems were found as regards guaranteeing the individual, impartial and independent nature of withdrawal decisions. Certain deficiencies are noted regarding the possibility of appeals against certain negative decisions.

Material reception conditions and family unity: Member States are obliged to provide asylum seekers with material reception conditions (i.e. housing, food, clothing, etc.), but leave a wide margin of discretion with regard to the form. The report finds that accommodationis provided in kindin the majority of Member States. The most common form is collective housing. Only a few Member States (UK, BE, IT, SE) provide individual housing. Foodis provided in kind in the majority of Member States (with the exceptions of EE, LV, UK, FI, SE). Although the way the clothing needsof asylum seekers are covered varies considerably, the Member States that grant financial assistance to this end are still in the minority (AT, FI, LU, NL, PL, UK, ES, SE, PT, CY, sometimes BE and AT). No major problems were detected where material reception conditions are provided in kind and in reception centres. The main problems concerning application of the Directive were discovered in Member States where asylum seekers are given financial allowances.

Rights: Asylum seekers have the right to free movement within the Member States in which they apply for asylum and to choose their residence although this right might be limited for a number of reasons. Given the broad discretion of Member States in limiting the right to free movement and residence, no substantial problems in application of the pertinent provisions were reported and the majority of Member States grant the *right to free movement* for their entire territory.

Detained asylum seekers: Detention is foreseen by all Member States on numerous grounds. The report points out, however, that according to the Directive detention is an exception to the general rule of free movement, which might be used only when "it proves necessary", automatic detention without any evaluation of the situation of the person in question is contrary to the Directive.

Access to accommodation centres: Asylum seekers are entitled to contact UNHCR, their legal advisers and NGOs and the report found no particular problems with regard to the application of this provision.

Access to health care and employment: Asylum seekers are also entitled to conditional access to the labour market and health care. Due to the considerable flexibility of Article 11, no major problems were found with regard to the respect of the rules on the access of asylum seekers to labour markets.

Asylum seekers with special needs: As special needs of vulnerable asylum seekers must be addressed, Member States are obliged to identify them and offer them special care. The report finds that certain deficiencies in transposition have been identified**.** Although the majority of Member States recognise such persons by listing all the groups mentioned in the Directive or by using an open clause, some do not cover the full list in Article 17(1) or do not address persons with special needs at all (SK, FR, HU, LT, MT, PL, LV, EE and some regions of AT). Furthermore, in some Member States (UK, DE, AT, BE, LU, EL, IT, SK, SI) no identification procedure is in place. Despite the fact that it is not literally an obligation, there might be serious doubts as to how and whether persons with special needs are actually identified in Member States with no such tool. The report reminds the Member States that identification of vulnerable asylum seekers is a core element without which the provisions of the Directive aimed at special treatment of these persons will loose any meaning.

Needs of vulnerable asylum seekers: Addressing the needs of vulnerable persons has been identified as one of the main deficiency in the application of the Directive **.** The Directive specifies that **v**ulnerable asylum seeker must be provided with adequate rehabilitation services (minor victims of abuse, neglect, exploitation, etc.), legal representation (unaccompanied minors) or necessary treatment (victims of any act of violence). Unaccompanied minors are guaranteed legal representation by virtually all Member States. They are generally hosted with foster families or in special centres; tracing of their family members is also legally or practically ensured. Only three Member States (DE, SE, PT) choose to host unaccompanied minors aged over 16 in accommodation for adults.

Conclusions:

Overall, the report finds that the Directive has been transposed satisfactorily in the majority of Member States. Only a few horizontal issues of incorrect transposition or misapplication of the Directive have been recorded. The Commission will examine and pursue all cases where problems have been identified. The Commission does note that the Member States do apply differing standards, leading it to conclude that a level playing field in the area of reception conditions is yet to be achieved. How to find an adequate response to this issues goes beyond the object of the present report, as it requires a wider political reflection on the level of ambition of the Common European Asylum System. These questions are therefore addressed in the Green Paper on the future of Asylum Policy which the Commission has recently published.

Asylum: reception of applicants, minimum standards

2001/0091(CNS) - 28/11/2002

The Council, pending final confirmation by one delegation, reached agreement on the draft Directive laying down minimum standards for the reception of asylum seekers in Member States with a view to enabling the Council to adopt this Directive at a forthcoming meeting. According to provisions of the respective Protocols on the positions of the United Kingdom and Ireland as well as of Denmark, the United Kingdom notified its intention to participate in the adoption of this proposal, whereas Ireland and Denmark do not and subsequently are not bound upon the Directive's provisions and application.

Asylum: reception of applicants, minimum standards

2001/0091(CNS) - 27/01/2003 - Final act

PURPOSE : to lay down the minimum standards for the reception of asylum seekers in Member States. COMMUNITY MEASURE : Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers. CONTENT : 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. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States. It 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 thereof are applied. 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. RECEPTION CONDITIONS : 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. DOCUMENTATION : 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. 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. The document need not certify the identity of the asylum seeker. Member States shall adopt the necessary measures to provide asylum seekers with this document 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. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State. Asylum seekers may move freely within the territory of the host Member State or within an area assignedto 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. 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. 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. 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. They may require medical screening for applicants on public health grounds. 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. Concerning employment, 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. Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market. REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS : Member States may reduce or withdraw reception conditions in the following cases: 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. PROVISIONS FOR PERSONS WITH SPECIAL NEEDS : 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. APPEALS : Member States shall ensure that negative decisions relating to the granting of benefits under this Directive may be the subject of an appeal within the procedures laid down in the national law. 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. 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. By 6 August 2006, the Commission shall report to the European Parliament and the Council on the application of this Directiveand shall propose any amendments that are necessary. 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. ENTRY INTO FORCE : 6 February 2003. IMPLEMENTATION : Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 February 2005. TERRITORIAL APPLICATION : 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. On the other hand, Denmark and Ireland are not participating in the adoption of this Directive and is therefore neither bound by it nor subject to its application.

Asylum: reception of applicants, minimum standards

2001/0091(CNS) - 25/04/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Jorge HERNANDEZ MOLLAR (EPP-ED, Spain) on minimum standards for the reception of asylum seekers. (Please refer to the document dated 09/04/02.) Parliament felt that the common European asylum system should level up and not level down standards in the EU. It introduced a provision stating that the directive will in no circumstances be used to modify any more favourable provisions existing in the Member States. Further amendments to the text include a provision that access to the education system will be granted as soon as possible and no later than 21 working days after the application has been lodged. Similarly, the Parliament has shortened the time in which Member States must allow access to the labour market from six months after the application has been lodged to four months. In cases where applicants are allowed to stay with family or friends, Member States are not permitted to reduce their allowances in the application of the directive. Minors may not be placed in detention, unless this is justified by exceptional circumstances.

Asylum: reception of applicants, minimum standards

2001/0091(CNS) - 03/04/2001 - Legislative proposal

PURPOSE: to present a Commission proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States. CONTENT: this proposal has been drafted on the basis of a number of preparatory activities and background materials. Most recently,

the Commission thought it appropriate to have bilateral consultations with the 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. Against this background, the Commission is pursuing the following aims: - 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 European Parliament in March 2000; - 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; - identifying the different reception conditions available to applicants for asylum procedures as well as for groups with special needs including minors and the cases for their exclusion, reduction and review; - outlining the possible actions to improve the efficiency of the national reception systems; - limiting secondary movements of applicants for asylum influenced solely by the diversity of the applicable rules on reception conditions; - 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. Furthermore, the proposal is composed of five sets of rules concerning: 1) the objective and scope of the proposal; 2) the reception conditions that should be granted, in principle, at all stages and in all kinds of asylum procedures; 3) the requirements (or minimum standards) of some reception conditions (material reception conditions and health care) which Member States are required to ensure; 4) 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; 5) several rules to ensure its complete implementation as well as the improvement of the national reception systems.