EUROPEAN IMMIGRATION AND ASYLUM LAW

VOLUME I: LEGISLATION AND POLICY DOCUMENTS

Prof. dr. Dirk Vanheule

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Erasmus Teaching Staff Mobility

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Course Objectives, Materials and Assessment

The aim of this course is to provide insight into the multilevel aspects of European immigration and asylum policy and law. Whilst national sovereignty in matters of immigration is still recognized in principle, both international (human rights) treaties and EU law have increasingly determined the development of policy and law in this field during the last two decades. The determination of who is entitled to enter and stay in the Member States of the European Union, the development of free movement between the Member States, the removal of persons from the territory of the Member States, and the accompanying measures of border control, reception and legal enforcement, have all been affected by this development.

The course will address these issues, both with regard to EU nationals and their families and to third country nationals. This will include an analysis of the relevant provisions from EU law (EU citizenship, freedom of movement and the legal instruments adopted, since the Treaty of Amsterdam, in matters of migration and asylum for third country nationals) and from international law (Geneva Convention on the Status of Refugees, European Convention on Human Rights, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). The course will also focus on the institutional aspects like the role of the European Union and its impact on solidarity among Member States, and the role of the European Court of Human Rights and the Court of Justice of the EU.

The course materials are bundled in two volumes. Volume I contains the legislation and policy documents that will be discussed in class. Please bring a printed or electronic version of volume I with you in class. Volume II holds the case law and serves as documentation; it can be consulted electronically.

The assessment will consist of a written essay.

Prof. dr. Dirk Vanheule
Faculty of Law, University of Antwerp
dirk.vanheule@ua.ac.be

I. The Institutional Framework of EU Immigration and Asylum Policy

A. Treaty on the Functioning of the European Union (TFEU)

PART TWO
NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

Article 18
(ex Article 12 TEC)

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.
The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

Article 19
(ex Article 13 TEC)

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

Article 20
(ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:
(a) the right to move and reside freely within the territory of the Member States;
(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;
(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.
These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

Article 21
(ex Article 18 TEC)

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.
2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.
3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

Article 22
(ex Article 19 TEC)

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance

with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.
2. Without prejudice to Article 223(1) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

Article 23
(ex Article 20 TEC)

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.
The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.

Article 24
(ex Article 21 TEC)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.
Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.
Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.
Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.

Article 25
(ex Article 22 TEC)

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this Part. This report shall take account of the development of the Union.
On this basis, and without prejudice to the other provisions of the Treaties, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to strengthen or to add to the rights listed in Article 20(2). These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements.

(…)

TITLE IV
FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1
WORKERS

Article 45
(ex Article 39 TEC)

1. Freedom of movement for workers shall be secured within the Union.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
(a) to accept offers of employment actually made;
(b) to move freely within the territory of Member States for this purpose;
(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.

Article 46
(ex Article 40 TEC)

The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45, in particular:
(a) by ensuring close cooperation between

national employment services;
(b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;
(c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article 47
(ex Article 41 TEC)

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

Article 48
(ex Article 42 TEC)

The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self- employed migrant workers and their dependants:
(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
(b) payment of benefits to persons resident in the territories of Member States.
Where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:
(a) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure; or
(b) take no action or request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.

CHAPTER 2
RIGHT OF ESTABLISHMENT

Article 49
(ex Article 43 TEC)

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.
Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 50
(ex Article 44 TEC)

1. In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives.
2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:
(a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
(b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Union of the various activities concerned;
(c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
(d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;

(e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39(2);
(f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
(g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union;
(h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 51
(ex Article 45 TEC)

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.
The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may rule that the provisions of this Chapter shall not apply to certain activities.

Article 52
(ex Article 46 TEC)

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.
2. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the coordination of the abovementioned provisions.

Article 53
(ex Article 47 TEC)

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self- employed persons.
2. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article 54
(ex Article 48 TEC)

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.
'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article 55
(ex Article 294 TEC)

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 54, without prejudice to the application of the other provisions of the Treaties.

CHAPTER 3
SERVICES

Article 56
(ex Article 49 TEC)

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.
The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.

Article 57
(ex Article 50 TEC)

Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.
'Services' shall in particular include:
(a) activities of an industrial character;
(b) activities of a commercial character;
(c) activities of craftsmen;

(d) activities of the professions.
Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 58
(ex Article 51 TEC)

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.
2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Article 59
(ex Article 52 TEC)

1. In order to achieve the liberalisation of a specific service, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall issue directives.
2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Article 60
(ex Article 53 TEC)

The Member States shall endeavour to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 59(1), if their general economic situation and the situation of the economic sector concerned so permit. To this end, the Commission shall make recommendations to the Member States concerned.

Article 61
(ex Article 54 TEC)

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 56.

Article 62
(ex Article 55 TEC)

The provisions of Articles 51 to 54 shall apply to the matters covered by this Chapter.

(…)

TITLE V
AREA OF FREEDOM, SECURITY AND JUSTICE

CHAPTER 1
GENERAL PROVISIONS

Article 67
(ex Article 61 TEC and ex Article 29 TEU)

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.
4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

Article 68

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

Article 69

National Parliaments ensure that the proposals and legislative initiatives submitted under Chapters 4 and 5 comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

Article 70

Without prejudice to Articles 258, 259 and 260, the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Title by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation.

Article 71
(ex Article 36 TEU)

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

Article 72
(ex Article 64(1) TEC and ex Article 33 TEU)

This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 73

It shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.

Article 74
(ex Article 66 TEC)

The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article 76, and after consulting the European Parliament.

Article 75
(ex Article 60 TEC)

Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.
The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.
The acts referred to in this Article shall include necessary provisions on legal safeguards.

Article 76

The acts referred to in Chapters 4 and 5, together with the measures referred to in Article 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted:
(a) on a proposal from the Commission, or
(b) on the initiative of a quarter of the Member States.

CHAPTER 2
POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article 77
(ex Article 62 TEC)

1. The Union shall develop a policy with a view to:
(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
(c) the gradual introduction of an integrated management system for external borders.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:
(a) the common policy on visas and other short-stay residence permits;
(b) the checks to which persons crossing external borders are subject;
(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
(d) any measure necessary for the gradual establishment of an integrated management system for external borders;
(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.
3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.
4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 78
(ex Articles 63, points 1 and 2, and 64(2) TEC)

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection

and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:
(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
(c) a common system of temporary protection for displaced persons in the event of a massive inflow;
(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.
3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article 79
(ex Article 63, points 3 and 4, TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:
(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
(d) combating trafficking in persons, in particular women and children.
3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.
4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.
5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article 80

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

B. Charter of Fundamental Rights and Freedoms

Article 5
Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Article 15
Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 18
Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Article 19
Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Article 21
Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 45
Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

C. Policy instruments

1. Stockholm Programme

THE STOCKHOLM PROGRAMME — AN OPEN AND SECURE EUROPE SERVING AND PROTECTING CITIZENS

(2010/C 115/01, *OJ* 4 May 2010)

1. TOWARDS A CITIZENS' EUROPE IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

The European Council reaffirms the priority it attaches to the development of an area of freedom, security and justice, responding to a central concern of the peoples of the States brought together in the Union.

Building on the achievements of the Tampere and Hague Programmes, significant progress has been achieved to date in this field. Internal border controls have been removed in the Schengen area and the external borders of the Union are now managed in a more coherent manner. Through the development of the Global Approach to Migration, the external dimension of the Union's migration policy focuses on dialogue and partnerships with third countries, based on mutual interests.

Significant steps have been taken towards the creation of a European Asylum System. European agencies such as Europol, Eurojust, the European Union Agency for Fundamental Rights and Frontex have reached operational maturity in their respective fields of activity. Cooperation in civil matters is facilitating the everyday life of citizens and cooperation in law enforcement provides enhanced security.

In spite of these and other important achievements in the area of freedom, security and justice Europe still faces challenges. These challenges must be addressed in a comprehensive manner. Further efforts are thus needed in order to improve coherence between policy areas. In addition, cooperation with partner countries should be intensified.

It is therefore time for a new agenda to enable the Union and its Member-States to build on these achievements and to meet future challenges. To this end the European Council has adopted this new multiannual programme to be known as the Stockholm Programme, for the period 2010-2014.

The European Council welcomes the increased role that the European Parliament and National Parliaments will play following the entry into force of the Lisbon Treaty (1). Citizens and representative associations will have greater opportunity to make known and publicly exchange their views in all areas of Union action in accordance with Article 11 TEU. This will reinforce the open and democratic character of the Union for the benefit of its people.

The Treaty facilitates the process of reaching the goals outlined in this programme, both for the Union institutions and for the Member States. The role of the Commission in preparing initiatives is confirmed, as is the right for a group of at least seven Member States to submit legislative proposals. The legislative process is improved by the use, in most sectors, of the codecision procedure, thereby granting full involvement of the European Parliament. National Parliaments will play an increasing role in the legislative process. By enhancing also the role of the Court of Justice, the Treaty will improve Europe's ability to fully implement policy in this area and ensure the consistency of interpretation.

All opportunities offered by the Lisbon Treaty to strengthen the European area of freedom, security and justice for the benefit of the citizens of the Union should be used by the Union institutions.

This programme defines strategic guidelines for legislative and operational planning within the area of freedom, security and justice in accordance with Article 68 TFEU.

1.1. Political priorities

The European Council considers that the priority for the coming years will be to focus on the interests and needs of citizens. The challenge will be to ensure respect for fundamental rights and freedoms and integrity of the person while guaranteeing security in Europe. It is of paramount importance that law enforcement measures, on the one hand, and measures to safeguard individual rights, the rule of law and international protection rules, on the other, go hand in hand in the same direction and are mutually reinforced.
All actions taken in the future should be centred on the citizen of the Union and other persons for whom the Union has a responsibility. The Union should, in the years to come, work on the following main priorities:

Promoting citizenship and fundamental rights: European citizenship must become a tangible reality. The area of freedom, security and justice must, above all, be a single area in which fundamental rights and freedoms are protected. The enlargement of the Schengen area must continue. Respect for the human person and human dignity and for the other rights set out in the Charter of Fundamental Rights of the European Union and the European Convention for the protection of Human Rights and fundamental freedoms are core values. For example, the exercise of these rights and freedoms, in particular citizens' privacy, must be preserved beyond national borders, especially by protecting personal data. Allowance must be made for the special needs of vulnerable people. Citizens of the Union and other persons must be able to exercise their specific rights to the fullest extent within, and even, where relevant, outside the Union.

A Europe of law and justice: The achievement of a European area of justice must be consolidated so as to move beyond the current fragmentation. Priority should be given to mechanisms that facilitate access to justice, so that people can enforce their rights throughout the Union. Training of and cooperation between public professionals should also be improved, and resources should be mobilised to eliminate barriers to the recognition of legal decisions in other Member States.

A Europe that protects: An internal security strategy should be developed in order to further improve security in the Union and thus protect the lives and safety of citizens of the Union and to tackle organised crime, terrorism and other threats. The strategy should be aimed at strengthening cooperation in law enforcement, border management, civil protection, disaster management as well as judicial cooperation in criminal matters in order to make Europe more secure. Moreover, the Union needs to base its work on solidarity between Member

States and make full use of Article 222 TFEU.

Access to Europe in a globalised world: Access to Europe for businessmen, tourists, students, scientists, workers, persons in need of international protection and others having a legitimate interest to access the Union's territory has to be made more effective and efficient. At the same time, the Union and its Member States have to guarantee security for their citizens. Integrated border management and visa policies should be construed to serve these goals.

A Europe of responsibility, solidarity and partnership in migration and asylum matters: The development of a forward-looking and comprehensive Union migration policy, based on solidarity and responsibility, remains a key policy objective for the Union. Effective implementation of all relevant legal instruments needs to be undertaken and full use should be made of relevant Agencies and Offices operating in this field. Well-managed migration can be beneficial to all stakeholders. The European Pact on Immigration and Asylum provides a clear basis for further development in this field. Europe will need a flexible policy which is responsive to the priorities and needs of Member States and enables migrants to take full advantage of their potential. The objective of establishing a common asylum system in 2012 remains and people in need of international protection must be ensured access to legally safe and efficient asylum procedures. Moreover, in order to maintain credible and sustainable immigration and asylum systems in the Union, it is necessary to prevent, control and combat illegal immigration as the Union faces increasing pressure from illegal migration flows, and particularly the Member States at its external borders, including at its Southern borders in line with the conclusions of the European Council of October 2009.

The role of Europe in a globalised world — the external dimension: The importance of the external dimension of the Union's policy in the area of freedom, security and justice underlines the need for increased integration of these policies into the general policies of the Union. This external dimension is essential to address the key challenges we face and to provide greater opportunities for citizens of the Union to work and do business with countries across the world. This external dimension is crucial to the successful implementation of the objectives of this programme and should in particular be taken into account in, and be fully coherent with all other aspects of the Union's foreign policy.

2. PROMOTING CITIZENS' RIGHTS: A EUROPE OF RIGHTS

2.1. A Europe built on fundamental rights

The Union is based on common values and respect for fundamental rights. After the entry into force of the Lisbon Treaty, the rapid accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is of key importance. This will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights and freedoms, are actively promoted. The case-law of the Court of Justice of the European Union and the European Court of Human Rights will be able to continue to develop in step, reinforcing the creation of a uniform European fundamental and human rights system based on the European Convention and those set out in the Charter of Fundamental Rights of the European Union.

The European Council invites:
— the Commission to submit a proposal on the accession of the Union to the European Convention for Protection of Human Rights and Fundamental Freedoms as a matter of urgency,
— the Union institutions and the Member States to ensure that legal initiatives are and remain consistent with fundamental rights and freedoms throughout the legislative process by way of strengthening the application of the methodology for a systematic and rigorous monitoring of compliance with the European Convention and the rights and freedoms set out in the Charter of Fundamental Rights.

The European Council invites the Union institutions to:
— make full use of the expertise of the European Union Agency for Fundamental Rights and to consult, where appropriate, with the Agency, in line with its mandate, on the development of policies and legislation with implications for fundamental rights, and to use it for the communication to citizens of human rights issues affecting them in their everyday life,
— pursue the Union's efforts to bring about the abolition of the death penalty, torture and other inhuman and degrading treatment,
— continue to support and promote Union and Member States' activity against impunity and fight against crimes of genocide, crimes against humanity and war crimes; in that context, promote cooperation between the Member States, third countries and the international tribunals in this field, and in particular the International Criminal Court (ICC), and develop exchange of judicial information and best practices in relation to the prosecution of such crimes through the European Network of Contact Points in respect of persons responsible for crimes of genocide, crimes against humanity and war crimes.

The Union is an area of shared values, values which are incompatible with crimes of genocide, crimes against humanity and war crimes, including crimes committed by totalitarian regimes. Each Member State has its own approach to this issue but, in the interests of reconciliation, the memory of those crimes must be a collective memory, shared and promoted, where possible, by us all. The Union must play the role of facilitator.

The European Council invites the Commission:
— to examine and to report to the Council in 2010 whether there is a need for additional proposals covering publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.

2.2. Full exercise of the right to free movement

The right to free movement of citizens and their family members within the Union is one of the fundamental principles on which the Union is based and of European citizenship. Citizens of the Union have the right to move and reside freely within the territory of the Member States, the right to vote and stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, protection of diplomatic and consular authorities of other Member States etc. When exercising their rights, citizens are ensured equal treatment to nationals under the conditions set by Union law. The effective implementation of relevant Union legislation is therefore a priority.

As noted by the European Parliament, Schengen cooperation, which has removed internal border controls within much of the Union, is a major achievement in the area of freedom, security and justice. The European Council recalls its attachment to the further enlargement of the Schengen area. Provided that all requirements to apply the Schengen *acquis* have been fulfilled, the European Council calls on the Council, the European Parliament and the Commission to take all necessary measures to allow for the abolition of controls at internal borders with the remaining Member States that have declared their readiness to join the Schengen area without delay.
Citizens of the Union must be assisted in administrative and legal procedures they are faced with when exercising the right to free movement. Within the framework of the Treaty, obstacles restricting that right in everyday life should be removed.

The European Council invites the Commission to:
— monitor the implementation and application of these rules in order to guarantee the right to free movement.
Obtaining a right of residence under Union law for the citizens of the Union and their family members is an advantage inherent in the exercise of the right to free movement. The purpose of that right is however not to circumvent immigration rules. Freedom of movement not only entails rights but also imposes obligations on those that benefit from it; abuses and fraud should be avoided. Member States should further safeguard and protect the right to free movement by working together, and with the Commission, to combat actions of a criminal nature with forceful and proportionate measures, with due regard to the applicable law.

The European Council therefore further invites the Commission to:
— monitor the implementation and application of these rules to avoid abuse and fraud,
— examine how best to exchange information, *inter alia*, on residence permits and documentation and how to assist Member States' authorities to tackle abuse of this fundamental right effectively.
With this aim in mind, Member States should also closely monitor the full and correct implementation of the existing *acquis* and tackle possible abuse and fraud of the right to free movement of persons and exchange information and statistics on such abuse and fraud. If systematic trends in abuse and fraud of the right to free movement are identified, Member States should report such trends to the Commission, which will suggest to the Council how these trends might be addressed through the most appropriate means.

2.3. Living together in an area that respects diversity and protects the most vulnerable

Since diversity enriches the Union, the Union and its Member States must provide a safe environment where differences are respected and the most vulnerable protected. Measures to tackle discrimination, racism, anti-semitism, xenophobia and homophobia must be vigorously pursued.

2.3.1. *Racism and xenophobia*

The European Council invites the Commission to:
— report during the period of the Stockholm Programme on the transposition of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law by 28 November 2013, and, if appropriate, to make proposals for amending it,
— make full use of the existing instruments, in particular the financing programmes to combat racism and xenophobia.

The Member States should implement that Framework Decision as soon as possible and

at the latest by 28 November 2010.

2.3.2. *Rights of the child*

The rights of the child, namely the principle of the best interest of the child being the child's right to life, survival and development, non-discrimination and respect for the children's right to express their opinion and be genuinely heard in all matters concerning them according to their age and level of development as proclaimed in the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, concern all Union policies. They must be systematically and strategically taken into account with a view to ensuring an integrated approach. The Commission Communication of 2006 entitled 'Towards an EU Strategy on the rights of the child' reflect important considerations in this regard. An ambitious Union strategy on the rights of the child should be developed.

The European Council calls upon the Commission to:
— identify measures, to which the Union can bring added value, in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, notably children that are victims of sexual exploitation and abuse as well as children that are victims of trafficking and unaccompanied minors in the context of Union migration policy.
As regards parental child abduction, apart from effectively implementing existing legal instruments in this area, the possibility to use family mediation at international level should be explored, while taking account of good practices in the Member States. The Union should continue to develop criminal child abduction alert mechanisms, by promoting cooperation between national authorities and interoperability of systems.

2.3.3. *Vulnerable groups*

All forms of discrimination remain unacceptable. The Union and the Member States must make a concerted effort to fully integrate vulnerable groups, in particular the Roma community, into society by promoting their inclusion in the education system and labour market and by taking action to prevent violence against them. For this purpose, Member States should ensure that the existing legislation is properly applied to tackle potential discrimination. The Union will offer practical support and promote best practice to help Member States achieve this. Civil society will have a special role to play.

Vulnerable groups in particularly exposed situations, such as women who are the victims of violence or of genital mutilation or persons who are harmed in a Member State of which they are not nationals or residents, are in need of greater protection, including legal protection. Appropriate financial support will be provided, through the available financing programmes.

The need for additional proposals as regards vulnerable adults should be assessed in the light of the experience acquired from the application of the 2000 Hague Convention on the International Protection of Adults by the Member States which are parties or which will become parties in the future. The Member States are encouraged to join the Convention as soon as possible.

2.3.4. *Victims of crime, including terrorism*

4. A EUROPE THAT PROTECTS

4.4. Protection against serious and organised crime

4.4.2. *Trafficking in human beings*

Trafficking in human beings and smuggling of persons are very serious crimes involving violations of human rights and human dignity that the Union cannot condone. The European Council finds it necessary to strengthen and enhance the prevention and combating of trafficking and smuggling. This calls for a coordinated and coherent policy response which goes beyond the area of freedom, security and justice and, while taking account of new forms of exploitation, includes external relations, development cooperation, social affairs and employment, education and health, gender equality and non-discrimination. It should also benefit from a broad dialogue between all stakeholders, including civil society, and be guided by an improved understanding and research of trafficking in human beings and smuggling of persons at Union and at international level.
In this context, cooperation and coordination with third countries is of crucial importance. The Action-Oriented Paper on the fight against trafficking in human beings, adopted by the Council on 30 November 2009 should be used to its fullest extent.

It is necessary that the Union develops a consolidated Union policy against trafficking in human beings aiming at further strengthening the commitment of, and efforts made, by the Union and the Member States to prevent and combat such trafficking. This includes building up and strengthening partnerships with third countries, improving coordination and cooperation within the Union and with the mechanisms of the Union external dimension as an integral part of such a policy. Progress should also be monitored and COSI regularly informed of coordination and cooperation against trafficking. The fight against human trafficking must mobilise all means of action, bringing together prevention, law enforcement, and victim protection, and be tailored to combating trafficking into, within and out of

the Union.

The European Council therefore invites the Council to consider establishing an EU Anti-Trafficking Coordinator (EU ATC) and, if it decides so, to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated Union policy against trafficking in human beings.

The European Council calls for:
— the adoption of new legislation on combating trafficking and protecting victims,
— the Commission to examine whether ad hoc cooperation agreements with specific third countries to be identified by the Council could be a way to enhance fight against trafficking and to make proposals to that end. In particular, such agreements could involve full use of all leverage available to the Union, including use of financing programmes, cooperation for the exchange of information, judicial cooperation and migration tools,
— Europol, with the support of the Member States, to step up support for information gathering and strategic analysis, to be carried out in cooperation with the countries of origin and of transit,
— Eurojust to step up its efforts to coordinate investigations conducted by Member States' authorities into trafficking in human beings,
— the Commission:
— to propose further measures to protect and assist victims through an array of measures including the development of compensation schemes, safe return and assistance with reintegration into society in their country of origin if they return voluntarily and those relating to their stay; the Union should establish partnerships with the main countries of origin,
— to propose cooperative measures to mobilise consular services in the countries of origin with a view to preventing the fraudulent issuing of visas. Information campaigns aimed at potential victims, especially women and children, could be conducted in the countries of origin in cooperation with the authorities there,
— to propose measures to make border checks more efficient in order to prevent human trafficking, in particular the trafficking of children.

5. ACCESS TO EUROPE IN A GLOBALISED WORLD

5.1. Integrated management of the external borders

The Union must continue to facilitate legal access to the territory of its Member States while in parallel taking measures to counteract illegal immigration and cross-border crime and maintaining a high level of security. The strengthening of border controls should not prevent access to protection systems by those persons entitled to benefit from them, and especially people and groups that are in vulnerable situations. In this regard, priority will be given to those in need of international protection and to the reception of unaccompanied minors. It is essential that the activities of Frontex and of the EASO are coordinated when it comes to the reception of migrants at the Union's external borders. The European Council calls for the further development of integrated border management, including the reinforcement of the role of Frontex in order to increase its capacity to respond more effectively to changing migration flows.

The European Council therefore:
— requests the Commission to put forward proposals no later than early 2010 to clarify the mandate and enhance the role of Frontex, taking account of the results of the evaluation of the Agency and the role and responsibilities of the Member States in the area of border control. Elements of these proposals could contain preparation of clear common operational procedures containing clear rules of engagement for joint operations at sea, with due regard to ensuring protection for those in need who travel in mixed flows, in accordance with international law as well as increased operational cooperation between Frontex and countries of origin and of transit and examination of the possibility of regular chartering financed by Frontex. In order to promote the proper enforcement of the applicable statutory framework for Frontex operations, the Commission should consider including a mechanism for reporting and recording incidents that can be satisfactorily followed up by the relevant authorities,
— invites Frontex itself to consider, within its mandate, establishing regional and/or specialised offices to take account of the diversity of situations, particularly the land border to the East and the sea border to the South. Creating such offices should in no account undermine the unity of the Frontex agency. Before creating such offices, Frontex should report to the Council on its intentions,
— invites the Commission to initiate a debate on the long-term development of Frontex. This debate should include, as was envisaged in the Hague programme, the feasibility of the creation of a European system of border guards,
— invites the EASO to develop methods to better identify those in need of international protection in mixed flows, and to cooperate with Frontex wherever possible,
— considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of Frontex in this field,
— invites the Council and the Commission to support enhanced capacity building in third countries so that they can control efficiently their external borders.

The European Council looks forward to the continued phased development of the European Border Surveillance System (Eurosur) in the Southern and Eastern borders, with a view to putting in place a system using modern technologies and supporting Member States, promoting interoperability and uniform border surveillance standards and to ensuring that the necessary cooperation is established between the Member States and with Frontex to share necessary surveillance data without delay. This development should take into account the work in other relevant areas of the Integrated Maritime Policy for the European Union as well as being able in the medium term to allow for cooperation with third countries. The European Council invites the Commission to make the necessary proposals to achieve these objectives.

The European Council takes note of the ongoing studies of Member States and Frontex in the field of automated border control and encourages them to continue their work in order to establish best practice with a view to improving border controls at the external borders.

The European Council also invites Member States and the Commission to explore how the different types of checks carried out at the external border can be better coordinated, integrated and rationalised with a view to the twin objective of facilitating access and improving security. Moreover, the potential of enhanced information exchange and closer cooperation between border guard authorities and other law enforcement authorities working inside the territory should be explored, in order to increase efficiency for all the parties involved and fight cross-border crime more effectively.

The European Council considers that technology can play a key role in improving and reinforcing the system of external border controls. The entry into operation of the Second generation Schengen Information System II (SIS II) and the roll-out of the Visa Information system (VIS) therefore remains a key objective and the European Council calls on the Commission and Member States to ensure that they now become fully operational in keeping with the timetables to be established for that purpose. Before creating new systems, an evaluation of these and other existing systems should be made and the difficulties encountered when they were set up should be taken into account. The setting up of an administration for large-scale IT systems could play a central role in the possible development of IT systems in the future.

The European Council is of the opinion that an electronic system for recording entry to and exit from Member States could complement the existing systems, in order to allow Member States to share data effectively while guaranteeing data protection rules. The introduction of the system at land borders deserves special attention and the implications to infrastructure and border lines should be analysed before implementation.

The possibilities of new and interoperable technologies hold great potential for rendering border management more efficient as well as more secure but should not lead to discrimination or unequal treatment of passengers. This includes, *inter alia*, the use of gates for automated border control.

The European Council invites the Commission to:
— present proposals for an entry/exit system alongside a fast track registered traveller programme with a view to such a system becoming operational as soon as possible,
— to prepare a study on the possibility and usefulness of developing a European system of travel authorisation and, where appropriate, to make the necessary proposals,
— to continue to examine the issue of automated border controls and other issues connected to rendering border management more efficient.

5.2. Visa policy

The European Council believes that the entry into force of the Visa Code and the gradual roll-out of the VIS will create important new opportunities for further developing the common visa policy. That policy must also be part of a broader vision that takes account of relevant internal and external policy concerns. The European Council therefore encourages the Commission and Member States to take advantage of these developments in order to intensify regional consular cooperation by means of regional consular cooperation programmes which could include, in particular, the establishment of common visa application centres, where necessary, on a voluntary basis.

The European Council also invites:
— the Commission and Council to continue to explore the possibilities created by the conclusion of visa facilitation agreements with third countries in appropriate cases,
— the Commission to keep the list of third countries whose nationals are or are not subject to a visa requirement under regular review in accordance with appropriate criteria relating for example to illegal immigration, public policy and security, which take account of the Union's internal and foreign policy objectives,
— the Commission to strengthen its efforts to ensure the principle of visa reciprocity and prevent the (re)introduction of visa requirements by third countries towards any Member State and to identify measures which could be used prior to imposing the

visa reciprocity mechanism towards those third countries.
The European Council, with a view to creating the possibility of moving to a new stage in the development of the common visa policy, while taking account of Member States competences in this area, invites the Commission to present a study on the possibility of establishing a common European issuing mechanism for short term visas. The study could also examine to what degree an assessment of individual risk could supplement the presumption of risk associated with the applicant's nationality.

6. A EUROPE OF RESPONSIBILITY, SOLIDARITY AND PARTNERSHIP IN MIGRATION AND ASYLUM MATTERS

The European Council recognises both the opportunities and challenges posed by increased mobility of persons, and underlines that well-managed migration can be beneficial to all stakeholders. The European Council equally recognises that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible migration policies will make an important contribution to the Union's economic development and performance in the longer term. The European Council is of the opinion that the long-term consequences of migration, for example on the labour markets and the social situation of migrants, have to be taken into account and that the interconnection between migration and integration remains crucial, inter alia, with regard to the fundamental values of the Union. Furthermore, the European Council recalls that the establishment of a Common European Asylum System (CEAS) by 2012 remains a key policy objective for the Union.

The European Council calls for the development of a comprehensive and sustainable Union migration and asylum policy framework, which in a spirit of solidarity can adequately and proactively manage fluctuations in migration flows and address situations such as the present one at the Southern external borders. Serious efforts are needed to build and strengthen dialogue and partnership between the Union and third countries, regions and organisations in order to achieve an enhanced and evidence-based response to these situations, taking into account that illegal immigrants enter the Union also via other borders or through misuse of visa. An important objective is to avoid the recurrence of tragedies at sea. When tragic situations unfortunately happen, ways should be explored to better record and, where possible, identify migrants trying to reach the Union.

The European Council recognises the need to find practical solutions which increase coherence between migration policies and other policy areas such as foreign and development policy and trade, employment, health and education policy at the European level. In particular, the European Council invites the Commission to explore procedures that to a greater extent link the development of migration policy to the development of the post-Lisbon Strategy. The European Council recognises the need to make financial resources within the Union increasingly flexible and coherent, both in terms of scope and of applicability, to support policy development in the field of asylum and migration.

The European Council reaffirms the principles set out in the Global Approach to Migration as well as the European Pact on Immigration and Asylum. The European Council also recalls its conclusions of the June and October 2009 on this subject. It underlines the need to implement all measures in a comprehensive manner and evaluate them as decided. It recalls the five basic commitments set out in the Pact:
— to organise legal migration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration,
— to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit,
— to make border controls more effective,
— to construct a Europe of asylum,
— to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development.

6.1. A dynamic and comprehensive migration policy

6.1.1. *Consolidating, developing and implementing the Global Approach to Migration*

The European Council has consistently underlined the need for Union migration policy to be an integral part of Union foreign policy and recognises that the Global Approach to Migration has proven its relevance as the strategic framework for this purpose. Based on the original principles of solidarity, balance and true partnership with countries of origin and of transit outside the Union and in line with what already has been accomplished, the European Council calls for the further development and consolidation of this integrated approach. The implementation of the Global Approach to Migration needs to be accelerated by the strategic use of all its existing instruments and improved by increased coordination. A balance between the three areas (promoting mobility and legal migration, optimising the link between migration and development, and preventing and combating illegal immigration) should be maintained. The principal focus should remain on cooperation with the most relevant countries in Africa and Eastern and

South-Eastern Europe. Dialogue and cooperation should be further developed also with other countries and regions such as those in Asia and Latin America on the basis of the identification of common interests and challenges.

To this end, the European Council emphasises the following priorities:
— strategic, evidence-based and systematic use of all available instruments of the Global Approach to Migration — migration profiles, migration missions, cooperation platforms on migration and development and Mobility partnerships — for long-term cooperation on all dimensions of this policy in close partnership with selected third countries along priority migratory routes,
— continued and expanded use of the Mobility partnership instrument as the main strategic, comprehensive and long- term cooperation framework for migration management with third countries, adding value to existing bilateral frameworks. Success in implementing these partnerships requires improved coordination and substantial capacity- building efforts in countries of origin, of transit and of destination. The European Council calls for further development of the Mobility partnership instrument, while respecting their voluntary nature. Partnerships should be flexible and responsive to the needs of both the Union and the partner countries, and should include cooperation on all areas of the Global Approach to Migration,
— more efficient use of the Union's existing cooperation instruments to increase the capacity of partner countries, with a view to ensuring well-functioning infrastructures and sufficient administrative capacity to handle all aspects of migration, including improving their capacity to offer adequate protection and increasing the benefits and opportunities created by mobility.

The successful implementation of the Global Approach to Migration should be underpinned by regular evaluations, increased commitment and capacity as well as improved flexibility of the financial instruments of both the Union and the Member States available in this field.

6.1.2. *Migration and development*

The European Council underlines the need to take further steps to maximise the positive and minimise the negative effects of migration on development in line with the Global Approach on Migration. Effective policies can provide the framework needed to enable countries of destination and of origin and migrants themselves to work in partnership to enhance the effects of international migration on development.

Efforts to promote concerted mobility and migration with countries of origin should be closely linked with efforts to promote the development of opportunities for decent and productive work and improved livelihood options in third countries in order to minimise the brain drain.

To that end, the European Council invites the Commission to submit proposals before 2012 on:
— how to further ensure efficient, secure and low-cost remittance transfers, and enhance the development impact of remittance transfers, as well as to evaluate the feasibility of creating a common Union portal on remittances to inform migrants about transfer costs and encourage competition among remittance service providers,
— how diaspora groups may be further involved in the Union development initiatives, and how Member States may support diaspora groups in their efforts to enhance development in their countries of origin,
— ways to further explore the concept of circular migration and study ways to facilitate orderly circulation of migrants, either taking place within, or outside, the framework of specific projects or programmes including a wide-ranging study on how relevant policy areas may contribute to and affect the preconditions for increased temporary and circular mobility.

The European Council recognises the need for increased policy coherence at European level in order to promote the positive development effects of migration within the scope of the Union's activities in the external dimension and to align international migration more closely to the achievement of the Millennium Development Goals. The European Council calls on the Council to ensure that it acts in a coordinated and coherent manner in this field.

The connection between climate change, migration and development needs to be further explored, and the European Council therefore invites the Commission to present an analysis of the effects of climate change on international migration, including its potential effects on immigration to the Union.

6.1.3. *A concerted policy in keeping with national labour-market requirements*

The European Council recognises that labour immigration can contribute to increased competitiveness and economic vitality. In this sense, the European Council is of the opinion that the Union should encourage the creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State and enable migrants to take full advantage of their skills and competence. In order to facilitate better labour matching, coherent immigration policies as well as better integration assessments of the skills in demand on the European labour markets are carried out. These systems must have due regard for Member States' competences, especially for managing their

labour markets, and the principle of Union preference.

The European Council invites:
— the Commission and Council to continue to implement the Policy Plan on Legal Migration,
— the Commission to consider how existing information sources and networks can be used more effectively to ensure the availability of the comparable data on migration issues with a view to better informing policy choices, which also takes account of recent developments,
— the Commission and the Council to evaluate existing policies that should, *inter alia*, improve skills recognition and labour matching between the Union and third countries and the capacity to analyze labour market needs, the transparency of European on-line employment and recruitment information, training, information dissemination, and skills matching in the country of origin,
— the Commission to assess the impact and effectiveness of measures adopted in this area with a view to determining whether there is a need for consolidating existing legislation, including regarding categories of workers currently not covered by Union legislation.

6.1.4. *Proactive policies for migrants and their rights*

The Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the Union. This should remain an objective of a common immigration policy and should be implemented as soon as possible, and no later than 2014.

The European Council therefore invites the Commission to submit proposals for:
— consolidation of all legislation in the area of immigration, starting with legal migration, which would be based on an evaluation of the existing *acquis* and include amendments needed to simplify and/or, where necessary, extend the existing provisions and improve their implementation and coherence,
— evaluation and, where necessary, review of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, taking into account the importance of integration measures.

6.1.5. *Integration*

The successful integration of legally residing third-country nationals remains the key to maximising the benefits of immigration. European cooperation can contribute to more effective integration policies in the Member States by providing incentives and support for the action of Member States. The objective of granting comparable rights, responsibilities, and opportunities for all is at the core of European cooperation in integration, taking into account the necessity of balancing migrants' rights and duties.

Integration is a dynamic, two-way process of mutual interaction, requiring not only efforts by national, regional and local authorities but also a greater commitment by the host community and immigrants.

Member States' integration policies should be supported through the further development of structures and tools for knowledge exchange and coordination with other relevant policy areas, such as employment, education and social inclusion. Access to employment is central to successful integration.

The European Council also invites the Commission to support Member States' efforts:
— through the development of a coordination mechanism involving the Commission and the Member States using a common reference framework, which should improve structures and tools for European knowledge exchange,
— to incorporate integration issues in a comprehensive way in all relevant policy areas,
— towards the identification of joint practices and European modules to support the integration process, including essential elements such as introductory courses and language classes, a strong commitment by the host community and the active participation of immigrants in all aspects of collective life,
— towards the development of core indicators in a limited number of relevant policy areas (for example employment, education and social inclusion) for monitoring the results of integration policies, in order to increase the comparability of national experiences and reinforce the European learning process,
— for improved consultation with and involvement of civil society, taking into account integration needs in various policy areas and making use of the European Integration Forum and the European website on Integration,
— to enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts at all levels.

6.1.6. *Effective policies to combat illegal immigration*

The European Council is convinced that effective action against illegal immigration remains essential when developing a common immigration policy. The fight against trafficking in human beings and smuggling of persons, integrated border management and cooperation with countries of origin and of transit, supported by police

and judicial cooperation, in particular, must remain a key priority for this purpose. Our aim must be to prevent the human tragedies which result from the activities of traffickers.

An effective and sustainable return policy is an essential element of a well-managed migration system within the Union. The Union and the Member States should intensify the efforts to return illegally residing third-country nationals. Necessary financial means should be allocated for this purpose. Such a policy must be implemented with full respect for the principle of '*non-refoulement*' and for the fundamental rights and freedoms and the dignity of the individual returnees. Voluntary return should be preferred, while acknowledging the inevitable need for efficient means to enforce returns where necessary.

In order to create a comprehensive approach on return and readmission, it is necessary to step up cooperation with countries of origin and of transit within the framework of the Global Approach to Migration and in line with the European Pact on Immigration and Asylum, while recognising that all States are required to readmit their own nationals who are illegally staying on the territory of another State.

It is important to ensure that the implementation of the newly adopted instruments in the area of return and sanctions against employers, as well as the readmission agreements in force, is closely monitored in order to ensure their effective application.

The European Council believes that the focus should be placed on:
— encouraging of voluntary return, including through the development of incentive systems, training, reintegration and subsidies, and by using the possibilities offered by existing financial instruments,
— Member States:
— to put into full effect the Union provisions pursuant to which a return decision issued by one Member State is applicable throughout the Union and the effective application of the principle of mutual recognition of return decisions by recording entry bans in SIS and facilitating exchange of information,
— to improve the exchange of information on developments at national level in the area of regularisation, with a view to ensuring consistency with the principles of the European Pact on Immigration and Asylum,
— assistance by the Commission, Frontex and Member States on a voluntary basis, to Member States which face specific and disproportionate pressures, in order to ensure the effectiveness of their return policies towards certain third countries,
— more effective action against illegal immigration and trafficking in human beings and smuggling of persons by developing information on migration routes as well as aggregate and comprehensive information which improves our understanding of and response to migratory flows, promoting cooperation on surveillance and border controls, facilitating readmission by promoting support measures for return and reintegration, capacity building in third countries,
— the conclusion of effective and operational readmission agreements, on a case-by-case basis at Union or bilateral level,
— ensuring that the objective of the Union's efforts on readmission should add value and increase the efficiency of return policies, including existing bilateral agreements and practices,
— the presentation by the Commission of an evaluation, also of ongoing negotiations, during 2010 of the EC/EU readmission agreements and propose a mechanism to monitor their implementation. The Council should define a renewed, coherent strategy on readmission on that basis, taking into account the overall relations with the country concerned, including a common approach towards third countries that do not cooperate in readmitting their own nationals,
— increased practical cooperation between Member States, for instance by regular chartering of joint return flights, financed by Frontex and the verification of the nationality of third-country nationals eligible for return, and the procurement from third countries of travel documents,
— increased targeted training and equipment support,
— a coordinated approach by Member States by developing the network of liaison officers in countries of origin and of transit.

6.1.7. *Unaccompanied minors*

Unaccompanied minors arriving in the Member States from third countries represent a particularly vulnerable group which requires special attention and dedicated responses, especially in the case of minors at risk. This is a challenge for Member States and raises issues of common concern. Areas identified as requiring particular attention are the exchange of information and best practice, minor's smuggling, cooperation with countries of origin, the question of age assessment, identification and family tracing, and the need to pay particular attention to unaccompanied minors in the context of the fight against trafficking in human beings. A comprehensive response at Union level should combine prevention, protection and assisted return measures while taking into account the best interests of the child.

The European Council therefore welcomes the Commission's initiative to:
— develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instru-

ments and combines measures directed at prevention, protection and assisted return. The action plan should underline the need for cooperation with countries of origin, including cooperation to facilitate the return of minors, as well as to prevent further departures. The action plan should also examine practical measures to facilitate the return of the high number of unaccompanied minors that do not require international protection, while recognising that the best interests for many may be the reunion with their families and development in their own social and cultural environment.

6.2. Asylum: a common area of protection and solidarity

The European Council remains committed to the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection. While CEAS should be based on high protection standards, due regard should also be given to fair and effective procedures capable of preventing abuse. It is crucial that individuals, regardless of the Member State in which their application for asylum is lodged, are offered an equivalent level of treatment as regards reception conditions, and the same level as regards procedural arrangements and status determination. The objective should be that similar cases should be treated alike and result in the same outcome.

6.2.1. *A common area of protection*

There are still significant differences between national provisions and their application. In order to achieve a higher degree of harmonisation, the establishment of CEAS, should remain a key policy objective for the Union. Common rules, as well as a better and more coherent application of them, should prevent or reduce secondary movements within the Union, and increase mutual trust between Member States.

The development of a Common Policy on Asylum should be based on a full and inclusive application of the 1951 Geneva Convention relating to the Status of Refugees and other relevant international treaties. Such a policy is necessary in order to maintain the long-term sustainability of the asylum system and to promote solidarity within the Union. Subject to a report from the Commission on the legal and practical consequences, the Union should seek accession to the Geneva Convention and its 1967 Protocol.

The EASO will be an important tool in the development and implementation of the CEAS and should contribute to strengthening all forms of practical cooperation between the Member States. Therefore the Member States should play an active role in the work of the EASO. It should further develop a common educational platform for national asylum officials, building in particular on the European Asylum Curriculum (EAC). Enhancing the convergence and ongoing quality with a view to reducing disparities of asylum decisions will be another important task.

The Dublin System remains a cornerstone in building the CEAS, as it clearly allocates responsibility for the examination of asylum application.

The European Council accordingly invites:
— the Council and the European Parliament to intensify the efforts to establish a common asylum procedure and a uniform status in accordance with Article 78 TFEU for those who are granted asylum or subsidiary protection by 2012 at the latest,
— the Commission to consider, once the second phase of the CEAS has been fully implemented and on the basis of an evaluation of the effect of that legislation and of the EASO, the possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquired residence rights under Union law,
— the Commission to undertake a feasibility study on the Eurodac system as a supporting tool for the entire CEAS, while fully respecting data protection rules,
— the Commission to consider, if necessary, in order to achieve the CEAS, proposing new legislative instruments on the basis of an evaluation,
— invites the Commission to finalise its study on the feasibility and legal and practical implications to establish joint processing of asylum applications.

6.2.2. *Sharing of responsibilities and solidarity between the Member States*

Effective solidarity with the Member States facing particular pressures should be promoted.
This should be achieved through a broad and balanced approach. Mechanisms for the voluntary and coordinated sharing of responsibility between the Member States should therefore be further analyzed and developed. In particular as one of the keys to a credible and sustainable CEAS is for Member States to build sufficient capacity in the national asylum systems, the European Council urges the Member States to support each other in building sufficient capacity in their national asylum systems. The EASO should have a central role in coordinating these capacity- building measures.

The European Council therefore invites the Commission to examine the possibilities for:
— developing the above mentioned mechanism for sharing responsibility between the Member States while assuring that asylum systems are not abused, and the principles of the CEAS are not undermined,
— creating instruments and coordinating

mechanisms which will enable Member States to support each other in building capacity, building on Member States own efforts to increase their capacity with regard to their national asylum systems,
— using, in a more effective way, existing Union financial systems aiming at reinforcing internal solidarity,
— the EASO to evaluate and develop procedures that will facilitate the secondment of officials in order to help those Member States facing particular pressures of asylum seekers.

6.2.3. *The external dimension of asylum*

The Union should act in partnership and cooperate with third countries hosting large refugee populations. A common Union approach can be more strategic and thereby contribute more efficiently to solving protracted refugee situations. Any development in this area needs to be pursued in close cooperation with the United Nations High Commissioner for Refugees (UNHCR) and, if appropriate, other relevant actors. The EASO should be fully involved in the external dimension of the CEAS. In its dealings with third countries, the Union has the responsibility to actively convey the importance of acceding to, and implementing of, the 1951 Geneva Convention and its Protocol.

Promoting solidarity within the Union is crucial but not sufficient to achieve a credible and sustainable common policy on asylum. It is therefore important to further develop instruments to express solidarity with third countries in order to promote and help building capacity to handle migratory flows and protracted refugee situations in these countries.

The European Council invites:
— the Council and the Commission to enhance capacity building in third countries, in particular, their capacity to provide effective protection, and to further develop and expand the idea of Regional Protection Programmes, on the basis of the forthcoming evaluations. Such efforts should be incorporated into the Global Approach to Migration, and should be reflected in national poverty reduction strategies and not only be targeting refugees and internally displaced persons but also local populations,
— the Council, the European Parliament and the Commission to encourage the voluntary participation of Member States in the joint Union resettlement scheme and increase the total number of resettled refugees, taking into consideration the specific situation in each Member State,
— the Commission to report annually to the Council and the European Parliament on the resettlement efforts made within the Union, to carry out a mid-term evaluation during 2012 of the progress made, and to evaluate the joint Union resettlement programme in 2014 with a view to identifying necessary improvements,
— the Council and the Commission to find ways to strengthen Union support for the UNHCR,
— the Commission to explore, in that context and where appropriate, new approaches concerning access to asylum procedures targeting main countries of transit, such as protection programmes for particular groups or certain procedures for examination of applications for asylum, in which Member States could participate on a voluntary basis.

7. EUROPE IN A GLOBALISED WORLD — THE EXTERNAL DIMENSION OF FREEDOM, SECURITY AND JUSTICE

The European Council emphasises the importance of the external dimension of the Union's policy in the area of freedom, security and justice and underlines the need for the increased integration of these policies into the general policies of the Union. The external dimension is crucial to the successful implementation of the objectives of this programme and should in particular be fully coherent with all other aspects of Union foreign policy.

The Union must continue to ensure effective implementation, and to conduct evaluations also in this area. All action should be based on transparency and accountability, in particular, with regard to the financial instruments.

As reiterated by the 2008 European Security Strategy report, internal and external security are inseparable. Addressing threats, even far away from our continent, is essential to protecting Europe and its citizens.

The European Council invites the Council and the Commission to ensure that coherence and complementary are guaranteed between the political and the operational level of activities in the area of freedom, security and justice. Priorities in external relations should inform and guide the prioritisation of the work of relevant Union agencies (Europol, Eurojust, Frontex, CEPOL, EMCDDA and EASO).

Member States' Liaison officers should be encouraged to further strengthen their cooperation, sharing of information and best practices.
The European Council underscores the need for complementarity between the Union and Member States' action. To that end, increased commitment from the Union and the Member States is required.

7.1. A reinforced external dimension

The European Council has decided that the following principles will continue to guide the Union action in the external dimension of the area of freedom, security and justice in the future:

— the Union has a single external relations policy,
— the Union and the Member States must work in partnership with third countries,
— the Union and the Member States will actively develop and promote European and international standards,
— the Union and the Member States will cooperate closely with their neighbours,
— the Member States will increase further the exchange of information between themselves and within the Union on multilateral and bilateral activities,
— the Union and the Member States must act with solidarity, coherence and complementarity,
— the Union will make full use of all ranges of instruments available to it,
— the Member States should coordinate with the Union so as to optimise the effective use of resources,
— the Union will engage in information, monitoring and evaluation, inter alia, with the involvement of the European Parliament,
— the Union will work with a proactive approach in its external relations.

The European Council considers that the policies in the area of freedom, security and justice should be well integrated into the general policies of the Union. The adoption of the Lisbon Treaty offers new possibilities for the Union to act more efficiently in the external relations. The High Representative of the Union for foreign affairs and security policy, who is also a Vice President of the Commission, the European External Action Service and the Commission will ensure better coherence between traditional external policy instruments and internal policy instruments with significant external dimensions, such as freedom, security and justice. Consideration should be given to the added value that could be achieved by including specific competence in the area of freedom, security and justice in Union delegations in strategic partner countries. Furthermore, the legal personality of the Union should enable the Union to act with increased strength in international organisations.

The Council recognises that CSDP and many external actions in the area of freedom, security and justice have shared or complementary objectives. CSDP missions also make an important contribution to the Union's internal security in their efforts to support the fight against serious transnational crime in their host countries and to build respect for the rule of law. The European Council encourages greater cooperation and coherence between the policies in the area of freedom, security and justice and CSDP to further these shared objectives.

The new basis under the Treaty for concluding international agreements will ensure that the Union can negotiate more effectively with key partners. The European Council intends to capitalise on all these new instruments to the fullest extent.

The European Council underscores the need for complementary between the Union and Member States' action. This will require a further commitment from the Union and the Member States. The European Council therefore asks the Commission to report on ways to ensure complementary by December 2011 at the latest.

7.2. Human rights

The Lisbon Treaty offers the Union new instruments as regards the protection of fundamental rights and freedoms both internally and externally. The values of the Union should be promoted and strict compliance with and development of international law should be respected. The European Council calls for the establishment of a Human Rights Action Plan to promote its values in the external dimension of the policies in the area of freedom, security and justice. This Plan should be examined by the European Council and should take into account that internal and external aspects of Human Rights are interlinked, for instance as regards the principle of *non-refoulement* or the use of death penalty by partners that the Union cooperates with. The Plan should contain specific measures in the short, medium and long term, and designate who is responsible for carrying out the actions.

7.3. Continued thematic priorities with new tools

The European Council considers that the key thematic priorities identified in the previous strategy remain valid, i.e. the fight against terrorism, organised crime, corruption, drugs, the exchange of personal data in a secure environment and managing migration flows. The fight against trafficking in human beings and smuggling of persons needs to be stepped up.

Building on the Strategy for the external dimension of JHA: Global freedom, security and justice adopted in 2005 and other relevant *acquis* in this field, such as the Global Approach to Migration, Union external cooperation should focus on areas where Union activity provides added value, in particular:
— *Migration and asylum*, with a view to increasing Union dialogue and cooperation with countries of origin and of transit in order to improve their capacity to carry out border control, to fight against illegal immigration, to better manage migration flows and to ensure protection as well as to benefit from the positive effects of migration on development; return and readmission is a priority in the Union's external relations,
— *Security*, by engaging with third countries to combat serious and organised crime, terrorism, drugs, trafficking in human beings and smuggling of persons, inter alia,

by focusing the Union's counter-terrorism activities primarily on prevention and by protecting critical infrastructures, internal and external security are inseparable. Addressing threats, even far away from our continent, is essential to protecting Europe and its citizens,
— *Information exchange* that flows securely, efficiently and with adequate data protection standards between the Union and third countries,
— *Justice*, to promote the rule of law and human rights, good governance, fight against corruption, the civil law dimension, promote security and stability and create a safe and solid environment for business, trade and investment,
— *Civil protection and disaster management*, in particular to develop capacities of prevention and answers to major technological and natural catastrophes as well as to meet threats from terrorists.

The European Council invites the Commission to:
— examine whether ad hoc cooperation agreements with specific third countries to be identified by the Council could be a way of enhancing the fight against trafficking in human beings and smuggling of persons and making proposals to that end. In particular, such agreements could involve full use of all leverage available to the Union, including the use of existing financing programmes, cooperation in the exchange of information, judicial cooperation and migration tools.

The threat of terrorism and organised crime remains high. It is therefore necessary to work with key strategic partners to exchange information while continuing to work on longer- term objectives such as measures to prevent radicalisation and recruitment, as well as the protection of critical infrastructures. Operational agreements by Eurojust, Europol, as well as working arrangements with Frontex, should be strengthened.

7.4. Agreements with third countries

The Lisbon Treaty provides for new and more efficient procedures for the conclusion of agreements with third countries. The European Council recommends that such agreements, in particular, as regards judicial cooperation as well as in the field of civil law, should be considered to be used more frequently, while taking account of multilateral mechanisms. It notes however that Member States will maintain the option of entering into bilateral agreements which comply with Union law, and that a legal framework has been created for certain bilateral agreements in civil law as well.
Protection of personal data is a core activity of the Union. There is a need for a coherent legislative framework for the Union for personal data transfers to third countries for law enforcement. A framework model agreement consisting of commonly applicable core elements of data protection could be created.

7.5. Geographical priorities and international organisations

Union action in external relations should focus on key partners, in particular:
— Candidate countries and countries with a European Union membership perspective for which the main objective would be to assist them in transposing the acquis,
— European neighbourhood countries, and other key partners with whom the Union should cooperate on all issues in the area of freedom, security and justice,
— EEA/Schengen states have a close relationship with the Union. This motivates closer cooperation, based on mutual trust and solidarity to enhance the positive effects of the internal market as well as to promote Union internal security,
— the United States of America, the Russian Federation and other strategic partners with which the Union should cooperate on all issues in the area of freedom, security and justice,
— Other countries or regions of priority, in terms of their contribution to EU strategic or geographical priorities,
— International organisations such as the UN and the Council of Europe with whom the Union needs to continue to work and within which the Union should coordinate its position.

In the *Western Balkans*, Stabilisation and Association Agreements are progressively entering into force and notable progress has been made in the area of visa policy, with visa facilitation and readmission agreements in place and a comprehensive visa liberalisation dialogue already achieved for some countries and still under way for others. Further efforts, including use of financial instruments, are needed to combat organised crime and corruption, to guarantee fundamental rights and freedoms and to build administrative capacities in border management, law enforcement and the judiciary in order to make the European perspective a reality.

The Union and *Turkey* have agreed to intensify their cooperation to meet the common challenge of managing migration flows and to tackle illegal immigration in particular. This cooperation should focus on joint responsibility, solidarity, cooperation with all Member States and common understanding, taking into account that Turkey neighbours the Union's external borders, its negotiation process and the Union's existing financial assistance in relevant areas, including border control. Concluding the negotiations on the readmission agreement with Turkey is a priority. Until then, already existing bilateral agreements should be adequately implemented.

The European Council emphasises that the

European Neighbourhood Policy (ENP) offers future opportunities for the Union to act in a coordinated and efficient manner and contribute to strengthen capacity and institution-building for an independent and impartial judiciary, law enforcement authorities and anti-corruption efforts, as well as increasing and facilitating the mobility of citizens of the partner countries. As regards the Eastern Partnership countries, the Union is holding out the prospect of concluding Association Agreements (with substantial parts concerning the area of freedom, security and justice) with those countries and supporting, the mobility of citizens and, as a long-term perspective, visa liberalisation in a secure environment.
The European Council calls for the development before the end of 2010 of a plan on how to take cooperation with the Eastern Partnership countries forward, comprising freedom, security and justice aspects of the Eastern Partnership as well as chapters on freedom, security and justice of the ENP Action Plans (or their successor documents) of the countries concerned. This plan should also list the gradual steps towards full visa liberalisation as a long-term goal for individual partner countries on a case- by-case basis, as well as describe the conditions for well- managed and secure mobility, mentioned in the Joint Declaration of the Prague Eastern Partnership Summit. The European Council will review the plan by the end of 2012, and in particular to assess its impact on the ground.

The Union should increase its efforts to support stability and security of *the Black Sea Region* as a whole and enhance further *the Black Sea Synergy* regional cooperation initiative. Activities should in particular focus on border management, migration management, customs cooperation and the rule of law as well as fight against cross-border crime.

As regards the *Union for the Mediterranean*, it will be necessary to enhance the work started in the context of the Barcelona process and the Euro-Mediterranean Partnership, in particular regarding migration (maritime), border surveillance, preventing and fighting drug trafficking, civil protection, law enforcement and judicial cooperation. The European Council invites the Commission in cooperation with the High Representative of the Union for foreign affairs and security policy to submit such a plan in 2010 and asks Coreper to prepare as soon as possible the decisions to be taken by the Council. The European Council will review the Plan by the end of 2012, and in particular to assess its impact on the ground.

As regards the situation in the Mediterranean area, the European Council considers that a stronger partnership with third countries of transit and of origin is necessary, based on reciprocal requirements and operational support, including border control, fight against organised crime, return and readmission. Rapid action to face the challenges in this region is a priority.

Cooperation has been intensified with the *USA* in the past 10 years including on all matters relating to the area of freedom, security and justice. Regular Ministerial Troika and Senior officials' meetings are held under each Presidency. In line with what has been laid down in the 'Washington Statement' adopted at the Ministerial Troika meeting in October 2009, the dialogue should continue and be deepened.
Ongoing cooperation in the fight against terrorism and transnational crime, border security, visa policy, migration and judicial cooperation should be pursued. An agreement on the protection of personal data exchanged for law enforcement purposes needs to be negotiated and concluded rapidly. The Union and the USA will work together to complete visa-free travel between the USA and the Union as soon as possible and increase security for travellers. Joint procedures should be set up for the implementation of the agreements on judicial cooperation, and regular consultations need to take place.

The Common Space for an area of freedom, security and justice and the new agreement currently under negotiation will provide the framework for intense and improved future cooperation with the *Russian Federation*. Building also on the outcomes of the bi-annual Permanent Partnership Councils on freedom, security and justice, the Union and Russia should continue to cooperate within the framework of the visa dialogue and on legal migration, while tackling illegal immigration, enhance common fight against organised crime and particularly operational cooperation, and improve and intensify judicial cooperation. An agreement, which should satisfy high standards of data protection, should be made with Eurojust as soon as possible. A framework agreement on information exchange should be concluded in that context. The visa dialogue must continue. The visa facilitation and readmission agreement should be implemented fully.

The European Council notes that the 2007 *EU-Africa* Joint Strategy and Action Plan define the scope of cooperation in the areas of counter-terrorism, transnational crime and drug trafficking. Both within the EU-Africa Partnership on Mobility, Migration and Employment (MME) and the Global Approach to Migration, and the follow up process of the Rabat, Paris and Tripoli conferences, the dialogue on migration should be deepened and intensified with African Partners, focussing on countries along the irregular migration routes to Europe with a view to assisting those countries in their efforts to draw up migration policies and responding to illegal immigration at sea and on the borders.

Efforts should be made to enhance cooperation, including the swift conclusion of readmission agreements, with Algeria, Morocco and Egypt, and, in line with the European Council conclusions of October 2009, with Libya.

West Africa has recently developed into a major hub for drug trafficking from South America to Europe and will require enhanced attention and assistance to stem drug trafficking as well as other transnational crime and terrorism (within the Sahel).

The dialogues with *China* and *India* on counter-terrorism aspects should be broadened and cover other priority areas such as intellectual property rights, migration, including fight against illegal immigration and judicial cooperation. When agreements on judicial cooperation are entered into, the Union will continue to require that the death penalty is an issue where no compromises can be made. The dialogue with India on migration should be intensified and cover all migration-related aspects. With regard to China, the dialogue on Human Rights must be continued. The dialogue with *Brazil* will have to become deeper and wider in the years to come. The Strategic Partnership and the Joint Action Plan should be implemented more efficiently and more specific measures should be considered.

With other countries and regions the Union will cooperate regionally or bilaterally as appropriate. The dialogue with Latin-American and Caribbean countries, on migration, drugs trafficking, money laundering and other fields of mutual interest should be pursued within the regional framework *(EU-LAC)* and within the framework of the FATF. Work will have to continue with the *Central Asian countries* along the trafficking routes to Europe.

Efforts should also be made to enhance cooperation with *Afghanistan* on drugs, including the implementation of the Action Oriented Paper on drug trafficking, and with Afghanistan and *Pakistan* on terrorism and migration issues.

As regards *Afghanistan and Iraq*, focus should be kept on effectively addressing the refugee situation through a comprehensive approach. Efforts should be made to address illegal immigration flows and to conclude readmission agreements with them as well as with *Bangladesh*.

7.6. International organisations and promotion of European and international standards

The European Council reiterates its commitment to effective multilateralism that supplements the bilateral and regional partnership with third countries and regions.

The UN remains the most important international organisation for the Union. The Lisbon Treaty creates the basis for more coherent and efficient Union participation in the work of the UN and other international organisations.

The Union should continue to promote European and international standards and the ratification of international conventions, in particular those developed under the auspices of the UN and the Council of Europe.

The work of the Council of Europe is of particular importance. It is the hub of the European values of democracy, human rights and the rule of law. The Union must continue to work together with the Council of Europe based on the Memorandum of Understanding between the Council of Europe and the European Union signed in 2007 and support its important conventions such as the Convention on Action against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

For law enforcement cooperation, Interpol is an important partner for the Union. Civil law cooperation is in particular made in the framework of the Hague Conference on Private International Law. The Union should continue to support the Conference and encourage its partners to ratify the conventions where the Union is or will become a Party or where all Member States are Parties.

LIST OF ABBREVIATIONS

CBRN	Chemical, Biological, Radiological and Nuclear
CEAS	Common European Asylum System
CEPOL	European Police College
COSI	Standing Committee on Internal Security
CSDP	Common Security and Defence Policy
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECRIS	European Criminal Records Information System
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ENP	European Neighbourhood Policy
EPRIS	European Police Records Index System
EU	European Union
EU ATC	EU Anti-Trafficking Coordinator

EUCPN	European Crime Prevention Network
Eurosur	European Border Surveillance System
FATF	Financial Action Task Force
FIUs	Financial Intelligence Units
GRECO	Council of Europe Group of States against Corruption
ICC	International Criminal Court
ICT	Information and Communication Technology
JITs	Joint Investigative Teams
MIC	Monitoring and Information Centre
OCTA	Organised Crime Threat Assessment
OECD	Organisation for Economic Cooperation and Development
OPC	Observatory for the Prevention of Crime
PNR	Passenger Name Record
SIS II	Second generation Schengen Information System
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNCAC	United Nations Convention against Corruption
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System

II. Citizenship and Free Movement of EU citizens and Their Families

A. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

B. Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

►B ►C1 DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 April 2004

on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

(Text with EEA relevance) ◄

(OJ L 158, 30.4.2004, p. 77)

Amended by:

		Official Journal		
		No	page	date
►M1	Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011	L 141	1	27.5.2011

Corrected by:

►C1 Corrigendum, OJ L 229, 29.6.2004, p. 35 (2004/38/EC)
►C2 Corrigendum, OJ L 30, 3.2.2005, p. 27 (2004/38/EC)
►C3 Corrigendum, OJ L 197, 28.7.2005, p. 34 (2004/38/EC)

▼B

▼C1

DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 April 2004

on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 12, 18, 40, 44 and 52 thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]),

Whereas:

(1) Citizenship of the Union confers on every citizen of the Union a primary and individual right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and to the measures adopted to give it effect.

(2) The free movement of persons constitutes one of the fundamental freedoms of the internal market, which comprises an area without internal frontiers, in which freedom is ensured in accordance with the provisions of the Treaty.

(3) Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.

([1]) OJ C 270 E, 25.9.2001, p. 150.
([2]) OJ C 149, 21.6.2002, p. 46.
([3]) OJ C 192, 12.8.2002, p. 17.
([4]) Opinion of the European Parliament of 11 February 2003 (OJ C 43 E, 19.2.2004, p. 42), Council Common Position of 5 December 2003 (OJ C 54 E, 2.3.2004, p. 12) and Position of the European Parliament of 10 March 2004 (not yet published in the Official Journal).

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(4) With a view to remedying this sector-by-sector, piecemeal approach to the right of free movement and residence and facilitating the exercise of this right, there needs to be a single legislative act to amend Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community ([1]), and to repeal the following acts: Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families ([2]), Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services ([3]), Council Directive 90/364/EEC of 28 June 1990 on the right of residence ([4]), Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity ([5]) and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students ([6]).

(5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality. For the purposes of this Directive, the definition of 'family member' should also include the registered partner if the legislation of the host Member State treats registered partnership as equivalent to marriage.

(6) In order to maintain the unity of the family in a broader sense and without prejudice to the prohibition of discrimination on grounds of nationality, the situation of those persons who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State, should be examined by the host Member State on the basis of its own national legislation, in order to decide whether entry and residence could be granted to such persons, taking into consideration their relationship with the Union citizen or any other circumstances, such as their financial or physical dependence on the Union citizen.

(7) The formalities connected with the free movement of Union citizens within the territory of Member States should be clearly defined, without prejudice to the provisions applicable to national border controls.

([1]) OJ L 257, 19.10.1968, p. 2. Regulation as last amended by Regulation (EEC) No 2434/92 (OJ L 245, 26.8.1992, p. 1).
([2]) OJ L 257, 19.10.1968, p. 13. Directive as last amended by the 2003 Act of Accession.
([3]) OJ L 172, 28.6.1973, p. 14.
([4]) OJ L 180, 13.7.1990, p. 26.
([5]) OJ L 180, 13.7.1990, p. 28.
([6]) OJ L 317, 18.12.1993, p. 59.

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(8) With a view to facilitating the free movement of family members who are not nationals of a Member State, those who have already obtained a residence card should be exempted from the requirement to obtain an entry visa within the meaning of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [1] or, where appropriate, of the applicable national legislation.

(9) Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice.

(10) Persons exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions.

(11) The fundamental and personal right of residence in another Member State is conferred directly on Union citizens by the Treaty and is not dependent upon their having fulfilled administrative procedures.

(12) For periods of residence of longer than three months, Member States should have the possibility to require Union citizens to register with the competent authorities in the place of residence, attested by a registration certificate issued to that effect.

(13) The residence card requirement should be restricted to family members of Union citizens who are not nationals of a Member State for periods of residence of longer than three months.

(14) The supporting documents required by the competent authorities for the issuing of a registration certificate or of a residence card should be comprehensively specified in order to avoid divergent administrative practices or interpretations constituting an undue obstacle to the exercise of the right of residence by Union citizens and their family members.

[1] OJ L 81, 21.3.2001, p. 1. Regulation as last amended by Regulation (EC) No 453/2003 (OJ L 69, 13.3.2003, p. 10).

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(15) Family members should be legally safeguarded in the event of the death of the Union citizen, divorce, annulment of marriage or termination of a registered partnership. With due regard for family life and human dignity, and in certain conditions to guard against abuse, measures should therefore be taken to ensure that in such circumstances family members already residing within the territory of the host Member State retain their right of residence exclusively on a personal basis.

(16) As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled. Therefore, an expulsion measure should not be the automatic consequence of recourse to the social assistance system. The host Member State should examine whether it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted in order to consider whether the beneficiary has become an unreasonable burden on its social assistance system and to proceed to his expulsion. In no case should an expulsion measure be adopted against workers, self-employed persons or job-seekers as defined by the Court of Justice save on grounds of public policy or public security.

(17) Enjoyment of permanent residence by Union citizens who have chosen to settle long term in the host Member State would strengthen the feeling of Union citizenship and is a key element in promoting social cohesion, which is one of the fundamental objectives of the Union. A right of permanent residence should therefore be laid down for all Union citizens and their family members who have resided in the host Member State in compliance with the conditions laid down in this Directive during a continuous period of five years without becoming subject to an expulsion measure.

(18) In order to be a genuine vehicle for integration into the society of the host Member State in which the Union citizen resides, the right of permanent residence, once obtained, should not be subject to any conditions.

(19) Certain advantages specific to Union citizens who are workers or self-employed persons and to their family members, which may allow these persons to acquire a right of permanent residence before they have resided five years in the host Member State, should be maintained, as these constitute acquired rights, conferred by Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State [1] and Council Directive 75/34/EEC of17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity [2].

[1] OJ L 142, 30.6.1970, p. 24.
[2] OJ L 14, 20.1.1975, p. 10.

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(20) In accordance with the prohibition of discrimination on grounds of nationality, all Union citizens and their family members residing in a Member State on the basis of this Directive should enjoy, in that Member State, equal treatment with nationals in areas covered by the Treaty, subject to such specific provisions as are expressly provided for in the Treaty and secondary law.

(21) However, it should be left to the host Member State to decide whether it will grant social assistance during the first three months of residence, or for a longer period in the case of job-seekers, to Union citizens other than those who are workers or self-employed persons or who retain that status or their family members, or maintenance assistance for studies, including vocational training, prior to acquisition of the right of permanent residence, to these same persons.

(22) The Treaty allows restrictions to be placed on the right of free movement and residence on grounds of public policy, public security or public health. In order to ensure a tighter definition of the circumstances and procedural safeguards subject to which Union citizens and their family members may be denied leave to enter or may be expelled, this Directive should replace Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals, which are justified on grounds of public policy, public security or public health ([1]).

(23) Expulsion of Union citizens and their family members on grounds of public policy or public security is a measure that can seriously harm persons who, having availed themselves of the rights and freedoms conferred on them by the Treaty, have become genuinely integrated into the host Member State. The scope for such measures should therefore be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin.

(24) Accordingly, the greater the degree of integration of Union citizens and their family members in the host Member State, the greater the degree of protection against expulsion should be. Only in exceptional circumstances, where there are imperative grounds of public security, should an expulsion measure be taken against Union citizens who have resided for many years in the territory of the host Member State, in particular when they were born and have resided there throughout their life. In addition, such exceptional circumstances should also apply to an expulsion measure taken against minors, in order to protect their links with their family, in accordance with the United Nations Convention on the Rights of the Child, of 20 November 1989.

([1]) OJ 56, 4.4.1964, p. 850. Directive as last amended by Directive 75/35/EEC (OJ 14, 20.1.1975, p. 14).

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(25) Procedural safeguards should also be specified in detail in order to ensure a high level of protection of the rights of Union citizens and their family members in the event of their being denied leave to enter or reside in another Member State, as well as to uphold the principle that any action taken by the authorities must be properly justified.

(26) In all events, judicial redress procedures should be available to Union citizens and their family members who have been refused leave to enter or reside in another Member State.

(27) In line with the case-law of the Court of Justice prohibiting Member States from issuing orders excluding for life persons covered by this Directive from their territory, the right of Union citizens and their family members who have been excluded from the territory of a Member State to submit a fresh application after a reasonable period, and in any event after a three year period from enforcement of the final exclusion order, should be confirmed.

(28) To guard against abuse of rights or fraud, notably marriages of convenience or any other form of relationships contracted for the sole purpose of enjoying the right of free movement and residence, Member States should have the possibility to adopt the necessary measures.

(29) This Directive should not affect more favourable national provisions.

(30) With a view to examining how further to facilitate the exercise of the right of free movement and residence, a report should be prepared by the Commission in order to evaluate the opportunity to present any necessary proposals to this effect, notably on the extension of the period of residence with no conditions.

(31) This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject

This Directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;

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(b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;

(c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health.

Article 2

Definitions

For the purposes of this Directive:

1. 'Union citizen' means any person having the nationality of a Member State;

2. 'family member' means:

   (a) the spouse;

   (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

   (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

   (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);

3. 'host Member State' means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence.

Article 3

Beneficiaries

1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.

2. Without prejudice to any right to free movement and residence the persons concerned may have in their own right, the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

(b) the partner with whom the Union citizen has a durable relationship, duly attested.

The host Member State shall undertake an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people.

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CHAPTER II

RIGHT OF EXIT AND ENTRY

Article 4

Right of exit

1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State.

2. No exit visa or equivalent formality may be imposed on the persons to whom paragraph 1 applies.

3. Member States shall, acting in accordance with their laws, issue to their own nationals, and renew, an identity card or passport stating their nationality.

4. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.

Article 5

Right of entry

1. Without prejudice to the provisions on travel documents applicable to national border controls, Member States shall grant Union citizens leave to enter their territory with a valid identity card or passport and shall grant family members who are not nationals of a Member State leave to enter their territory with a valid passport.

No entry visa or equivalent formality may be imposed on Union citizens.

2. Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. For the purposes of this Directive, possession of the valid residence card referred to in Article 10 shall exempt such family members from the visa requirement.

Member States shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure.

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3. The host Member State shall not place an entry or exit stamp in the passport of family members who are not nationals of a Member State provided that they present the residence card provided for in Article 10.

4. Where a Union citizen, or a family member who is not a national of a Member State, does not have the necessary travel documents or, if required, the necessary visas, the Member State concerned shall, before turning them back, give such persons every reasonable opportunity to obtain the necessary documents or have them brought to them within a reasonable period of time or to corroborate or prove by other means that they are covered by the right of free movement and residence.

5. The Member State may require the person concerned to report his/her presence within its territory within a reasonable and non-discriminatory period of time. Failure to comply with this requirement may make the person concerned liable to proportionate and non-discriminatory sanctions.

CHAPTER III

RIGHT OF RESIDENCE

Article 6

Right of residence for up to three months

1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Article 7

Right of residence for more than three months

1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State; or

(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or

(c) — are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and

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— have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or

(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.

Article 8

Administrative formalities for Union citizens

1. Without prejudice to Article 5(5), for periods of residence longer than three months, the host Member State may require Union citizens to register with the relevant authorities.

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2. The deadline for registration may not be less than three months from the date of arrival. A registration certificate shall be issued immediately, stating the name and address of the person registering and the date of the registration. Failure to comply with the registration requirement may render the person concerned liable to proportionate and non-discriminatory sanctions.

3. For the registration certificate to be issued, Member States may only require that

— Union citizens to whom point (a) of Article 7(1) applies present a valid identity card or passport, a confirmation of engagement from the employer or a certificate of employment, or proof that they are self-employed persons,

— Union citizens to whom point (b) of Article 7(1) applies present a valid identity card or passport and provide proof that they satisfy the conditions laid down therein,

— Union citizens to whom point (c) of Article 7(1) applies present a valid identity card or passport, provide proof of enrolment at an accredited establishment and of comprehensive sickness insurance cover and the declaration or equivalent means referred to in point (c) of Article 7(1). Member States may not require this declaration to refer to any specific amount of resources.

4. Member States may not lay down a fixed amount which they regard as 'sufficient resources', but they must take into account the personal situation of the person concerned. In all cases this amount shall not be higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State.

5. For the registration certificate to be issued to family members of Union citizens, who are themselves Union citizens, Member States may require the following documents to be presented:

(a) a valid identity card or passport;

(b) a document attesting to the existence of a family relationship or of a registered partnership;

(c) where appropriate, the registration certificate of the Union citizen whom they are accompanying or joining;

(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;

(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;

(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.

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Article 9

Administrative formalities for family members who are not nationals of a Member State

1. Member States shall issue a residence card to family members of a Union citizen who are not nationals of a Member State, where the planned period of residence is for more than three months.

2. The deadline for submitting the residence card application may not be less than three months from the date of arrival.

3. Failure to comply with the requirement to apply for a residence card may make the person concerned liable to proportionate and non-discriminatory sanctions.

Article 10

Issue of residence cards

1. The right of residence of family members of a Union citizen who are not nationals of a Member State shall be evidenced by the issuing of a document called 'Residence card of a family member of a Union citizen' no later than six months from the date on which they submit the application. A certificate of application for the residence card shall be issued immediately.

2. For the residence card to be issued, Member States shall require presentation of the following documents:

(a) a valid passport;

(b) a document attesting to the existence of a family relationship or of a registered partnership;

(c) the registration certificate or, in the absence of a registration system, any other proof of residence in the host Member State of the Union citizen whom they are accompanying or joining;

(d) in cases falling under points (c) and (d) of Article 2(2), documentary evidence that the conditions laid down therein are met;

(e) in cases falling under Article 3(2)(a), a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the Union citizen, or proof of the existence of serious health grounds which strictly require the personal care of the family member by the Union citizen;

(f) in cases falling under Article 3(2)(b), proof of the existence of a durable relationship with the Union citizen.

Article 11

Validity of the residence card

1. The residence card provided for by Article 10(1) shall be valid for five years from the date of issue or for the envisaged period of residence of the Union citizen, if this period is less than five years.

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2. The validity of the residence card shall not be affected by temporary absences not exceeding six months a year, or by absences of a longer duration for compulsory military service or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

Article 12

Retention of the right of residence by family members in the event of death or departure of the Union citizen

1. Without prejudice to the second subparagraph, the Union citizen's death or departure from the host Member State shall not affect the right of residence of his/her family members who are nationals of a Member State.

Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, the Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in the host Member State as family members for at least one year before the Union citizen's death.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. ‘Sufficient resources’ shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on a personal basis.

3. The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies.

Article 13

Retention of the right of residence by family members in the event of divorce, annulment of marriage or termination of registered partnership

1. Without prejudice to the second subparagraph, divorce, annulment of the Union citizen's marriage or termination of his/her registered partnership, as referred to in point 2(b) of Article 2 shall not affect the right of residence of his/her family members who are nationals of a Member State.

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Before acquiring the right of permanent residence, the persons concerned must meet the conditions laid down in points (a), (b), (c) or (d) of Article 7(1).

2. Without prejudice to the second subparagraph, divorce, annulment of marriage or termination of the registered partnership referred to in point 2(b) of Article 2 shall not entail loss of the right of residence of a Union citizen's family members who are not nationals of a Member State where:

(a) prior to initiation of the divorce or annulment proceedings or termination of the registered partnership referred to in point 2(b) of Article 2, the marriage or registered partnership has lasted at least three years, including one year in the host Member State; or

(b) by agreement between the spouses or the partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has custody of the Union citizen's children; or

(c) this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting; or

(d) by agreement between the spouses or partners referred to in point 2(b) of Article 2 or by court order, the spouse or partner who is not a national of a Member State has the right of access to a minor child, provided that the court has ruled that such access must be in the host Member State, and for as long as is required.

Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'Sufficient resources' shall be as defined in Article 8(4).

Such family members shall retain their right of residence exclusively on personal basis.

Article 14

Retention of the right of residence

1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

2. Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.

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In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.

3. An expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State.

4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:

(a) the Union citizens are workers or self-employed persons, or

(b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.

Article 15

Procedural safeguards

1. The procedures provided for by Articles 30 and 31 shall apply by analogy to all decisions restricting free movement of Union citizens and their family members on grounds other than public policy, public security or public health.

2. Expiry of the identity card or passport on the basis of which the person concerned entered the host Member State and was issued with a registration certificate or residence card shall not constitute a ground for expulsion from the host Member State.

3. The host Member State may not impose a ban on entry in the context of an expulsion decision to which paragraph 1 applies.

CHAPTER IV

RIGHT OF PERMANENT RESIDENCE

Section I

Eligibility

Article 16

General rule for Union citizens and their family members

1. Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.

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2. Paragraph 1 shall apply also to family members who are not nationals of a Member State and have legally resided with the Union citizen in the host Member State for a continuous period of five years.

3. Continuity of residence shall not be affected by temporary absences not exceeding a total of six months a year, or by absences of a longer duration for compulsory military service, or by one absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

4. Once acquired, the right of permanent residence shall be lost only through absence from the host Member State for a period exceeding two consecutive years.

Article 17

Exemptions for persons no longer working in the host Member State and their family members

1. By way of derogation from Article 16, the right of permanent residence in the host Member State shall be enjoyed before completion of a continuous period of five years of residence by:

(a) workers or self-employed persons who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension or workers who cease paid employment to take early retirement, provided that they have been working in that Member State for at least the preceding twelve months and have resided there continuously for more than three years.

If the law of the host Member State does not grant the right to an old age pension to certain categories of self-employed persons, the age condition shall be deemed to have been met once the person concerned has reached the age of 60;

(b) workers or self-employed persons who have resided continuously in the host Member State for more than two years and stop working there as a result of permanent incapacity to work.

If such incapacity is the result of an accident at work or an occupational disease entitling the person concerned to a benefit payable in full or in part by an institution in the host Member State, no condition shall be imposed as to length of residence;

(c) workers or self-employed persons who, after three years of continuous employment and residence in the host Member State, work in an employed or self-employed capacity in another Member State, while retaining their place of residence in the host Member State, to which they return, as a rule, each day or at least once a week.

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For the purposes of entitlement to the rights referred to in points (a) and (b), periods of employment spent in the Member State in which the person concerned is working shall be regarded as having been spent in the host Member State.

Periods of involuntary unemployment duly recorded by the relevant employment office, periods not worked for reasons not of the person's own making and absences from work or cessation of work due to illness or accident shall be regarded as periods of employment.

2. The conditions as to length of residence and employment laid down in point (a) of paragraph 1 and the condition as to length of residence laid down in point (b) of paragraph 1 shall not apply if the worker's or the self-employed person's spouse or partner as referred to in point 2(b) of Article 2 is a national of the host Member State or has lost the nationality of that Member State by marriage to that worker or self-employed person.

3. Irrespective of nationality, the family members of a worker or a self-employed person who are residing with him in the territory of the host Member State shall have the right of permanent residence in that Member State, if the worker or self-employed person has acquired himself the right of permanent residence in that Member State on the basis of paragraph 1.

4. If, however, the worker or self-employed person dies while still working but before acquiring permanent residence status in the host Member State on the basis of paragraph 1, his family members who are residing with him in the host Member State shall acquire the right of permanent residence there, on condition that:

(a) the worker or self-employed person had, at the time of death, resided continuously on the territory of that Member State for two years; or

(b) the death resulted from an accident at work or an occupational disease; or

(c) the surviving spouse lost the nationality of that Member State following marriage to the worker or self-employed person.

Article 18

Acquisition of the right of permanent residence by certain family members who are not nationals of a Member State

Without prejudice to Article 17, the family members of a Union citizen to whom Articles 12(2) and 13(2) apply, who satisfy the conditions laid down therein, shall acquire the right of permanent residence after residing legally for a period of five consecutive years in the host Member State.

▼C1

Section II

Administrative formalities

Article 19

Document certifying permanent residence for Union citizens

1. Upon application Member States shall issue Union citizens entitled to permanent residence, after having verified duration of residence, with a document certifying permanent residence.

2. The document certifying permanent residence shall be issued as soon as possible.

Article 20

Permanent residence card for family members who are not nationals of a Member State

1. Member States shall issue family members who are not nationals of a Member State entitled to permanent residence with a permanent residence card within six months of the submission of the application. The permanent residence card shall be renewable automatically every 10 years.

2. The application for a permanent residence card shall be submitted before the residence card expires. Failure to comply with the requirement to apply for a permanent residence card may render the person concerned liable to proportionate and non-discriminatory sanctions.

3. Interruption in residence not exceeding two consecutive years shall not affect the validity of the permanent residence card.

Article 21

Continuity of residence

For the purposes of this Directive, continuity of residence may be attested by any means of proof in use in the host Member State. Continuity of residence is broken by any expulsion decision duly enforced against the person concerned.

CHAPTER V

PROVISIONS COMMON TO THE RIGHT OF RESIDENCE AND THE RIGHT OF PERMANENT RESIDENCE

Article 22

Territorial scope

The right of residence and the right of permanent residence shall cover the whole territory of the host Member State. Member States may impose territorial restrictions on the right of residence and the right of permanent residence only where the same restrictions apply to their own nationals.

▼C1

Article 23

Related rights

Irrespective of nationality, the family members of a Union citizen who have the right of residence or the right of permanent residence in a Member State shall be entitled to take up employment or self-employment there.

Article 24

Equal treatment

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

Article 25

General provisions concerning residence documents

1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.

2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.

Article 26

Checks

Member States may carry out checks on compliance with any requirement deriving from their national legislation for non-nationals always to carry their registration certificate or residence card, provided that the same requirement applies to their own nationals as regards their identity card. In the event of failure to comply with this requirement, Member States may impose the same sanctions as those imposed on their own nationals for failure to carry their identity card.

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CHAPTER VI

RESTRICTIONS ON THE RIGHT OF ENTRY AND THE RIGHT OF RESIDENCE ON GROUNDS OF PUBLIC POLICY, PUBLIC SECURITY OR PUBLIC HEALTH

Article 27

General principles

1. Subject to the provisions of this Chapter, Member States may restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds of public policy, public security or public health. These grounds shall not be invoked to serve economic ends.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.

3. In order to ascertain whether the person concerned represents a danger for public policy or public security, when issuing the registration certificate or, in the absence of a registration system, not later than three months from the date of arrival of the person concerned on its territory or from the date of reporting his/her presence within the territory, as provided for in Article 5(5), or when issuing the residence card, the host Member State may, should it consider this essential, request the Member State of origin and, if need be, other Member States to provide information concerning any previous police record the person concerned may have. Such enquiries shall not be made as a matter of routine. The Member State consulted shall give its reply within two months.

4. The Member State which issued the passport or identity card shall allow the holder of the document who has been expelled on grounds of public policy, public security, or public health from another Member State to re-enter its territory without any formality even if the document is no longer valid or the nationality of the holder is in dispute.

Article 28

Protection against expulsion

1. Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

▼C1

2. The host Member State may not take an expulsion decision against Union citizens or their family members, irrespective of nationality, who have the right of permanent residence on its territory, except on serious grounds of public policy or public security.

3. An expulsion decision may not be taken against Union citizens, except if the decision is based on imperative grounds of public security, as defined by Member States, if they:

(a) have resided in the host Member State for the previous 10 years; or

(b) are a minor, except if the expulsion is necessary for the best interests of the child, as provided for in the United Nations Convention on the Rights of the Child of 20 November 1989.

Article 29

Public health

1. The only diseases justifying measures restricting freedom of movement shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the host Member State.

2. Diseases occurring after a three-month period from the date of arrival shall not constitute grounds for expulsion from the territory.

3. Where there are serious indications that it is necessary, Member States may, within three months of the date of arrival, require persons entitled to the right of residence to undergo, free of charge, a medical examination to certify that they are not suffering from any of the conditions referred to in paragraph 1. Such medical examinations may not be required as a matter of routine.

Article 30

Notification of decisions

1. The persons concerned shall be notified in writing of any decision taken under Article 27(1), in such a way that they are able to comprehend its content and the implications for them.

2. The persons concerned shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security.

3. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory of the Member State. Save in duly substantiated cases of urgency, the time allowed to leave the territory shall be not less than one month from the date of notification.

▼C1

Article 31

Procedural safeguards

1. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures in the host Member State to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health.

2. Where the application for appeal against or judicial review of the expulsion decision is accompanied by an application for an interim order to suspend enforcement of that decision, actual removal from the territory may not take place until such time as the decision on the interim order has been taken, except:

— where the expulsion decision is based on a previous judicial decision; or

— where the persons concerned have had previous access to judicial review; or

— where the expulsion decision is based on imperative grounds of public security under Article 28(3).

3. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Article 28.

4. Member States may exclude the individual concerned from their territory pending the redress procedure, but they may not prevent the individual from submitting his/her defence in person, except when his/her appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.

Article 32

Duration of exclusion orders

1. Persons excluded on grounds of public policy or public security may submit an application for lifting of the exclusion order after a reasonable period, depending on the circumstances, and in any event after three years from enforcement of the final exclusion order which has been validly adopted in accordance with Community law, by putting forward arguments to establish that there has been a material change in the circumstances which justified the decision ordering their exclusion.

The Member State concerned shall reach a decision on this application within six months of its submission.

2. The persons referred to in paragraph 1 shall have no right of entry to the territory of the Member State concerned while their application is being considered.

▼C1

Article 33

Expulsion as a penalty or legal consequence

1. Expulsion orders may not be issued by the host Member State as a penalty or legal consequence of a custodial penalty, unless they conform to the requirements of Articles 27, 28 and 29.

2. If an expulsion order, as provided for in paragraph 1, is enforced more than two years after it was issued, the Member State shall check that the individual concerned is currently and genuinely a threat to public policy or public security and shall assess whether there has been any material change in the circumstances since the expulsion order was issued.

CHAPTER VII

FINAL PROVISIONS

Article 34

Publicity

Member States shall disseminate information concerning the rights and obligations of Union citizens and their family members on the subjects covered by this Directive, particularly by means of awareness-raising campaigns conducted through national and local media and other means of communication.

Article 35

Abuse of rights

Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measure shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31.

Article 36

Sanctions

Member States shall lay down provisions on the sanctions applicable to breaches of national rules adopted for the implementation of this Directive and shall take the measures required for their application. The sanctions laid down shall be effective and proportionate. Member States shall notify the Commission of these provisions not later than 30 April 2006 and as promptly as possible in the case of any subsequent changes.

Article 37

More favourable national provisions

The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.

▼C1

Article 38

Repeals

▼M1

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▼C1

2. Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC shall be repealed with effect from 30 April 2006.

3. References made to the repealed provisions and Directives shall be construed as being made to this Directive.

Article 39

Report

►C3 No later than 30 April 2008 ◄ the Commission shall submit a report on the application of this Directive to the European Parliament and the Council, together with any necessary proposals, notably on the opportunity to extend the period of time during which Union citizens and their family members may reside in the territory of the host Member State without any conditions. The Member States shall provide the Commission with the information needed to produce the report.

Article 40

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2006.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

Article 41

Entry into force

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

Article 42

Addressees

This Directive is addressed to the Member States.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 492/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 April 2011

on freedom of movement for workers within the Union

(codification)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [3] has been substantially amended several times [4]. In the interests of clarity and rationality the said Regulation should be codified.

(2) Freedom of movement for workers should be secured within the Union. The attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Union in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health.

(3) Provisions should be laid down to enable the objectives laid down in Articles 45 and 46 of the Treaty on the Functioning of the European Union in the field of freedom of movement to be achieved.

(4) Freedom of movement constitutes a fundamental right of workers and their families. Mobility of labour within the Union must be one of the means by which workers are guaranteed the possibility of improving their living and working conditions and promoting their social advancement, while helping to satisfy the requirements of the economies of the Member States. The right of all workers in the Member States to pursue the activity of their choice within the Union should be affirmed.

(5) Such right should be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services.

(6) The right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers be eliminated, in particular as regards the conditions for the integration of the worker's family into the host country.

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[1] OJ C 44, 11.2.2011, p. 170.
[2] Position of the European Parliament of 7 September 2010 (not yet published in the Official Journal) and decision of the Council of 21 March 2011.
[3] OJ L 257, 19.10.1968, p. 2.
[4] See Annex I.

(7) The principle of non-discrimination between workers in the Union means that all nationals of Member States have the same priority as regards employment as is enjoyed by national workers.

(8) The machinery for vacancy clearance, in particular by means of direct cooperation between the central employment services and also between the regional services, as well as by coordination of the exchange of information, ensures in a general way a clearer picture of the labour market. Workers wishing to move should also be regularly informed of living and working conditions.

(9) Close links exist between freedom of movement for workers, employment and vocational training, particularly where the latter aims at putting workers in a position to take up concrete offers of employment from other regions of the Union. Such links make it necessary that the problems arising in this connection should no longer be studied in isolation but viewed as interdependent, account also being taken of the problems of employment at the regional level. It is therefore necessary to direct the efforts of Member States toward coordinating their employment policies,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

EMPLOYMENT, EQUAL TREATMENT AND WORKERS' FAMILIES

SECTION 1

Eligibility for employment

Article 1

1. Any national of a Member State shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

2. He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State.

Article 2

Any national of a Member State and any employer pursuing an activity in the territory of a Member State may exchange their applications for and offers of employment, and may conclude and perform contracts of employment in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefrom.

Article 3

1. Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

(a) where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

(b) where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

The first subparagraph shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.

2. There shall be included in particular among the provisions or practices of a Member State referred to in the first subparagraph of paragraph 1 those which:

(a) prescribe a special recruitment procedure for foreign nationals;

(b) limit or restrict the advertising of vacancies in the press or through any other medium or subject it to conditions other than those applicable in respect of employers pursuing their activities in the territory of that Member State;

(c) subject eligibility for employment to conditions of registration with employment offices or impede recruitment of individual workers, where persons who do not reside in the territory of that State are concerned.

Article 4

1. Provisions laid down by law, regulation or administrative action of the Member States which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of activity or region, or at a national level, shall not apply to nationals of the other Member States.

2. When in a Member State the granting of any benefit to undertakings is subject to a minimum percentage of national workers being employed, nationals of the other Member States shall be counted as national workers, subject to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [1].

[1] OJ L 255, 30.9.2005, p. 22.

Article 5

A national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment.

Article 6

1. The engagement and recruitment of a national of one Member State for a post in another Member State shall not depend on medical, vocational or other criteria which are discriminatory on grounds of nationality by comparison with those applied to nationals of the other Member State who wish to pursue the same activity.

2. A national who holds an offer in his name from an employer in a Member State other than that of which he is a national may have to undergo a vocational test, if the employer expressly requests this when making his offer of employment.

SECTION 2

Employment and equality of treatment

Article 7

1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.

Article 8

A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union. He may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking.

The first paragraph of this Article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States.

Article 9

1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

2. A worker referred to in paragraph 1 may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist, and shall enjoy the resultant benefits and priorities.

If his family has remained in the country whence he came, they shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption.

SECTION 3

Workers' families

Article 10

The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.

CHAPTER II

CLEARANCE OF VACANCIES AND APPLICATIONS FOR EMPLOYMENT

SECTION 1

Cooperation between the Member States and with the Commission

Article 11

1. The Member States or the Commission shall instigate or together undertake any study of employment or unemployment which they consider necessary for freedom of movement for workers within the Union.

The central employment services of the Member States shall cooperate closely with each other and with the Commission with a view to acting jointly as regards the clearing of vacancies and applications for employment within the Union and the resultant placing of workers in employment.

2. To this end the Member States shall designate specialist services which shall be entrusted with organising work in the fields referred to in the second subparagraph of paragraph 1 and cooperating with each other and with the departments of the Commission.

The Member States shall notify the Commission of any change in the designation of such services and the Commission shall publish details thereof for information in the *Official Journal of the European Union*.

Article 12

1. The Member States shall send to the Commission information on problems arising in connection with the freedom of movement and employment of workers and particulars of the state and development of employment.

2. The Commission, taking the utmost account of the opinion of the Technical Committee referred to in Article 29 ('the Technical Committee'), shall determine the manner in which the information referred to in paragraph 1 of this Article is to be drawn up.

3. In accordance with the procedure laid down by the Commission taking the utmost account of the opinion of the Technical Committee, the specialist service of each Member State shall send to the specialist services of the other Member States and to the European Coordination Office referred to in Article 18 such information concerning living and working conditions and the state of the labour market as is likely to be of guidance to workers from the other Member States. Such information shall be brought up to date regularly.

The specialist services of the other Member States shall ensure that wide publicity is given to such information, in particular by circulating it among the appropriate employment services and by all suitable means of communication for informing the workers concerned.

SECTION 2

Machinery for vacancy clearance

Article 13

1. The specialist service of each Member State shall regularly send to the specialist services of the other Member States and to the European Coordination Office referred to in Article 18:

(a) details of vacancies which could be filled by nationals of other Member States;

(b) details of vacancies addressed to third countries;

(c) details of applications for employment by those who have formally expressed a wish to work in another Member State;

(d) information, by region and by branch of activity, on applicants who have declared themselves actually willing to accept employment in another country.

The specialist service of each Member State shall forward this information to the appropriate employment services and agencies as soon as possible.

2. The details of vacancies and applications referred to in paragraph 1 shall be circulated according to a uniform system to be established by the European Coordination Office referred to in Article 18 in collaboration with the Technical Committee.

This system may be adapted if necessary.

Article 14

1. Any vacancy within the meaning of Article 13 communicated to the employment services of a Member State shall be notified to and processed by the competent employment services of the other Member States concerned.

Such services shall forward to the services of the first Member State the details of suitable applications.

2. The applications for employment referred to in point (c) of the first subparagraph of Article 13(1) shall be responded to by the relevant services of the Member States within a reasonable period, not exceeding 1 month.

3. The employment services shall grant workers who are nationals of the Member States the same priority as the relevant measures grant to nationals vis-à-vis workers from third countries.

Article 15

1. The provisions of Article 14 shall be implemented by the specialist services. However, in so far as they have been authorised by the central services and in so far as the organisation of the employment services of a Member State and the placing techniques employed make it possible:

(a) the regional employment services of the Member States shall:

(i) on the basis of the information referred to in Article 13, on which appropriate action will be taken, directly bring together and clear vacancies and applications for employment;

(ii) establish direct relations for clearance:

— of vacancies offered to a named worker,

— of individual applications for employment sent either to a specific employment service or to an employer pursuing his activity within the area covered by such a service,

— where the clearing operations concern seasonal workers who must be recruited as quickly as possible;

(b) the services territorially responsible for the border regions of two or more Member States shall regularly exchange data relating to vacancies and applications for employment in their area and, acting in accordance with their arrangements with the other employment services of their countries, shall directly bring together and clear vacancies and applications for employment.

If necessary, the services territorially responsible for border regions shall also set up cooperation and service structures to provide:

— users with as much practical information as possible on the various aspects of mobility, and

— management and labour, social services (in particular public, private or those of public interest) and all institutions concerned, with a framework of coordinated measures relating to mobility,

(c) official employment services which specialise in certain occupations or specific categories of persons shall cooperate directly with each other.

2. The Member States concerned shall forward to the Commission the list, drawn up by common accord, of services referred to in paragraph 1 and the Commission shall publish such list for information, and any amendment thereto, in the *Official Journal of the European Union*.

Article 16

Adoption of recruiting procedures as applied by the implementing bodies provided for under agreements concluded between two or more Member States shall not be obligatory.

SECTION 3

Measures for controlling the balance of the labour market

Article 17

1. On the basis of a report from the Commission drawn up from information supplied by the Member States, the latter and the Commission shall at least once a year analyse jointly the results of Union arrangements regarding vacancies and applications.

2. The Member States shall examine with the Commission all the possibilities of giving priority to nationals of Member States when filling employment vacancies in order to achieve a balance between vacancies and applications for employment within the Union. They shall adopt all measures necessary for this purpose.

3. Every 2 years the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Chapter II, summarising the information required and the data obtained from the studies and research carried out and highlighting any useful points with regard to developments on the Union's labour market.

SECTION 4

European Coordination Office

Article 18

The European Office for Coordinating the Clearance of Vacancies and Applications for Employment ('the European Coordination Office'), established within the Commission, shall have the general task of promoting vacancy clearance at Union level. It shall be responsible in particular for all the technical duties in this field which, under the provisions of this Regulation, are assigned to the Commission, and especially for assisting the national employment services.

It shall summarise the information referred to in Articles 12 and 13 and the data arising out of the studies and research carried out pursuant to Article 11, so as to bring to light any useful facts about foreseeable developments on the Union labour market; such facts shall be communicated to the specialist services of the Member States and to the Advisory Committee referred to in Article 21 and the Technical Committee.

Article 19

1. The European Coordination Office shall be responsible, in particular, for:

(a) coordinating the practical measures necessary for vacancy clearance at Union level and for analysing the resulting movements of workers;

(b) contributing to such objectives by implementing, in cooperation with the Technical Committee, joint methods of action at administrative and technical levels;

(c) carrying out, where a special need arises, and in agreement with the specialist services, the bringing together of vacancies and applications for employment for clearance by those specialist services.

2. It shall communicate to the specialist services vacancies and applications for employment sent directly to the Commission, and shall be informed of the action taken thereon.

Article 20

The Commission may, in agreement with the competent authority of each Member State, and in accordance with the conditions and procedures which it shall determine on the basis of the opinion of the Technical Committee, organise visits and assignments for officials of other Member States, and also advanced programmes for specialist personnel.

CHAPTER III

COMMITTEES FOR ENSURING CLOSE COOPERATION BETWEEN THE MEMBER STATES IN MATTERS CONCERNING THE FREEDOM OF MOVEMENT OF WORKERS AND THEIR EMPLOYMENT

SECTION 1

The Advisory Committee

Article 21

The Advisory Committee shall be responsible for assisting the Commission in the examination of any questions arising from the application of the Treaty on the Functioning of the European Union and measures taken in pursuance thereof, in matters concerning the freedom of movement of workers and their employment.

Article 22

The Advisory Committee shall be responsible in particular for:

(a) examining problems concerning freedom of movement and employment within the framework of national manpower policies, with a view to coordinating the employment policies of the Member States at Union level, thus contributing to the development of the economies and to an improved balance of the labour market;

(b) making a general study of the effects of implementing this Regulation and any supplementary measures;

(c) submitting to the Commission any reasoned proposals for revising this Regulation;

(d) delivering, either at the request of the Commission or on its own initiative, reasoned opinions on general questions or on questions of principle, in particular on exchange of information concerning developments in the labour market, on the movement of workers between Member States, on programmes or measures to develop vocational guidance and vocational training which are likely to increase the possibilities of freedom of movement and employment, and on all forms of assistance to workers and their families, including social assistance and the housing of workers.

Article 23

1. The Advisory Committee shall be composed of six members for each Member State, two of whom shall represent the Government, two the trade unions and two the employers' associations.

2. For each of the categories referred to in paragraph 1, one alternate member shall be appointed by each Member State.

3. The term of office of the members and their alternates shall be 2 years. Their appointments shall be renewable.

On expiry of their term of office, the members and their alternates shall remain in office until replaced or until their appointments are renewed.

Article 24

The members of the Advisory Committee and their alternates shall be appointed by the Council, which shall endeavour, when selecting representatives of trade unions and employers' associations, to achieve adequate representation on the Committee of the various economic sectors concerned.

The list of members and their alternates shall be published by the Council for information in the *Official Journal of the European Union*.

Article 25

The Advisory Committee shall be chaired by a member of the Commission or his representative. The Chairman shall not vote. The Committee shall meet at least twice a year. It shall be convened by its Chairman, either on his own initiative, or at the request of at least one third of the members.

Secretarial services shall be provided for the Committee by the Commission.

Article 26

The Chairman may invite individuals or representatives of bodies with wide experience in the field of employment or movement of workers to take part in meetings as observers or as experts. The Chairman may be assisted by expert advisers.

Article 27

1. An opinion delivered by the Advisory Committee shall not be valid unless two thirds of the members are present.

2. Opinions shall state the reasons on which they are based; they shall be delivered by an absolute majority of the votes validly cast; they shall be accompanied by a written statement of the views expressed by the minority, when the latter so requests.

Article 28

The Advisory Committee shall establish its working methods by rules of procedure which shall enter into force after the Council, having received an opinion from the Commission, has given its approval. The entry into force of any amendment that the Committee decides to make thereto shall be subject to the same procedure.

SECTION 2

The Technical Committee

Article 29

The Technical Committee shall be responsible for assisting the Commission in the preparation, promotion and follow-up of all technical work and measures for giving effect to this Regulation and any supplementary measures.

Article 30

The Technical Committee shall be responsible in particular for:

(a) promoting and advancing cooperation between the public authorities concerned in the Member States on all technical questions relating to freedom of movement of workers and their employment;

(b) formulating procedures for the organisation of the joint activities of the public authorities concerned;

(c) facilitating the gathering of information likely to be of use to the Commission and the undertaking of the studies and research provided for in this Regulation, and encouraging exchange of information and experience between the administrative bodies concerned;

(d) investigating at a technical level the harmonisation of the criteria by which Member States assess the state of their labour markets.

Article 31

1. The Technical Committee shall be composed of representatives of the Governments of the Member States. Each Government shall appoint as member of the Technical Committee one of the members who represent it on the Advisory Committee.

2. Each Government shall appoint an alternate from among its other representatives — members or alternates — on the Advisory Committee.

Article 32

The Technical Committee shall be chaired by a member of the Commission or his representative. The Chairman shall not vote. The Chairman and the members of the Committee may be assisted by expert advisers.

Secretarial services shall be provided for the Committee by the Commission.

Article 33

The proposals and opinions formulated by the Technical Committee shall be submitted to the Commission, and the Advisory Committee shall be informed thereof. Any such proposals and opinions shall be accompanied by a written statement of the views expressed by the various members of the Technical Committee, when the latter so request.

Article 34

The Technical Committee shall establish its working methods by rules of procedure which shall enter into force after the Council, having received an opinion from the Commission, has given its approval. The entry into force of any amendment which the Committee decides to make thereto shall be subject to the same procedure.

CHAPTER IV

FINAL PROVISIONS

Article 35

The rules of procedure of the Advisory Committee and of the Technical Committee in force on 8 November 1968 shall continue to apply.

Article 36

1. This Regulation shall not affect the provisions of the Treaty establishing the European Atomic Energy Community which deal with eligibility for skilled employment in the field of nuclear energy, nor any measures taken in pursuance of that Treaty.

Nevertheless, this Regulation shall apply to the category of workers referred to in the first subparagraph and to members of their families in so far as their legal position is not governed by the above-mentioned Treaty or measures.

2. This Regulation shall not affect measures taken in accordance with Article 48 of the Treaty on the Functioning of the European Union.

3. This Regulation shall not affect the obligations of Member States arising out of special relations or future agreements with certain non-European countries or territories, based on institutional ties existing on 8 November 1968, or agreements in existence on 8 November 1968 with certain non-European countries or territories, based on institutional ties between them.

Workers from such countries or territories who, in accordance with this provision, are pursuing activities as employed persons in the territory of one of those Member States may not invoke the benefit of the provisions of this Regulation in the territory of the other Member States.

Article 37

Member States shall, for information purposes, communicate to the Commission the texts of agreements, conventions or arrangements concluded between them in the manpower field between the date of their being signed and that of their entry into force.

Article 38

The Commission shall adopt measures pursuant to this Regulation for its implementation. To this end it shall act in close cooperation with the central public authorities of the Member States.

Article 39

The administrative expenditure of the Advisory Committee and of the Technical Committee shall be included in the general budget of the European Union in the section relating to the Commission.

Article 40

This Regulation shall apply to the Member States and to their nationals, without prejudice to Articles 2 and 3.

Article 41

Regulation (EEC) No 1612/68 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 42

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 5 April 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
GYŐRI E.

ANNEX I

REPEALED REGULATION WITH LIST OF ITS SUCCESSIVE AMENDMENTS

Council Regulation (EEC) No 1612/68 (OJ L 257, 19.10.1968, p. 2)	
Council Regulation (EEC) No 312/76 (OJ L 39, 14.2.1976, p. 2)	
Council Regulation (EEC) No 2434/92 (OJ L 245, 26.8.1992, p. 1)	
Directive 2004/38/EC of the European Parliament and of the Council (OJ L 158, 30.4.2004, p. 77)	Only Article 38(1)

ANNEX II

Correlation Table

Regulation (EEC) No 1612/68	This Regulation
Part I	Chapter I
Title I	Section 1
Article 1	Article 1
Article 2	Article 2
Article 3(1), first subparagraph	Article 3(1), first subparagraph
Article 3(1), first subparagraph, first indent	Article 3(1), first subparagraph, point (a)
Article 3(1), first subparagraph, second indent	Article 3(1), first subparagraph, point (b)
Article 3(1), second subparagraph	Article 3(1), second subparagraph
Article 3(2)	Article 3(2)
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Title II	Section 2
Article 7	Article 7
Article 8(1)	Article 8
Article 9	Article 9
Title III	Section 3
Article 12	Article 10
Part II	Chapter II
Title I	Section 1
Article 13	Article 11
Article 14	Article 12
Title II	Section 2
Article 15	Article 13
Article 16	Article 14
Article 17	Article 15
Article 18	Article 16
Title III	Section 3

Regulation (EEC) No 1612/68	This Regulation
Article 19	Article 17
Title IV	Section 4
Article 21	Article 18
Article 22	Article 19
Article 23	Article 20
Part III	Chapter III
Title I	Section 1
Article 24	Article 21
Article 25	Article 22
Article 26	Article 23
Article 27	Article 24
Article 28	Article 25
Article 29	Article 26
Article 30	Article 27
Article 31	Article 28
Title II	Section 2
Article 32	Article 29
Article 33	Article 30
Article 34	Article 31
Article 35	Article 32
Article 36	Article 33
Article 37	Article 34
Part IV	Chapter IV
Title I	—
Article 38	—
Article 39	Article 35
Article 40	—
Article 41	—
Title II	—
Article 42(1)	Article 36(1)

Regulation (EEC) No 1612/68	This Regulation
Article 42(2)	Article 36(2)
Article 42(3), first subparagraph, first and second indents	Article 36(3), first subparagraph
Article 42(3), second subparagraph	Article 36(3), second subparagraph
Article 43	Article 37
Article 44	Article 38
Article 45	—
Article 46	Article 39
Article 47	Article 40
—	Article 41
Article 48	Article 42
—	Annex I
—	Annex II

III. Voluntary Migration

A. Entry into the EU

1. *Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement*

2. *Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)*

3. *Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*

4. *Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*

►**B**

COUNCIL REGULATION (EC) No 539/2001

of 15 March 2001

listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

(OJ L 81, 21.3.2001, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EC) No 2414/2001 of 7 December 2001	L 327	1	12.12.2001
►**M2**	Council Regulation (EC) No 453/2003 of 6 March 2003	L 69	10	13.3.2003
►**M3**	Council Regulation (EC) No 851/2005 of 2 June 2005	L 141	3	4.6.2005
►**M4**	Council Regulation (EC) No 1791/2006 of 20 November 2006	L 363	1	20.12.2006
►**M5**	Council Regulation (EC) No 1932/2006 of 21 December 2006	L 405	23	30.12.2006
►**M6**	Council Regulation (EC) No 1244/2009 of 30 November 2009	L 336	1	18.12.2009
►**M7**	Regulation (EU) No 1091/2010 of the European Parliament and of the Council of 24 November 2010	L 329	1	14.12.2010
►**M8**	Regulation (EU) No 1211/2010 of the European Parliament and of the Council of 15 December 2010	L 339	6	22.12.2010

Amended by:

►**A1**	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

Corrected by:

►**C1** Corrigendum, OJ L 29, 3.2.2007, p. 10 (1932/2006)

▼B

COUNCIL REGULATION (EC) No 539/2001

of 15 March 2001

listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62, point (2)(b)(i) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) Under Article 62, point (2)(b) of the Treaty, the Council is to adopt rules relating to visas for intended stays of no more than three months, and in that context it is required to determine the list of those third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Article 61 cites those lists among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice.

(2) This Regulation follows on from the Schengen acquis in accordance with the Protocol integrating it into the framework of the European Union, hereinafter referred to as the 'Schengen Protocol'. It does not affect Member States' obligations deriving from the acquis as defined in Annex A to Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis [3].

(3) This Regulation constitutes the further development of those provisions in respect of which closer cooperation has been authorised under the Schengen Protocol and falls within the area referred to in Article 1, point B, of Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis [4].

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[1] OJ C 177 E, 27.6.2000, p. 66.
[2] Opinion of 5 July 2000 (not yet published in the Official Journal).
[3] OJ L 176, 10.7.1999, p. 1.
[4] OJ L 176, 10.7.1999, p. 31.

▼B

(4) Pursuant to Article 1 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, Ireland and the United Kingdom are not participating in the adoption of this Regulation. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Regulation apply neither to Ireland nor to the United Kingdom.

(5) The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is governed by a considered, case-by-case assessment of a variety of criteria relating *inter alia* to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity. Provision should be made for a Community mechanism enabling this principle of reciprocity to be implemented if one of the third countries included in Annex II to this Regulation decides to make the nationals of one or more Member States subject to the visa obligation.

(6) As the Agreement on the European Economic Area exempts nationals of Iceland, Liechtenstein and Norway from the visa requirement, these countries are not included in the list in Annex II hereto.

(7) As regards stateless persons and recognised refugees, without prejudice to obligations under international agreements signed by the Member States and in particular the European Agreement on the Abolition of Visas for Refugees, signed at Strasbourg on 20 April 1959, the decision as to the visa requirement or exemption should be based on the third country in which these persons reside and which issued their travel documents. However, given the differences in the national legislation applicable to stateless persons and to recognised refugees, Member States may decide whether these categories of persons shall be subject to the visa requirement, where the third country in which these persons reside and which issued their travel documents is a third country whose nationals are exempt from the visa requirement.

(8) In specific cases where special visa rules are warranted, Member States may exempt certain categories of persons from the visa requirement or impose it on them in accordance with public international law or custom.

(9) With a view to ensuring that the system is administered openly and that the persons concerned are informed, Member States should communicate to the other Member States and to the Commission the measures which they take pursuant to this Regulation. For the same reasons, that information should also be published in the *Official Journal of the European Communities*.

(10) The conditions governing entry into the territory of the Member States or the issue of visas do not affect the rules currently governing recognition of the validity of travel documents.

▼B

(11) In accordance with the principle of proportionality stated in Article 5 of the Treaty, enacting a Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders, and those whose nationals are exempt from that requirement, is both a necessary and an appropriate means of ensuring that the common visa rules operate efficiently.

▼M1

(12) This Regulation provides for full harmonisation as regards the third countries whose nationals are subject to the visa requirement for the crossing of Member States' external borders and those whose nationals are exempt from that requirement,

HAS ADOPTED THIS REGULATION:

Article 1

1. Nationals of third countries on the list in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.

▼M5
▼C1

Without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons shall be required to be in possession of a visa when crossing the external borders of the Member States if the third country in which they are resident and which has issued them with their travel document is a third country listed in Annex I to this Regulation.

▼B

2. ►M1 Nationals of third countries on the list in Annex II shall be exempt from the requirement set out in paragraph 1 for stays of no more than three months in all. ◄

▼M5
▼C1

The following shall also be exempt from the visa requirement:

— the nationals of third countries listed in Annex I to this Regulation who are holders of a local border traffic card issued by the Member States pursuant to Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention ([1]) when these holders exercise their right within the context of the Local Border Traffic regime;

— school pupils who are nationals of a third country listed in Annex I and who reside in a Member State applying Council Decision 94/795/JHA of 30 November 1994 on a joint action adopted by the Council on the basis of Article K.3.2.b of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State ([2]) and are travelling in the context of a school excursion as members of a group of school pupils accompanied by a teacher from the school in question;

([1]) OJ L 405, 20.12.2006, p. 1.
([2]) OJ L 327, 19.12.1994, p. 1.

▼C1

— recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State.

▼B

3. Nationals of new third countries formerly part of countries on the lists in Annexes I and II shall be subject respectively to the provisions of paragraphs 1 and 2 unless and until the Council decides otherwise under the procedure laid down in the relevant provision of the Treaty.

▼M3

4. Where a third country listed in Annex II introduces a visa requirement for nationals of a Member State, the following provisions shall apply:

(a) within 90 days of such introduction, or its announcement, the Member State concerned shall notify the Council and the Commission in writing; the notification shall be published in the C series of the *Official Journal of the European Union*. The notification shall specify the date of implementation of the measure and the type of travel documents and visas concerned.

If the third country decides to lift the visa obligation before the expiry of this deadline, the notification becomes superfluous;

(b) the Commission shall immediately after publication of that notification and in consultation with the Member State concerned, take steps with the authorities of the third country in order to restore visa-free travel;

(c) within 90 days after publication of that notification, the Commission, in consultation with the Member State concerned, shall report to the Council. The report may be accompanied by a proposal providing for the temporary restoration of the visa requirement for nationals of the third country in question. The Commission may also present this proposal after deliberations in Council on its report. The Council shall act on such proposal by a qualified majority within three months;

(d) if it considers it necessary, the Commission may present a proposal for the temporary restoration of the visa requirement for nationals of the third country referred to in subparagraph (c) without a prior report. The procedure provided for in subparagraph (c) shall apply to that proposal. The Member State concerned may state whether it wishes the Commission to refrain from the temporary restoration of such visa requirement without a prior report;

(e) the procedure referred to in subparagraphs (c) and (d) does not affect the Commission's right to present a proposal amending this Regulation in order to transfer the third country concerned to Annex I. Where a temporary measure as referred to in subparagraphs (c) and (d) has been decided, the proposal amending this Regulation shall be presented by the Commission at the latest nine months after the entry into force of the temporary measure. Such a proposal shall also include provisions for lifting of temporary measures, which may have been introduced pursuant to the procedures referred to in subparagraphs (c) and (d). In the meantime the Commission will continue its efforts in order to induce the authorities of the third country in question to reinstall visa-free travel for the nationals of the Member State concerned;

▼M3

(f) where the third country in question abolishes the visa requirement, the Member State shall immediately notify the Council and the Commission to that effect. The notification shall be published in the C series of the *Official Journal of the European Union*. Any temporary measure decided upon under subparagraph (d) shall terminate seven days after the publication in the Official Journal. In case the third country in question has introduced a visa requirement for nationals of two or more Member States the termination of the temporary measure will only terminate after the last publication.

5. As long as visa exemption reciprocity continues not to exist with any third country listed in Annex II in relation to any of the Member States, the Commission shall report to the European Parliament and the Council before the 1 July of every even-numbered year on the situation of non-reciprocity and shall, if necessary, submit appropriate proposals.

▼B

Article 2

For the purposes of this Regulation, 'visa' shall mean an authorisation issued by a Member State or a decision taken by such State which is required with a view to:

— entry for an intended stay in that Member State or in several Member States of no more than three months in total,

— entry for transit through the territory of that Member State or several Member States, except for transit at an airport.

▼M5
▼C1

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▼B

Article 4

1. A Member State may provide for exceptions from the visa requirement provided for by Article 1(1) or from the exemption from the visa requirement provided for by Article 1(2) as regards:

▼M5
▼C1

(a) holders of diplomatic passports, service/official passports or special passports in accordance with one of the procedures laid down in Articles 1(1) and 2(1) of Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications ([1]).

▼B

(b) civilian air and sea crew;

(c) the flight crew and attendants on emergency or rescue flights and other helpers in the event of disaster or accident;

(d) the civilian crew of ships navigating in international waters;

([1]) OJ L 116, 26.4.2001, p. 2. Regulation as amended by Decision 2004/927/EC (OJ L 396, 31.12.2004, p. 45).

▼B

(e) the holders of laissez-passer issued by some intergovernmental international organisations to their officials.

▼M5
▼C1

2. A Member State may exempt from the visa requirement:

(a) a school pupil having the nationality of a third country listed in Annex I who resides in a third country listed in Annex II or in Switzerland and Liechtenstein and is travelling in the context of a school excursion as a member of a group of school pupils accompanied by a teacher from the school in question;

(b) recognised refugees and stateless persons if the third country where they reside and which issued their travel document is one of the third countries listed in Annex II;

(c) members of the armed forces travelling on NATO or Partnership for Peace business and holders of identification and movement orders provided for by the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty Organisation regarding the status of their forces.

▼B

3. A Member State may provide for exceptions from the exemption from the visa requirement provided for in Article 1(2) as regards persons carrying out a paid activity during their stay.

Article 5

1. Within 10 working days of the entry into force of this Regulation, Member States shall communicate to the other Member States and the Commission the measures they have taken pursuant to Article 3, second indent and Article 4. Any further changes to those measures shall be similarly communicated within five working days.

2. The Commission shall publish the measures communicated pursuant to paragraph 1 in the *Official Journal of the European Communities* for information.

Article 6

This Regulation shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities.

Article 7

1. Council Regulation (EC) No 574/1999 ([1]) shall be replaced by this Regulation.

2. The final versions of the Common Consular Instruction (CCI) and of the Common Manual (CM), as they result from the Decision of the Schengen Executive Committee of 28 April 1999 (SCH/Com-ex(99) 13) shall be amended as follows:

1. the heading of Annex 1, part I of the CCI and of Annex 5, part I of the CM, shall be replaced by the following:

‘Common list of third countries the nationals of which are subject to the visa requirement imposed by Regulation (EC) No 539/2001’;

([1]) OJ L 72, 18.3.1999, p. 2.

▼B

2. the list in Annex 1, part I of the CCI and in Annex 5, part I of the CM shall be replaced by the list in Annex I to this Regulation;

3. the heading of Annex 1, part II of the CCI and of Annex 5, part II of the CM shall be replaced by the following:

‘Common list of third countries the nationals of which are exempted from the visa requirement by Regulation (EC) No 539/2001’;

4. the list in Annex 1, part II of the CCI and in Annex 5, part II of the CM shall be replaced by the list in Annex II to this Regulation;

5. part III of Annex 1 to the CCI and part III of Annex 5 of the CM shall be deleted.

3. The decisions of the Schengen Executive Committee of 15 December 1997 (SCH/Com-ex(97)32) and of 16 December 1998 (SCH/Com-ex(98)53, rev.2) shall be repealed.

▼M1

Article 8

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

▼B

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

▼B

ANNEX I

Common list referred to in Article 1(1)

1. STATES

Afghanistan

▼M7

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▼B

Algeria

Angola

▼M5
▼C1

_____

▼B

Armenia

Azerbaijan

▼M5
▼C1

_____

▼B

Bahrain

Bangladesh

▼M5
▼C1

_____

▼B

Belarus

Belize

Benin

Bhutan

▼M5
▼C1

Bolivia

▼M7

_____

▼B

Botswana

Burkina Faso

Burma/Myanmar

Burundi

Cambodia

Cameroon

Cape Verde

Central African Republic

Chad

China

Colombia

Congo

Côte d'Ivoire

Cuba

▼B

Democratic Republic of the Congo

Djijbouti

Dominica

Dominican Republic

▼M5
▼C1

_____

▼M2

Ecuador

▼B

Egypt

Equatorial Guinea

Eritrea

Ethiopia

Fiji

▼M6

_____

▼B

Gabon

Gambia

Georgia

Ghana

Grenada

Guinea

Guinea-Bissau

Guyana

Haiti

India

Indonesia

Iran

Iraq

Jamaica

Jordan

Kazakhstan

Kenya

Kiribati

Kuwait

Kyrgyzstan

Laos

Lebanon

Lesotho

Liberia

Libya

Madagascar

Malawi

▼B

Maldives

Mali

Marshall Islands

Mauritania

▼M5
▼C1

_____

▼B

Micronesia

Moldova

Mongolia

▼M6

_____

▼B

Morocco

Mozambique

Namibia

Nauru

Nepal

Niger

Nigeria

North Korea

▼M8

_____

▼B

Oman

Pakistan

Palau

Papua New Guinea

Peru

Philippines

Qatar

Russia

Rwanda

▼M5
▼C1

_____

▼B

Saint Lucia

Saint Vincent and the Grenadines

▼M5
▼C1

Samoa

▼B

São Tomé and Príncipe

Saudi Arabia

Senegal

▼M6

_____

▼M5
▼C1

_____

▼B

Sierra Leone

Solomon Islands

Somalia

South Africa

Sri Lanka

Sudan

Surinam

Swaziland

Syria

Tajikistan

Tanzania

Thailand

The Comoros

▼M5
▼C1

Timor-Leste

▼B

Togo

Tonga

Trinidad and Tobago

Tunisia

Turkey

Turkmenistan

Tuvalu

Uganda

Ukraine

United Arab Emirates

Uzbekistan

Vanuatu

Vietnam

▼M5
▼C1

_____

▼B

Yemen

Zambia

Zimbabwe

▼B

2. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE

▼M2

_____

▼B

Palestinian Authority

▼M8

_____

▼M6

Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999

▼M5

▼C1

3. BRITISH CITIZENS WHO ARE NOT NATIONALS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PURPOSES OF COMMUNITY LAW:

British overseas territories citizens who do not have the right of abode in the United Kingdom

British overseas citizens

British subjects who do not have the right of abode in the United Kingdom

British protected persons

▼B

ANNEX II

Common list referred to in Article 1(2)

1. STATES

▼M7

Albania (1)

▼B

Andorra

▼M5
▼C1

Antigua and Barbuda (2)

▼B

Argentina

Australia

▼M5
▼C1

Bahamy (2)

Barbados (2)

_____

▼M7

Bosnia and Herzegovina (1)

▼B

Brazil

▼M5
▼C1

Brunei Darussalam

▼M4

_____

▼B

Canada

Chile

Costa Rica

Croatia

▼A1

_____

▼M2

_____

▼A1

_____

▼M6

former Yugoslav Republic of Macedonia (3)

▼B

Guatemala

Holy See

Honduras

▼A1

_____

(1) The exemption from the visa requirement applies only to holders of biometric passports.
(2) The exemption from the visa requirement will apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Community.
(3) The visa requirement exemption applies only to holders of biometric passports.

▼B

Israel

Japan

▼A1

_____

▼B

Malaysia

▼A1

_____

▼M5

▼C1

Mauritius (1)

▼B

Mexico

Monaco

▼M6

Montenegro (2)

▼B

New Zealand

Nicaragua

Panama

Paraguay

▼A1

_____

▼M4

_____

▼B

Salvador

San Marino

▼M6

Serbia (excluding holders of Serbian passports issued by the Serbian Coordination Directorate (in Serbian: *Koordinaciona uprava*)) (2)

▼M5

▼C1

Seychelles (1)

▼B

Singapore

▼A1

_____

▼B

South Korea

▼M5

▼C1

Saint Kitts and Nevis (1)

▼M2

_____

▼B

United States of America

Uruguay

Venezuela

_____

(1) The exemption from the visa requirement will apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Community.

(2) The visa requirement exemption applies only to holders of biometric passports.

▼B

2. SPECIAL ADMINISTRATIVE REGIONS OF THE PEOPLE'S REPUBLIC OF CHINA

Hong Kong SAR ([1])

Macao SAR ([2])

▼M5
▼C1

3. BRITISH CITIZENS WHO ARE NOT NATIONALS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE PURPOSES OF COMMUNITY LAW:

British nationals (overseas)

▼M8

4. ENTITIES AND TERRITORIAL AUTHORITIES THAT ARE NOT RECOGNISED AS STATES BY AT LEAST ONE MEMBER STATE:

Taiwan ([3])

([1]) The visa requirement exemption applies only to holders of a 'Hong Kong Special Administrative Region' passport.

([2]) The visa requirement exemption applies only to holders of a 'Região Administrativa Especial de Macau' passport.

([3]) The exemption from the visa requirement applies only to holders of passports issued by Taiwan which include an identity card number.

►B REGULATION (EC) No 810/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

establishing a Community Code on Visas

(Visa Code)

(OJ L 243, 15.9.2009, p. 1)

Amended by:

		Official Journal		
		No	page	date
►M1	Commission Regulation (EU) No 977/2011 of 3 October 2011	L 258	9	4.10.2011

▼B

REGULATION (EC) No 810/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

establishing a Community Code on Visas

(Visa Code)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(a) and (b)(ii) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([1]),

Whereas:

(1) In accordance with Article 61 of the Treaty, the creation of an area in which persons may move freely should be accompanied by measures with respect to external border controls, asylum and immigration.

(2) Pursuant to Article 62(2) of the Treaty, measures on the crossing of the external borders of the Member States shall establish rules on visas for intended stays of no more than three months, including the procedures and conditions for issuing visas by Member States.

(3) As regards visa policy, the establishment of a 'common corpus' of legislation, particularly via the consolidation and development of the *acquis* (the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 ([2]) and the Common Consular Instructions ([3]), is one of the fundamental components of 'further development of the common visa policy as part of a multi-layer system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions', as defined in the Hague Programme: strengthening freedom, security and justice in the European Union ([4]).

(4) Member States should be present or represented for visa purposes in all third countries whose nationals are subject to visa requirements. Member States lacking their own consulate in a given third country or in a certain part of a given third country should endeavour to conclude representation arrangements in order to avoid a disproportionate effort on the part of visa applicants to have access to consulates.

([1]) Opinion of the European Parliament of 2 April 2009 (not yet published in the Official Journal) and Council Decision of 25 June 2009.
([2]) OJ L 239, 22.9.2000, p. 19.
([3]) OJ C 326, 22.12.2005, p. 1.
([4]) OJ C 53, 3.3.2005, p. 1.

▼B

(5) It is necessary to set out rules on the transit through international areas of airports in order to combat illegal immigration. Thus nationals from a common list of third countries should be required to hold airport transit visas. Nevertheless, in urgent cases of mass influx of illegal immigrants, Member States should be allowed to impose such a requirement on nationals of third countries other than those listed in the common list. Member States' individual decisions should be reviewed on an annual basis.

(6) The reception arrangements for applicants should be made with due respect for human dignity. Processing of visa applications should be conducted in a professional and respectful manner and be proportionate to the objectives pursued.

(7) Member States should ensure that the quality of the service offered to the public is of a high standard and follows good administrative practices. They should allocate appropriate numbers of trained staff as well as sufficient resources in order to facilitate as much as possible the visa application process. Member States should ensure that a 'one-stop' principle is applied to all applicants.

(8) Provided that certain conditions are fulfilled, multiple-entry visas should be issued in order to lessen the administrative burden of Member States' consulates and to facilitate smooth travel for frequent or regular travellers. Applicants known to the consulate for their integrity and reliability should as far as possible benefit from a simplified procedure.

(9) Because of the registration of biometric identifiers in the Visa Information System (VIS) as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) ([1]), the appearance of the applicant in person — at least for the first application — should be one of the basic requirements for the application for a visa.

(10) In order to facilitate the visa application procedure of any subsequent application, it should be possible to copy fingerprints from the first entry into the VIS within a period of 59 months. Once this period of time has elapsed, the fingerprints should be collected again.

(11) Any document, data or biometric identifier received by a Member State in the course of the visa application process shall be considered a consular document under the Vienna Convention on Consular Relations of 24 April 1963 and shall be treated in an appropriate manner.

(12) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([2]) applies to the Member States with regard to the processing of personal data pursuant to this Regulation.

([1]) OJ L 218, 13.8.2008, p. 60.
([2]) OJ L 281, 23.11.1995, p. 31.

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(13) In order to facilitate the procedure, several forms of cooperation should be envisaged, such as limited representation, co-location, common application centres, recourse to honorary consuls and cooperation with external service providers, taking into account in particular data protection requirements set out in Directive 95/46/EC. Member States should, in accordance with the conditions laid down in this Regulation, determine the type of organisational structure which they will use in each third country.

(14) It is necessary to make provision for situations in which a Member State decides to cooperate with an external service provider for the collection of applications. Such a decision may be taken if, in particular circumstances or for reasons relating to the local situation, cooperation with other Member States in the form of representation, limited representation, co-location or a Common Application Centre proves not to be appropriate for the Member State concerned. Such arrangements should be established in compliance with the general principles for issuing visas and with the data protection requirements set out in Directive 95/46/EC. In addition, the need to avoid visa shopping should be taken into consideration when establishing and implementing such arrangements.

(15) Where a Member State has decided to cooperate with an external service provider, it should maintain the possibility for all applicants to lodge applications directly at its diplomatic missions or consular posts.

(16) A Member State should cooperate with an external service provider on the basis of a legal instrument which should contain provisions on its exact responsibilities, on direct and total access to its premises, information for applicants, confidentiality and on the circumstances, conditions and procedures for suspending or terminating the cooperation.

(17) This Regulation, by allowing Member States to cooperate with external service providers for the collection of applications while establishing the 'one-stop' principle for the lodging of applications, creates a derogation from the general rule that an applicant must appear in person at a diplomatic mission or consular post. This is without prejudice to the possibility of calling the applicant for a personal interview.

(18) Local Schengen cooperation is crucial for the harmonised application of the common visa policy and for proper assessment of migratory and/or security risks. Given the differences in local circumstances, the operational application of particular legislative provisions should be assessed among Member States' diplomatic missions and consular posts in individual locations in order to ensure a harmonised application of the legislative provisions to prevent visa shopping and different treatment of visa applicants.

(19) Statistical data are an important means of monitoring migratory movements and can serve as an efficient management tool. Therefore, such data should be compiled regularly in a common format.

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(20) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([1]).

(21) In particular, the Commission should be empowered to adopt amendments to the Annexes to this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(22) In order to ensure the harmonised application of this Regulation at operational level, instructions should be drawn up on the practice and procedures to be followed by Member States when processing visa applications.

(23) A common Schengen visa Internet site is to be established to improve the visibility and a uniform image of the common visa policy. Such a site will serve as a means to provide the general public with all relevant information in relation to the application for a visa.

(24) Appropriate measures should be adopted for the monitoring and evaluation of this Regulation.

(25) The VIS Regulation and Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ([2]) should be amended in order to take account of the provisions of this Regulation.

(26) Bilateral agreements concluded between the Community and third countries aiming at facilitating the processing of applications for visas may derogate from the provisions of this Regulation.

(27) When a Member State hosts the Olympic Games and the Paralympic Games, a particular scheme facilitating the issuing of visas to members of the Olympic family should apply.

(28) Since the objective of this Regulation, namely the establishment of the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(29) This Regulation respects fundamental rights and observes the principles recognised in particular by the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and by the Charter of Fundamental Rights of the European Union.

(30) The conditions governing entry into the territory of the Member States or the issue of visas do not affect the rules currently governing recognition of the validity of travel documents.

([1]) OJ L 184, 17.7.1999, p. 23.
([2]) OJ L 105, 13.4.2006, p. 1.

▼B

(31) 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 does not take part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds on the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of that Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law.

(32) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ([1]) which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC ([2]) on certain arrangements for the application of that Agreement.

(33) An arrangement should be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers under this Regulation. Such an arrangement has been contemplated in the Exchange of Letters between the Council of the European Union and Iceland and Norway concerning committees which assist the European Commission in the exercise of its executive powers ([3]), annexed to the above-mentioned Agreement. The Commission has submitted to the Council a draft recommendation with a view to negotiating this arrangement.

(34) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([4]), which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ([5]) on the conclusion of that Agreement.

(35) As regards Liechtenstein, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement concluded between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC ([6]) on the signing of that Protocol.

([1]) OJ L 176, 10.7.1999, p. 36.
([2]) OJ L 176, 10.7.1999, p. 31.
([3]) OJ L 176, 10.7.1999, p. 53.
([4]) OJ L 53, 27.2.2008, p. 52.
([5]) OJ L 53, 27.2.2008, p. 1.
([6]) OJ L 83, 26.3.2008, p. 3.

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(36) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ([1]). The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(37) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ([2]). Ireland is therefore not taking part in the adoption of the Regulation and is not bound by it or subject to its application.

(38) This Regulation, with the exception of Article 3, constitutes provisions building on the Schengen *acquis* or otherwise relating to it within the meaning of Article 3(2) of the 2003 Act of Accession and within the meaning of Article 4(2) of the 2005 Act of Accession,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Objective and scope

1. This Regulation establishes the procedures and conditions for issuing visas for transit through or intended stays in the territory of the Member States not exceeding three months in any six-month period.

2. The provisions of this Regulation shall apply to any third-country national who must be in possession of a visa when crossing the external borders of the Member States pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ([3]), without prejudice to:

(a) the rights of free movement enjoyed by third-country nationals who are family members of citizens of the Union;

(b) the equivalent rights enjoyed by third-country nationals and their family members, who, under agreements between the Community and its Member States, on the one hand, and these third countries, on the other, enjoy rights of free movement equivalent to those of Union citizens and members of their families.

3. This Regulation also lists the third countries whose nationals are required to hold an airport transit visa by way of exception from the principle of free transit laid down in Annex 9 to the Chicago Convention on International Civil Aviation, and establishes the procedures and conditions for issuing visas for the purpose of transit through the international transit areas of Member States' airports.

([1]) OJ L 131, 1.6.2000, p. 43.
([2]) OJ L 64, 7.3.2002, p. 20.
([3]) OJ L 81, 21.3.2001, p. 1.

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Article 2

Definitions

For the purpose of this Regulation the following definitions shall apply:

1. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

2. ‘visa’ means an authorisation issued by a Member State with a view to:

   (a) transit through or an intended stay in the territory of the Member States of a duration of no more than three months in any six-month period from the date of first entry in the territory of the Member States;

   (b) transit through the international transit areas of airports of the Member States;

3. ‘uniform visa’ means a visa valid for the entire territory of the Member States;

4. ‘visa with limited territorial validity’ means a visa valid for the territory of one or more Member States but not all Member States;

5. ‘airport transit visa’ means a visa valid for transit through the international transit areas of one or more airports of the Member States;

6. ‘visa sticker’ means the uniform format for visas as defined by Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas ([1]);

7. ‘recognised travel document’ means a travel document recognised by one or more Member States for the purpose of affixing visas;

8. ‘separate sheet for affixing a visa’ means the uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form as defined by Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form ([2]);

9. ‘consulate’ means a Member State’s diplomatic mission or a Member State’s consular post authorised to issue visas and headed by a career consular officer as defined by the Vienna Convention on Consular Relations of 24 April 1963;

10. ‘application’ means an application for a visa;

11. ‘commercial intermediary’ means a private administrative agency, transport company or travel agency (tour operator or retailer).

([1]) OJ L 164, 14.7.1995, p. 1.
([2]) OJ L 53, 23.2.2002, p. 4.

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TITLE II

AIRPORT TRANSIT VISA

Article 3

Third-country nationals required to hold an airport transit visa

1. Nationals of the third countries listed in Annex IV shall be required to hold an airport transit visa when passing through the international transit areas of airports situated on the territory of the Member States.

2. In urgent cases of mass influx of illegal immigrants, individual Member States may require nationals of third countries other than those referred to in paragraph 1 to hold an airport transit visa when passing through the international transit areas of airports situated on their territory. Member States shall notify the Commission of such decisions before their entry into force and of withdrawals of such an airport transit visa requirement.

3. Within the framework of the Committee referred to in Article 52(1), those notifications shall be reviewed on an annual basis for the purpose of transferring the third country concerned to the list set out in Annex IV.

4. If the third country is not transferred to the list set out in Annex IV, the Member State concerned may maintain, provided that the conditions in paragraph 2 are met, or withdraw the airport transit visa requirement.

5. The following categories of persons shall be exempt from the requirement to hold an airport transit visa provided for in paragraphs 1 and 2:

(a) holders of a valid uniform visa, national long-stay visa or residence permit issued by a Member State;

(b) third-country nationals holding the valid residence permits listed in Annex V issued by Andorra, Canada, Japan, San Marino or the United States of America guaranteeing the holder's unconditional readmission;

(c) third-country nationals holding a valid visa for a Member State or for a State party to the Agreement on the European Economic Area of 2 May 1992, Canada, Japan or the United States of America, or when they return from those countries after having used the visa;

(d) family members of citizens of the Union as referred to in Article 1(2)(a);

(e) holders of diplomatic passports;

(f) flight crew members who are nationals of a contracting Party to the Chicago Convention on International Civil Aviation.

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TITLE III

PROCEDURES AND CONDITIONS FOR ISSUING VISAS

CHAPTER I

Authorities taking part in the procedures relating to applications

Article 4

Authorities competent for taking part in the procedures relating to applications

1. Applications shall be examined and decided on by consulates.

2. By way of derogation from paragraph 1, applications may be examined and decided on at the external borders of the Member States by the authorities responsible for checks on persons, in accordance with Articles 35 and 36.

3. In the non-European overseas territories of Member States, applications may be examined and decided on by the authorities designated by the Member State concerned.

4. A Member State may require the involvement of authorities other than the ones designated in paragraphs 1 and 2 in the examination of and decision on applications.

5. A Member State may require to be consulted or informed by another Member State in accordance with Articles 22 and 31.

Article 5

Member State competent for examining and deciding on an application

1. The Member State competent for examining and deciding on an application for a uniform visa shall be:

(a) the Member State whose territory constitutes the sole destination of the visit(s);

(b) if the visit includes more than one destination, the Member State whose territory constitutes the main destination of the visit(s) in terms of the length or purpose of stay; or

(c) if no main destination can be determined, the Member State whose external border the applicant intends to cross in order to enter the territory of the Member States.

2. The Member State competent for examining and deciding on an application for a uniform visa for the purpose of transit shall be:

(a) in the case of transit through only one Member State, the Member State concerned; or

(b) in the case of transit through several Member States, the Member State whose external border the applicant intends to cross to start the transit.

3. The Member State competent for examining and deciding on an application for an airport transit visa shall be:

(a) in the case of a single airport transit, the Member State on whose territory the transit airport is situated; or

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(b) in the case of double or multiple airport transit, the Member State on whose territory the first transit airport is situated.

4. Member States shall cooperate to prevent a situation in which an application cannot be examined and decided on because the Member State that is competent in accordance with paragraphs 1 to 3 is neither present nor represented in the third country where the applicant lodges the application in accordance with Article 6.

Article 6

Consular territorial competence

1. An application shall be examined and decided on by the consulate of the competent Member State in whose jurisdiction the applicant legally resides.

2. A consulate of the competent Member State shall examine and decide on an application lodged by a third-country national legally present but not residing in its jurisdiction, if the applicant has provided justification for lodging the application at that consulate.

Article 7

Competence to issue visas to third-country nationals legally present within the territory of a Member State

Third-country nationals who are legally present in the territory of a Member State and who are required to hold a visa to enter the territory of one or more other Member States shall apply for a visa at the consulate of the Member State that is competent in accordance with Article 5(1) or (2).

Article 8

Representation arrangements

1. A Member State may agree to represent another Member State that is competent in accordance with Article 5 for the purpose of examining applications and issuing visas on behalf of that Member State. A Member State may also represent another Member State in a limited manner solely for the collection of applications and the enrolment of biometric identifiers.

2. The consulate of the representing Member State shall, when contemplating refusing a visa, submit the application to the relevant authorities of the represented Member State in order for them to take the final decision on the application within the time limits set out in Article 23(1), (2) or (3).

3. The collection and transmission of files and data to the represented Member State shall be carried out in compliance with the relevant data protection and security rules.

4. A bilateral arrangement shall be established between the representing Member State and the represented Member State containing the following elements:

(a) it shall specify the duration of such representation, if only temporary, and procedures for its termination;

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(b) it may, in particular when the represented Member State has a consulate in the third country concerned, provide for the provision of premises, staff and payments by the represented Member State;

(c) it may stipulate that applications from certain categories of third-country nationals are to be transmitted by the representing Member State to the central authorities of the represented Member State for prior consultation as provided for in Article 22;

(d) by way of derogation from paragraph 2, it may authorise the consulate of the representing Member State to refuse to issue a visa after examination of the application.

5. Member States lacking their own consulate in a third country shall endeavour to conclude representation arrangements with Member States that have consulates in that country.

6. With a view to ensuring that a poor transport infrastructure or long distances in a specific region or geographical area does not require a disproportionate effort on the part of applicants to have access to a consulate, Member States lacking their own consulate in that region or area shall endeavour to conclude representation arrangements with Member States that have consulates in that region or area.

7. The represented Member State shall notify the representation arrangements or the termination of such arrangements to the Commission before they enter into force or are terminated.

8. Simultaneously, the consulate of the representing Member State shall inform both the consulates of other Member States and the delegation of the Commission in the jurisdiction concerned about representation arrangements or the termination of such arrangements before they enter into force or are terminated.

9. If the consulate of the representing Member State decides to cooperate with an external service provider in accordance with Article 43, or with accredited commercial intermediaries as provided for in Article 45, such cooperation shall include applications covered by representation arrangements. The central authorities of the represented Member State shall be informed in advance of the terms of such cooperation.

CHAPTER II

Application

Article 9

Practical modalities for lodging an application

1. Applications shall be lodged no more than three months before the start of the intended visit. Holders of a multiple-entry visa may lodge the application before the expiry of the visa valid for a period of at least six months.

2. Applicants may be required to obtain an appointment for the lodging of an application. The appointment shall, as a rule, take place within a period of two weeks from the date when the appointment was requested.

3. In justified cases of urgency, the consulate may allow applicants to lodge their applications either without appointment, or an appointment shall be given immediately.

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4. Applications may be lodged at the consulate by the applicant or by accredited commercial intermediaries, as provided for in Article 45(1), without prejudice to Article 13, or in accordance with Article 42 or 43.

Article 10

General rules for lodging an application

1. Without prejudice to the provisions of Articles 13, 42, 43 and 45, applicants shall appear in person when lodging an application.

2. Consulates may waive the requirement referred to in paragraph 1 when the applicant is known to them for his integrity and reliability.

3. When lodging the application, the applicant shall:

(a) present an application form in accordance with Article 11;

(b) present a travel document in accordance with Article 12;

(c) present a photograph in accordance with the standards set out in Regulation (EC) No 1683/95 or, where the VIS is operational pursuant to Article 48 of the VIS Regulation, in accordance with the standards set out in Article 13 of this Regulation;

(d) allow the collection of his fingerprints in accordance with Article 13, where applicable;

(e) pay the visa fee in accordance with Article 16;

(f) provide supporting documents in accordance with Article 14 and Annex II;

(g) where applicable, produce proof of possession of adequate and valid travel medical insurance in accordance with Article 15.

Article 11

Application form

1. Each applicant shall submit a completed and signed application form, as set out in Annex I. Persons included in the applicant's travel document shall submit a separate application form. Minors shall submit an application form signed by a person exercising permanent or temporary parental authority or legal guardianship.

2. Consulates shall make the application form widely available and easily accessible to applicants free of charge.

3. The form shall be available in the following languages:

(a) the official language(s) of the Member State for which a visa is requested;

(b) the official language(s) of the host country;

(c) the official language(s) of the host country and the official language(s) of the Member State for which a visa is requested; or

(d) in case of representation, the official language(s) of the representing Member State.

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In addition to the language(s) referred to in point (a), the form may be made available in another official language of the institutions of the European Union.

4. If the application form is not available in the official language(s) of the host country, a translation of it into that/those language(s) shall be made available separately to applicants.

5. A translation of the application form into the official language(s) of the host country shall be produced under local Schengen cooperation provided for in Article 48.

6. The consulate shall inform applicants of the language(s) which may be used when filling in the application form.

Article 12

Travel document

The applicant shall present a valid travel document satisfying the following criteria:

(a) its validity shall extend at least three months after the intended date of departure from the territory of the Member States or, in the case of several visits, after the last intended date of departure from the territory of the Member States. However, in a justified case of emergency, this obligation may be waived;

(b) it shall contain at least two blank pages;

(c) it shall have been issued within the previous 10 years.

Article 13

Biometric identifiers

1. Member States shall collect biometric identifiers of the applicant comprising a photograph of him and his 10 fingerprints in accordance with the safeguards laid down in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, in the Charter of Fundamental Rights of the European Union and in the United Nations Convention on the Rights of the Child.

2. At the time of submission of the first application, the applicant shall be required to appear in person. At that time, the following biometric identifiers of the applicant shall be collected:

— a photograph, scanned or taken at the time of application, and

— his 10 fingerprints taken flat and collected digitally.

3. Where fingerprints collected from the applicant as part of an earlier application were entered in the VIS for the first time less than 59 months before the date of the new application, they shall be copied to the subsequent application.

However, where there is reasonable doubt regarding the identity of the applicant, the consulate shall collect fingerprints within the period specified in the first subparagraph.

Furthermore, if at the time when the application is lodged, it cannot be immediately confirmed that the fingerprints were collected within the period specified in the first subparagraph, the applicant may request that they be collected.

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4. In accordance with Article 9(5) of the VIS Regulation, the photograph attached to each application shall be entered in the VIS. The applicant shall not be required to appear in person for this purpose.

The technical requirements for the photograph shall be in accordance with the international standards as set out in the International Civil Aviation Organization (ICAO) document 9303 Part 1, 6th edition.

5. Fingerprints shall be taken in accordance with ICAO standards and Commission Decision 2006/648/EC of 22 September 2006 laying down the technical specifications on the standards for biometric features related to the development of the Visa Information System ([1]).

6. The biometric identifiers shall be collected by qualified and duly authorised staff of the authorities competent in accordance with Article 4(1), (2) and (3). Under the supervision of the consulates, the biometric identifiers may also be collected by qualified and duly authorised staff of an honorary consul as referred to in Article 42 or of an external service provider as referred to in Article 43. The Member State(s) concerned shall, where there is any doubt, provide for the possibility of verifying at the consulate fingerprints which have been taken by the external service provider.

7. The following applicants shall be exempt from the requirement to give fingerprints:

(a) children under the age of 12;

(b) persons for whom fingerprinting is physically impossible. If the fingerprinting of fewer than 10 fingers is possible, the maximum number of fingerprints shall be taken. However, should the impossibility be temporary, the applicant shall be required to give the fingerprints at the following application. The authorities competent in accordance with Article 4(1), (2) and (3) shall be entitled to ask for further clarification of the grounds for the temporary impossibility. Member States shall ensure that appropriate procedures guaranteeing the dignity of the applicant are in place in the event of there being difficulties in enrolling;

(c) heads of State or government and members of a national government with accompanying spouses, and the members of their official delegation when they are invited by Member States' governments or by international organisations for an official purpose;

(d) sovereigns and other senior members of a royal family, when they are invited by Member States' governments or by international organisations for an official purpose.

8. In the cases referred to in paragraph 7, the entry 'not applicable' shall be introduced in the VIS in accordance with Article 8(5) of the VIS Regulation.

Article 14

Supporting documents

1. When applying for a uniform visa, the applicant shall present:

(a) documents indicating the purpose of the journey;

([1]) OJ L 267, 27.9.2006, p. 41.

▼B

(b) documents in relation to accommodation, or proof of sufficient means to cover his accommodation;

(c) documents indicating that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or that he is in a position to acquire such means lawfully, in accordance with Article 5(1)(c) and (3) of the Schengen Borders Code;

(d) information enabling an assessment of the applicant's intention to leave the territory of the Member States before the expiry of the visa applied for.

2. When applying for an airport transit visa, the applicant shall present:

(a) documents in relation to the onward journey to the final destination after the intended airport transit;

(b) information enabling an assessment of the applicant's intention not to enter the territory of the Member States.

3. A non-exhaustive list of supporting documents which the consulate may request from the applicant in order to verify the fulfilment of the conditions listed in paragraphs 1 and 2 is set out in Annex II.

4. Member States may require applicants to present a proof of sponsorship and/or private accommodation by completing a form drawn up by each Member State. That form shall indicate in particular:

(a) whether its purpose is proof of sponsorship and/or of accommodation;

(b) whether the host is an individual, a company or an organisation;

(c) the host's identity and contact details;

(d) the invited applicant(s);

(e) the address of the accommodation;

(f) the length and purpose of the stay;

(g) possible family ties with the host.

In addition to the Member State's official language(s), the form shall be drawn up in at least one other official language of the institutions of the European Union. The form shall provide the person signing it with the information required pursuant to Article 37(1) of the VIS Regulation. A specimen of the form shall be notified to the Commission.

5. Within local Schengen cooperation the need to complete and harmonise the lists of supporting documents shall be assessed in each jurisdiction in order to take account of local circumstances.

6. Consulates may waive one or more of the requirements of paragraph 1 in the case of an applicant known to them for his integrity and reliability, in particular the lawful use of previous visas, if there is no doubt that he will fulfil the requirements of Article 5(1) of the Schengen Borders Code at the time of the crossing of the external borders of the Member States.

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Article 15

Travel medical insurance

1. Applicants for a uniform visa for one or two entries shall prove that they are in possession of adequate and valid travel medical insurance to cover any expenses which might arise in connection with repatriation for medical reasons, urgent medical attention and/or emergency hospital treatment or death, during their stay(s) on the territory of the Member States.

2. Applicants for a uniform visa for more than two entries (multiple entries) shall prove that they are in possession of adequate and valid travel medical insurance covering the period of their first intended visit.

In addition, such applicants shall sign the statement, set out in the application form, declaring that they are aware of the need to be in possession of travel medical insurance for subsequent stays.

3. The insurance shall be valid throughout the territory of the Member States and cover the entire period of the person's intended stay or transit. The minimum coverage shall be EUR 30 000.

When a visa with limited territorial validity covering the territory of more than one Member State is issued, the insurance cover shall be valid at least in the Member States concerned.

4. Applicants shall, in principle, take out insurance in their country of residence. Where this is not possible, they shall seek to obtain insurance in any other country.

When another person takes out insurance in the name of the applicant, the conditions set out in paragraph 3 shall apply.

5. When assessing whether the insurance cover is adequate, consulates shall ascertain whether claims against the insurance company would be recoverable in a Member State.

6. The insurance requirement may be considered to have been met where it is established that an adequate level of insurance may be presumed in the light of the applicant's professional situation. The exemption from presenting proof of travel medical insurance may concern particular professional groups, such as seafarers, who are already covered by travel medical insurance as a result of their professional activities.

7. Holders of diplomatic passports shall be exempt from the requirement to hold travel medical insurance.

Article 16

Visa fee

1. Applicants shall pay a visa fee of EUR 60.

2. Children from the age of six years and below the age of 12 years shall pay a visa fee of EUR 35.

3. The visa fee shall be revised regularly in order to reflect the administrative costs.

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4. The visa fee shall be waived for applicants belonging to one of the following categories:

(a) children under six years;

(b) school pupils, students, postgraduate students and accompanying teachers who undertake stays for the purpose of study or educational training;

(c) researchers from third countries travelling for the purpose of carrying out scientific research as defined in Recommendation No 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research ([1]);

(d) representatives of non-profit organisations aged 25 years or less participating in seminars, conferences, sports, cultural or educational events organised by non-profit organisations.

5. The visa fee may be waived for:

(a) children from the age of six years and below the age of 12 years;

(b) holders of diplomatic and service passports;

(c) participants aged 25 years or less in seminars, conferences, sports, cultural or educational events, organised by non-profit organisations.

Within local Schengen cooperation, Members States shall aim to harmonise the application of these exemptions.

6. In individual cases, the amount of the visa fee to be charged may be waived or reduced when to do so serves to promote cultural or sporting interests as well as interests in the field of foreign policy, development policy and other areas of vital public interest or for humanitarian reasons.

7. The visa fee shall be charged in euro, in the national currency of the third country or in the currency usually used in the third country where the application is lodged, and shall not be refundable except in the cases referred to in Articles 18(2) and 19(3).

When charged in a currency other than euro, the amount of the visa fee charged in that currency shall be determined and regularly reviewed in application of the euro foreign exchange reference rate set by the European Central Bank. The amount charged may be rounded up and consulates shall ensure under local Schengen cooperation that they charge similar fees.

8. The applicant shall be given a receipt for the visa fee paid.

Article 17

Service fee

1. An additional service fee may be charged by an external service provider referred to in Article 43. The service fee shall be proportionate to the costs incurred by the external service provider while performing one or more of the tasks referred to in Article 43(6).

([1]) OJ L 289, 3.11.2005, p. 23.

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2. The service fee shall be specified in the legal instrument referred to in Article 43(2).

3. Within the framework of local Schengen cooperation, Member States shall ensure that the service fee charged to an applicant duly reflects the services offered by the external service provider and is adapted to local circumstances. Furthermore, they shall aim to harmonise the service fee applied.

4. The service fee shall not exceed half of the amount of the visa fee set out in Article 16(1), irrespective of the possible reductions in or exemptions from the visa fee as provided for in Article 16(2), (4), (5) and (6).

5. The Member State(s) concerned shall maintain the possibility for all applicants to lodge their applications directly at its/their consulates.

CHAPTER III

Examination of and decision on an application

Article 18

Verification of consular competence

1. When an application has been lodged, the consulate shall verify whether it is competent to examine and decide on it in accordance with the provisions of Articles 5 and 6.

2. If the consulate is not competent, it shall, without delay, return the application form and any documents submitted by the applicant, reimburse the visa fee, and indicate which consulate is competent.

Article 19

Admissibility

1. The competent consulate shall verify whether:

— the application has been lodged within the period referred to in Article 9(1),

— the application contains the items referred to in Article 10(3)(a) to (c),

— the biometric data of the applicant have been collected, and

— the visa fee has been collected.

2. Where the competent consulate finds that the conditions referred to in paragraph 1 have been fulfilled, the application shall be admissible and the consulate shall:

— follow the procedures described in Article 8 of the VIS Regulation, and

— further examine the application.

Data shall be entered in the VIS only by duly authorised consular staff in accordance with Articles 6(1), 7, 9(5) and 9(6) of the VIS Regulation.

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3. Where the competent consulate finds that the conditions referred to in paragraph 1 have not been fulfilled, the application shall be inadmissible and the consulate shall without delay:

— return the application form and any documents submitted by the applicant,

— destroy the collected biometric data,

— reimburse the visa fee, and

— not examine the application.

4. By way of derogation, an application that does not meet the requirements set out in paragraph 1 may be considered admissible on humanitarian grounds or for reasons of national interest.

Article 20

Stamp indicating that an application is admissible

1. When an application is admissible, the competent consulate shall stamp the applicant's travel document. The stamp shall be as set out in the model in Annex III and shall be affixed in accordance with the provisions of that Annex.

2. Diplomatic, service/official and special passports shall not be stamped.

3. The provisions of this Article shall apply to the consulates of the Member States until the date when the VIS becomes fully operational in all regions, in accordance with Article 48 of the VIS Regulation.

Article 21

Verification of entry conditions and risk assessment

1. In the examination of an application for a uniform visa, it shall be ascertained whether the applicant fulfils the entry conditions set out in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code, and particular consideration shall be given to assessing whether the applicant presents a risk of illegal immigration or a risk to the security of the Member States and whether the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

2. In respect of each application, the VIS shall be consulted in accordance with Articles 8(2) and 15 of the VIS Regulation. Member States shall ensure that full use is made of all search criteria pursuant to Article 15 of the VIS Regulation in order to avoid false rejections and identifications.

3. While checking whether the applicant fulfils the entry conditions, the consulate shall verify:

(a) that the travel document presented is not false, counterfeit or forged;

(b) the applicant's justification for the purpose and conditions of the intended stay, and that he has sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is in a position to acquire such means lawfully;

(c) whether the applicant is a person for whom an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry;

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(d) that the applicant is not considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where no alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds;

(e) that the applicant is in possession of adequate and valid travel medical insurance, where applicable.

4. The consulate shall, where applicable, verify the length of previous and intended stays in order to verify that the applicant has not exceeded the maximum duration of authorised stay in the territory of the Member States, irrespective of possible stays authorised under a national long-stay visa or a residence permit issued by another Member State.

5. The means of subsistence for the intended stay shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed, on the basis of the reference amounts set by the Member States in accordance with Article 34(1)(c) of the Schengen Borders Code. Proof of sponsorship and/or private accommodation may also constitute evidence of sufficient means of subsistence.

6. In the examination of an application for an airport transit visa, the consulate shall in particular verify:

(a) that the travel document presented is not false, counterfeit or forged;

(b) the points of departure and destination of the third-country national concerned and the coherence of the intended itinerary and airport transit;

(c) proof of the onward journey to the final destination.

7. The examination of an application shall be based notably on the authenticity and reliability of the documents submitted and on the veracity and reliability of the statements made by the applicant.

8. During the examination of an application, consulates may in justified cases call the applicant for an interview and request additional documents.

9. A previous visa refusal shall not lead to an automatic refusal of a new application. A new application shall be assessed on the basis of all available information.

Article 22

Prior consultation of central authorities of other Member States

1. A Member State may require the central authorities of other Member States to consult its central authorities during the examination of applications lodged by nationals of specific third countries or specific categories of such nationals. Such consultation shall not apply to applications for airport transit visas.

2. The central authorities consulted shall reply definitively within seven calendar days after being consulted. The absence of a reply within this deadline shall mean that they have no grounds for objecting to the issuing of the visa.

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3. Member States shall notify the Commission of the introduction or withdrawal of the requirement of prior consultation before it becomes applicable. This information shall also be given within local Schengen cooperation in the jurisdiction concerned.

4. The Commission shall inform Member States of such notifications.

5. From the date of the replacement of the Schengen Consultation Network, as referred to in Article 46 of the VIS Regulation, prior consultation shall be carried out in accordance with Article 16(2) of that Regulation.

Article 23

Decision on the application

1. Applications shall be decided on within 15 calendar days of the date of the lodging of an application which is admissible in accordance with Article 19.

2. That period may be extended up to a maximum of 30 calendar days in individual cases, notably when further scrutiny of the application is needed or in cases of representation where the authorities of the represented Member State are consulted.

3. Exceptionally, when additional documentation is needed in specific cases, the period may be extended up to a maximum of 60 calendar days.

4. Unless the application has been withdrawn, a decision shall be taken to:

(a) issue a uniform visa in accordance with Article 24;

(b) issue a visa with limited territorial validity in accordance with Article 25;

(c) refuse a visa in accordance with Article 32; or

(d) discontinue the examination of the application and transfer it to the relevant authorities of the represented Member State in accordance with Article 8(2).

The fact that fingerprinting is physically impossible, in accordance with Article 13(7)(b), shall not influence the issuing or refusal of a visa.

CHAPTER IV

Issuing of the visa

Article 24

Issuing of a uniform visa

1. The period of validity of a visa and the length of the authorised stay shall be based on the examination conducted in accordance with Article 21.

A visa may be issued for one, two or multiple entries. The period of validity shall not exceed five years.

In the case of transit, the length of the authorised stay shall correspond to the time necessary for the purpose of the transit.

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Without prejudice to Article 12(a), the period of validity of the visa shall include an additional 'period of grace' of 15 days.

Member States may decide not to grant such a period of grace for reasons of public policy or because of the international relations of any of the Member States.

2. Without prejudice to Article 12(a), multiple-entry visas shall be issued with a period of validity between six months and five years, where the following conditions are met:

(a) the applicant proves the need or justifies the intention to travel frequently and/or regularly, in particular due to his occupational or family status, such as business persons, civil servants engaged in regular official contacts with Member States and EU institutions, representatives of civil society organisations travelling for the purpose of educational training, seminars and conferences, family members of citizens of the Union, family members of third-country nationals legally residing in Member States and seafarers; and

(b) the applicant proves his integrity and reliability, in particular the lawful use of previous uniform visas or visas with limited territorial validity, his economic situation in the country of origin and his genuine intention to leave the territory of the Member States before the expiry of the visa applied for.

3. The data set out in Article 10(1) of the VIS Regulation shall be entered into the VIS when a decision on issuing such a visa has been taken.

Article 25

Issuing of a visa with limited territorial validity

1. A visa with limited territorial validity shall be issued exceptionally, in the following cases:

(a) when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations,

(i) to derogate from the principle that the entry conditions laid down in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code must be fulfilled;

(ii) to issue a visa despite an objection by the Member State consulted in accordance with Article 22 to the issuing of a uniform visa; or

(iii) to issue a visa for reasons of urgency, although the prior consultation in accordance with Article 22 has not been carried out;

or

(b) when for reasons deemed justified by the consulate, a new visa is issued for a stay during the same six-month period to an applicant who, over this six-month period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of three months.

2. A visa with limited territorial validity shall be valid for the territory of the issuing Member State. It may exceptionally be valid for the territory of more than one Member State, subject to the consent of each such Member State.

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3. If the applicant holds a travel document that is not recognised by one or more, but not all Member States, a visa valid for the territory of the Member States recognising the travel document shall be issued. If the issuing Member State does not recognise the applicant's travel document, the visa issued shall only be valid for that Member State.

4. When a visa with limited territorial validity has been issued in the cases described in paragraph 1(a), the central authorities of the issuing Member State shall circulate the relevant information to the central authorities of the other Member States without delay, by means of the procedure referred to in Article 16(3) of the VIS Regulation.

5. The data set out in Article 10(1) of the VIS Regulation shall be entered into the VIS when a decision on issuing such a visa has been taken.

Article 26

Issuing of an airport transit visa

1. An airport transit visa shall be valid for transiting through the international transit areas of the airports situated on the territory of Member States.

2. Without prejudice to Article 12(a), the period of validity of the visa shall include an additional 'period of grace' of 15 days.

Member States may decide not to grant such a period of grace for reasons of public policy or because of the international relations of any of the Member States.

3. Without prejudice to Article 12(a), multiple airport transit visas may be issued with a period of validity of a maximum six months.

4. The following criteria in particular are relevant for taking the decision to issue multiple airport transit visas:

(a) the applicant's need to transit frequently and/or regularly; and

(b) the integrity and reliability of the applicant, in particular the lawful use of previous uniform visas, visas with limited territorial validity or airport transit visas, his economic situation in his country of origin and his genuine intention to pursue his onward journey.

5. If the applicant is required to hold an airport transit visa in accordance with the provisions of Article 3(2), the airport transit visa shall be valid only for transiting through the international transit areas of the airports situated on the territory of the Member State(s) concerned.

6. The data set out in Article 10(1) of the VIS Regulation shall be entered into the VIS when a decision on issuing such a visa has been taken.

Article 27

Filling in the visa sticker

1. When the visa sticker is filled in, the mandatory entries set out in Annex VII shall be inserted and the machine-readable zone filled in, as provided for in ICAO document 9303, Part 2.

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2. Member States may add national entries in the ‘comments’ section of the visa sticker, which shall not duplicate the mandatory entries in Annex VII.

3. All entries on the visa sticker shall be printed, and no manual changes shall be made to a printed visa sticker.

4. Visa stickers may be filled in manually only in case of technical force majeure. No changes shall be made to a manually filled in visa sticker.

5. When a visa sticker is filled in manually in accordance with paragraph 4 of this Article, this information shall be entered into the VIS in accordance with Article 10(1)(k) of the VIS Regulation.

Article 28

Invalidation of a completed visa sticker

1. If an error is detected on a visa sticker which has not yet been affixed to the travel document, the visa sticker shall be invalidated.

2. If an error is detected after the visa sticker has been affixed to the travel document, the visa sticker shall be invalidated by drawing a cross with indelible ink on the visa sticker and a new visa sticker shall be affixed to a different page.

3. If an error is detected after the relevant data have been introduced into the VIS in accordance with Article 10(1) of the VIS Regulation, the error shall be corrected in accordance with Article 24(1) of that Regulation.

Article 29

Affixing a visa sticker

1. The printed visa sticker containing the data provided for in Article 27 and Annex VII shall be affixed to the travel document in accordance with the provisions set out in Annex VIII.

2. Where the issuing Member State does not recognise the applicant’s travel document, the separate sheet for affixing a visa shall be used.

3. When a visa sticker has been affixed to the separate sheet for affixing a visa, this information shall be entered into the VIS in accordance with Article 10(1)(j) of the VIS Regulation.

4. Individual visas issued to persons who are included in the travel document of the applicant shall be affixed to that travel document.

5. Where the travel document in which such persons are included is not recognised by the issuing Member State, the individual stickers shall be affixed to the separate sheets for affixing a visa.

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Article 30

Rights derived from an issued visa

Mere possession of a uniform visa or a visa with limited territorial validity shall not confer an automatic right of entry.

Article 31

Information of central authorities of other Member States

1. A Member State may require that its central authorities be informed of visas issued by consulates of other Member States to nationals of specific third countries or to specific categories of such nationals, except in the case of airport transit visas.

2. Member States shall notify the Commission of the introduction or withdrawal of the requirement for such information before it becomes applicable. This information shall also be given within local Schengen cooperation in the jurisdiction concerned.

3. The Commission shall inform Member States of such notifications.

4. From the date referred to in Article 46 of the VIS Regulation, information shall be transmitted in accordance with Article 16(3) of that Regulation.

Article 32

Refusal of a visa

1. Without prejudice to Article 25(1), a visa shall be refused:

(a) if the applicant:

(i) presents a travel document which is false, counterfeit or forged;

(ii) does not provide justification for the purpose and conditions of the intended stay;

(iii) does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is not in a position to acquire such means lawfully;

(iv) has already stayed for three months during the current six-month period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;

(v) is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;

(vi) is considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where an alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds; or

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(vii) does not provide proof of holding adequate and valid travel medical insurance, where applicable;

or

(b) if there are reasonable doubts as to the authenticity of the supporting documents submitted by the applicant or the veracity of their contents, the reliability of the statements made by the applicant or his intention to leave the territory of the Member States before the expiry of the visa applied for.

2. A decision on refusal and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex VI.

3. Applicants who have been refused a visa shall have the right to appeal. Appeals shall be conducted against the Member State that has taken the final decision on the application and in accordance with the national law of that Member State. Member States shall provide applicants with information regarding the procedure to be followed in the event of an appeal, as specified in Annex VI.

4. In the cases referred to in Article 8(2), the consulate of the representing Member State shall inform the applicant of the decision taken by the represented Member State.

5. Information on a refused visa shall be entered into the VIS in accordance with Article 12 of the VIS Regulation.

CHAPTER V

Modification of an issued visa

Article 33

Extension

1. The period of validity and/or the duration of stay of an issued visa shall be extended where the competent authority of a Member State considers that a visa holder has provided proof of force majeure or humanitarian reasons preventing him from leaving the territory of the Member States before the expiry of the period of validity of or the duration of stay authorised by the visa. Such an extension shall be granted free of charge.

2. The period of validity and/or the duration of stay of an issued visa may be extended if the visa holder provides proof of serious personal reasons justifying the extension of the period of validity or the duration of stay. A fee of EUR 30 shall be charged for such an extension.

3. Unless otherwise decided by the authority extending the visa, the territorial validity of the extended visa shall remain the same as that of the original visa.

4. The authority competent to extend the visa shall be that of the Member State on whose territory the third-country national is present at the moment of applying for an extension.

5. Member States shall notify to the Commission the authorities competent for extending visas.

6. Extension of visas shall take the form of a visa sticker.

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7. Information on an extended visa shall be entered into the VIS in accordance with Article 14 of the VIS Regulation.

Article 34

Annulment and revocation

1. A visa shall be annulled where it becomes evident that the conditions for issuing it were not met at the time when it was issued, in particular if there are serious grounds for believing that the visa was fraudulently obtained. A visa shall in principle be annulled by the competent authorities of the Member State which issued it. A visa may be annulled by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such annulment.

2. A visa shall be revoked where it becomes evident that the conditions for issuing it are no longer met. A visa shall in principle be revoked by the competent authorities of the Member State which issued it. A visa may be revoked by the competent authorities of another Member State, in which case the authorities of the Member State that issued the visa shall be informed of such revocation.

3. A visa may be revoked at the request of the visa holder. The competent authorities of the Member States that issued the visa shall be informed of such revocation.

4. Failure of the visa holder to produce, at the border, one or more of the supporting documents referred to in Article 14(3), shall not automatically lead to a decision to annul or revoke the visa.

5. If a visa is annulled or revoked, a stamp stating 'ANNULLED' or 'REVOKED' shall be affixed to it and the optically variable feature of the visa sticker, the security feature 'latent image effect' as well as the term 'visa' shall be invalidated by being crossed out.

6. A decision on annulment or revocation of a visa and the reasons on which it is based shall be notified to the applicant by means of the standard form set out in Annex VI.

7. A visa holder whose visa has been annulled or revoked shall have the right to appeal, unless the visa was revoked at his request in accordance with paragraph 3. Appeals shall be conducted against the Member State that has taken the decision on the annulment or revocation and in accordance with the national law of that Member State. Member States shall provide applicants with information regarding the procedure to be followed in the event of an appeal, as specified in Annex VI.

8. Information on an annulled or a revoked visa shall be entered into the VIS in accordance with Article 13 of the VIS Regulation.

CHAPTER VI

Visas issued at the external borders

Article 35

Visas applied for at the external border

1. In exceptional cases, visas may be issued at border crossing points if the following conditions are satisfied:

(a) the applicant fulfils the conditions laid down in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code;

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(b) the applicant has not been in a position to apply for a visa in advance and submits, if required, supporting documents substantiating unforeseeable and imperative reasons for entry; and

(c) the applicant's return to his country of origin or residence or transit through States other than Member States fully implementing the Schengen *acquis* is assessed as certain.

2. Where a visa is applied for at the external border, the requirement that the applicant be in possession of travel medical insurance may be waived when such travel medical insurance is not available at that border crossing point or for humanitarian reasons.

3. A visa issued at the external border shall be a uniform visa, entitling the holder to stay for a maximum duration of 15 days, depending on the purpose and conditions of the intended stay. In the case of transit, the length of the authorised stay shall correspond to the time necessary for the purpose of the transit.

4. Where the conditions laid down in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code are not fulfilled, the authorities responsible for issuing the visa at the border may issue a visa with limited territorial validity, in accordance with Article 25(1)(a) of this Regulation, for the territory of the issuing Member State only.

5. A third-country national falling within a category of persons for whom prior consultation is required in accordance with Article 22 shall, in principle, not be issued a visa at the external border.

However, a visa with limited territorial validity for the territory of the issuing Member State may be issued at the external border for such persons in exceptional cases, in accordance with Article 25(1)(a).

6. In addition to the reasons for refusing a visa as provided for in Article 32(1) a visa shall be refused at the border crossing point if the conditions referred to in paragraph 1(b) of this Article are not met.

7. The provisions on justification and notification of refusals and the right of appeal set out in Article 32(3) and Annex VI shall apply.

Article 36

Visas issued to seafarers in transit at the external border

1. A seafarer who is required to be in possession of a visa when crossing the external borders of the Member States may be issued with a visa for the purpose of transit at the border where:

(a) he fulfils the conditions set out in Article 35(1); and

(b) he is crossing the border in question in order to embark on, re-embark on or disembark from a ship on which he will work or has worked as a seafarer.

2. Before issuing a visa at the border to a seafarer in transit, the competent national authorities shall comply with the rules set out in Annex IX, Part 1, and make sure that the necessary information concerning the seafarer in question has been exchanged by means of a duly completed form for seafarers in transit, as set out in Annex IX, Part 2.

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3. This Article shall apply without prejudice to Article 35(3), (4) and (5).

TITLE IV

ADMINISTRATIVE MANAGEMENT AND ORGANISATION

Article 37

Organisation of visa sections

1. Member States shall be responsible for organising the visa sections of their consulates.

In order to prevent any decline in the level of vigilance and to protect staff from being exposed to pressure at local level, rotation schemes for staff dealing directly with applicants shall be set up, where appropriate. Particular attention shall be paid to clear work structures and a distinct allocation/division of responsibilities in relation to the taking of final decisions on applications. Access to consultation of the VIS and the SIS and other confidential information shall be restricted to a limited number of duly authorised staff. Appropriate measures shall be taken to prevent unauthorised access to such databases.

2. The storage and handling of visa stickers shall be subject to adequate security measures to avoid fraud or loss. Each consulate shall keep an account of its stock of visa stickers and register how each visa sticker has been used.

3. Member States' consulates shall keep archives of applications. Each individual file shall contain the application form, copies of relevant supporting documents, a record of checks made and the reference number of the visa issued, in order for staff to be able to reconstruct, if need be, the background for the decision taken on the application.

Individual application files shall be kept for a minimum of two years from the date of the decision on the application as referred to in Article 23(1).

Article 38

Resources for examining applications and monitoring of consulates

1. Member States shall deploy appropriate staff in sufficient numbers to carry out the tasks relating to the examining of applications, in such a way as to ensure reasonable and harmonised quality of service to the public.

2. Premises shall meet appropriate functional requirements of adequacy and allow for appropriate security measures.

3. Member States' central authorities shall provide adequate training to both expatriate staff and locally employed staff and shall be responsible for providing them with complete, precise and up-to-date information on the relevant Community and national law.

4. Member States' central authorities shall ensure frequent and adequate monitoring of the conduct of examination of applications and take corrective measures when deviations from the provisions of this Regulation are detected.

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Article 39

Conduct of staff

1. Member States' consulates shall ensure that applicants are received courteously.

2. Consular staff shall, in the performance of their duties, fully respect human dignity. Any measures taken shall be proportionate to the objectives pursued by such measures.

3. While performing their tasks, consular staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 40

Forms of cooperation

1. Each Member State shall be responsible for organising the procedures relating to applications. In principle, applications shall be lodged at a consulate of a Member State.

2. Member States shall:

(a) equip their consulates and authorities responsible for issuing visas at the borders with the required material for the collection of biometric identifiers, as well as the offices of their honorary consuls, whenever they make use of them, to collect biometric identifiers in accordance with Article 42; and/or

(b) cooperate with one or more other Member States, within the framework of local Schengen cooperation or by other appropriate contacts, in the form of limited representation, co-location, or a Common Application Centre in accordance with Article 41.

3. In particular circumstances or for reasons relating to the local situation, such as where:

(a) the high number of applicants does not allow the collection of applications and of data to be organised in a timely manner and in decent conditions; or

(b) it is not possible to ensure a good territorial coverage of the third country concerned in any other way;

and where the forms of cooperation referred to in paragraph 2(b) prove not to be appropriate for the Member State concerned, a Member State may, as a last resort, cooperate with an external service provider in accordance with Article 43.

4. Without prejudice to the right to call the applicant for a personal interview, as provided for in Article 21(8), the selection of a form of organisation shall not lead to the applicant being required to appear in person at more than one location in order to lodge an application.

5. Member States shall notify to the Commission how they intend to organise the procedures relating to applications in each consular location.

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Article 41

Cooperation between Member States

1. Where ‘co-location’ is chosen, staff of the consulates of one or more Member States shall carry out the procedures relating to applications (including the collection of biometric identifiers) addressed to them at the consulate of another Member State and share the equipment of that Member State. The Member States concerned shall agree on the duration of and conditions for the termination of the co-location as well as the proportion of the visa fee to be received by the Member State whose consulate is being used.

2. Where ‘Common Application Centres’ are established, staff of the consulates of two or more Member States shall be pooled in one building in order for applicants to lodge applications (including biometric identifiers). Applicants shall be directed to the Member State competent for examining and deciding on the application. Member States shall agree on the duration of and conditions for the termination of such cooperation as well as the cost-sharing among the participating Member States. One Member State shall be responsible for contracts in relation to logistics and diplomatic relations with the host country.

3. In the event of termination of cooperation with other Member States, Member States shall assure the continuity of full service.

Article 42

Recourse to honorary consuls

1. Honorary consuls may also be authorised to perform some or all of the tasks referred to in Article 43(6). Adequate measures shall be taken to ensure security and data protection.

2. Where the honorary consul is not a civil servant of a Member State, the performance of those tasks shall comply with the requirements set out in Annex X, except for the provisions in point D(c) of that Annex.

3. Where the honorary consul is a civil servant of a Member State, the Member State concerned shall ensure that requirements comparable to those which would apply if the tasks were performed by its consulate are applied.

Article 43

Cooperation with external service providers

1. Member States shall endeavour to cooperate with an external service provider together with one or more Member States, without prejudice to public procurement and competition rules.

2. Cooperation with an external service provider shall be based on a legal instrument that shall comply with the requirements set out in Annex X.

3. Member States shall, within the framework of local Schengen cooperation, exchange information about the selection of external service providers and the establishment of the terms and conditions of their respective legal instruments.

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4. The examination of applications, interviews (where appropriate), the decision on applications and the printing and affixing of visa stickers shall be carried out only by the consulate.

5. External service providers shall not have access to the VIS under any circumstances. Access to the VIS shall be reserved exclusively to duly authorised staff of consulates.

6. An external service provider may be entrusted with the performance of one or more of the following tasks:

(a) providing general information on visa requirements and application forms;

(b) informing the applicant of the required supporting documents, on the basis of a checklist;

(c) collecting data and applications (including collection of biometric identifiers) and transmitting the application to the consulate;

(d) collecting the visa fee;

(e) managing the appointments for appearance in person at the consulate or at the external service provider;

(f) collecting the travel documents, including a refusal notification if applicable, from the consulate and returning them to the applicant.

7. When selecting an external service provider, the Member State(s) concerned shall scrutinise the solvency and reliability of the company, including the necessary licences, commercial registration, company statutes, bank contracts, and ensure that there is no conflict of interests.

8. The Member State(s) concerned shall ensure that the external service provider selected complies with the terms and conditions assigned to it in the legal instrument referred to in paragraph 2.

9. The Member State(s) concerned shall remain responsible for compliance with data protection rules for the processing of data and shall be supervised in accordance with Article 28 of Directive 95/46/EC.

Cooperation with an external service provider shall not limit or exclude any liability arising under the national law of the Member State(s) concerned for breaches of obligations with regard to the personal data of applicants or the performance of one or more of the tasks referred to in paragraph 6. This provision is without prejudice to any action which may be taken directly against the external service provider under the national law of the third country concerned.

10. The Member State(s) concerned shall provide training to the external service provider, corresponding to the knowledge needed to offer an appropriate service and sufficient information to applicants.

11. The Member State(s) concerned shall closely monitor the implementation of the legal instrument referred to in paragraph 2, including:

(a) the general information on visa requirements and application forms provided by the external service provider to applicants;

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(b) all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the cooperation involves the transmission of files and data to the consulate of the Member State(s) concerned, and all other unlawful forms of processing personal data;

(c) the collection and transmission of biometric identifiers;

(d) the measures taken to ensure compliance with data protection provisions.

To this end, the consulate(s) of the Member State(s) concerned shall, on a regular basis, carry out spot checks on the premises of the external service provider.

12. In the event of termination of cooperation with an external service provider, Member States shall ensure the continuity of full service.

13. Member States shall provide the Commission with a copy of the legal instrument referred to in paragraph 2.

Article 44

Encryption and secure transfer of data

1. In the case of representation arrangements between Member States and cooperation of Member States with an external service provider and recourse to honorary consuls, the represented Member State(s) or the Member State(s) concerned shall ensure that the data are fully encrypted, whether electronically transferred or physically transferred on an electronic storage medium from the authorities of the representing Member State to the authorities of the represented Member State(s) or from the external service provider or from the honorary consul to the authorities of the Member State(s) concerned.

2. In third countries which prohibit encryption of data to be electronically transferred from the authorities of the representing Member State to the authorities of the represented Member State(s) or from the external service provider or from the honorary consul to the authorities of the Member State(s) concerned, the represented Members State(s) or the Member State(s) concerned shall not allow the representing Member State or the external service provider or the honorary consul to transfer data electronically.

In such a case, the represented Member State(s) or the Member State(s) concerned shall ensure that the electronic data are transferred physically in fully encrypted form on an electronic storage medium from the authorities of the representing Member State to the authorities of the represented Member State(s) or from the external service provider or from the honorary consul to the authorities of the Member State(s) concerned by a consular officer of a Member State or, where such a transfer would require disproportionate or unreasonable measures to be taken, in another safe and secure way, for example by using established operators experienced in transporting sensitive documents and data in the third country concerned.

3. In all cases the level of security for the transfer shall be adapted to the sensitive nature of the data.

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4. The Member States or the Community shall endeavour to reach agreement with the third countries concerned with the aim of lifting the prohibition against encryption of data to be electronically transferred from the authorities of the representing Member State to the authorities of the represented Member State(s) or from the external service provider or from the honorary consul to the authorities of the Member State(s) concerned.

Article 45

Member States' cooperation with commercial intermediaries

1. Member States may cooperate with commercial intermediaries for the lodging of applications, except for the collection of biometric identifiers.

2. Such cooperation shall be based on the granting of an accreditation by Member States' relevant authorities. The accreditation shall, in particular, be based on the verification of the following aspects:

(a) the current status of the commercial intermediary: current licence, the commercial register, contracts with banks;

(b) existing contracts with commercial partners based in the Member States offering accommodation and other package tour services;

(c) contracts with transport companies, which must include an outward journey, as well as a guaranteed and fixed return journey.

3. Accredited commercial intermediaries shall be monitored regularly by spot checks involving personal or telephone interviews with applicants, verification of trips and accommodation, verification that the travel medical insurance provided is adequate and covers individual travellers, and wherever deemed necessary, verification of the documents relating to group return.

4. Within local Schengen cooperation, information shall be exchanged on the performance of the accredited commercial intermediaries concerning irregularities detected and refusal of applications submitted by commercial intermediaries, and on detected forms of travel document fraud and failure to carry out scheduled trips.

5. Within local Schengen cooperation, lists shall be exchanged of commercial intermediaries to which accreditation has been given by each consulate and from which accreditation has been withdrawn, together with the reasons for any such withdrawal.

Each consulate shall make sure that the public is informed about the list of accredited commercial intermediaries with which it cooperates.

Article 46

Compilation of statistics

Member States shall compile annual statistics on visas, in accordance with the table set out in Annex XII. These statistics shall be submitted by 1 March for the preceding calendar year.

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Article 47

Information to the general public

1. Member States' central authorities and consulates shall provide the general public with all relevant information in relation to the application for a visa, in particular:

(a) the criteria, conditions and procedures for applying for a visa;

(b) the means of obtaining an appointment, if applicable;

(c) where the application may be submitted (competent consulate, Common Application Centre or external service provider);

(d) accredited commercial intermediaries;

(e) the fact that the stamp as provided for in Article 20 has no legal implications;

(f) the time limits for examining applications provided for in Article 23(1), (2) and (3);

(g) the third countries whose nationals or specific categories of whose nationals are subject to prior consultation or information;

(h) that negative decisions on applications must be notified to the applicant, that such decisions must state the reasons on which they are based and that applicants whose applications are refused have a right to appeal, with information regarding the procedure to be followed in the event of an appeal, including the competent authority, as well as the time limit for lodging an appeal;

(i) that mere possession of a visa does not confer an automatic right of entry and that the holders of visa are requested to present proof that they fulfil the entry conditions at the external border, as provided for in Article 5 of the Schengen Borders Code.

2. The representing and represented Member State shall inform the general public about representation arrangements as referred to in Article 8 before such arrangements enter into force.

TITLE V

LOCAL SCHENGEN COOPERATION

Article 48

Local Schengen cooperation between Member States' consulates

1. In order to ensure a harmonised application of the common visa policy taking into account, where appropriate, local circumstances, Member States' consulates and the Commission shall cooperate within each jurisdiction and assess the need to establish in particular:

(a) a harmonised list of supporting documents to be submitted by applicants, taking into account Article 14 and Annex II;

(b) common criteria for examining applications in relation to exemptions from paying the visa fee in accordance with Article 16(5) and matters relating to the translation of the application form in accordance with Article 11(5);

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(c) an exhaustive list of travel documents issued by the host country, which shall be updated regularly.

If in relation to one or more of the points (a) to (c), the assessment within local Schengen cooperation confirms the need for a local harmonised approach, measures on such an approach shall be adopted pursuant to the procedure referred to in Article 52(2).

2. Within local Schengen cooperation a common information sheet shall be established on uniform visas and visas with limited territorial validity and airport transit visas, namely, the rights that the visa implies and the conditions for applying for it, including, where applicable, the list of supporting documents as referred to in paragraph 1(a).

3. The following information shall be exchanged within local Schengen cooperation:

(a) monthly statistics on uniform visas, visas with limited territorial validity, and airport transit visas issued, as well as the number of visas refused;

(b) with regard to the assessment of migratory and/or security risks, information on:

(i) the socioeconomic structure of the host country;

(ii) sources of information at local level, including social security, health insurance, fiscal registers and entry-exit registrations;

(iii) the use of false, counterfeit or forged documents;

(iv) illegal immigration routes;

(v) refusals;

(c) information on cooperation with transport companies;

(d) information on insurance companies providing adequate travel medical insurance, including verification of the type of coverage and possible excess amount.

4. Local Schengen cooperation meetings to deal specifically with operational issues in relation to the application of the common visa policy shall be organised regularly among Member States and the Commission. These meetings shall be convened within the jurisdiction by the Commission, unless otherwise agreed at the request of the Commission.

Single-topic meetings may be organised and sub-groups set up to study specific issues within local Schengen cooperation.

5. Summary reports of local Schengen cooperation meetings shall be drawn up systematically and circulated locally. The Commission may delegate the drawing up of the reports to a Member State. The consulates of each Member State shall forward the reports to their central authorities.

On the basis of these reports, the Commission shall draw up an annual report within each jurisdiction to be submitted to the European Parliament and the Council.

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6. Representatives of the consulates of Member States not applying the Community *acquis* in relation to visas, or of third countries, may on an ad hoc basis be invited to participate in meetings for the exchange of information on issues relating to visas.

TITLE VI

FINAL PROVISIONS

Article 49

Arrangements in relation to the Olympic Games and Paralympic Games

Member States hosting the Olympic Games and Paralympic Games shall apply the specific procedures and conditions facilitating the issuing of visas set out in Annex XI.

Article 50

Amendments to the Annexes

Measures designed to amend non-essential elements of this Regulation and amending Annexes I, II, III, IV, V, VI, VII, VIII and XII shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 52(3).

Article 51

Instructions on the practical application of the Visa Code

Operational instructions on the practical application of the provisions of this Regulation shall be drawn up in accordance with the procedure referred to in Article 52(2).

Article 52

Committee procedure

1. The Commission shall be assisted by a committee (the Visa Committee).

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof and provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Regulation.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

3. Where reference is made to this paragraph, Articles 5a(1) to (4) and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 53

Notification

1. Member States shall notify the Commission of:

(a) representation arrangements referred to in Article 8;

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(b) third countries whose nationals are required by individual Member States to hold an airport transit visa when passing through the international transit areas of airports situated on their territory, as referred to in Article 3;

(c) the national form for proof of sponsorship and/or private accommodation referred to in Article 14(4), if applicable;

(d) the list of third countries for which prior consultation referred to in Article 22(1) is required;

(e) the list of third countries for which information referred to in Article 31(1) is required;

(f) the additional national entries in the 'comments' section of the visa sticker, as referred to in Article 27(2);

(g) authorities competent for extending visas, as referred to in Article 33(5);

(h) the forms of cooperation chosen as referred to in Article 40;

(i) statistics compiled in accordance with Article 46 and Annex XII.

2. The Commission shall make the information notified pursuant to paragraph 1 available to the Member States and the public via a constantly updated electronic publication.

Article 54

Amendments to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is hereby amended as follows:

1. Article 4(1) shall be amended as follows:

(a) point (a) shall be replaced by the following:

'(a) "uniform visa" as defined in Article 2(3) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community code on Visas (Visa Code) (*);

(*) OJ L 243, 15.9.2009, p. 1.';

(b) point (b) shall be deleted;

(c) point (c) shall be replaced by the following:

'(c) "airport transit visa" as defined in Article 2(5) of Regulation (EC) No 810/2009;';

(d) point (d) shall be replaced by the following:

'(d) "visa with limited territorial validity" as defined in Article 2(4) of Regulation (EC) No 810/2009;';

(e) point (e) shall be deleted;

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2. in Article 8(1), the words ‘On receipt of an application’, shall be replaced by the following:

‘When the application is admissible according to Article 19 of Regulation (EC) No 810/2009’;

3. Article 9 shall be amended as follows:

(a) the heading shall be replaced by the following:

‘Data to be entered on application’;

(b) paragraph 4 shall be amended as follows:

(i) point (a) shall be replaced by the following:

‘(a) surname (family name), surname at birth (former family name(s)), first name(s) (given name(s)); date of birth, place of birth, country of birth, sex;’;

(ii) point (e) shall be deleted;

(iii) point (g) shall be replaced by the following:

‘(g) Member State(s) of destination and duration of the intended stay or transit;’;

(iv) point (h) shall be replaced by the following:

‘(h) main purpose(s) of the journey;’;

(v) point (i) shall be replaced by the following:

‘(i) intended date of arrival in the Schengen area and intended date of departure from the Schengen area;’;

(vi) point (j) shall be replaced by the following:

‘(j) Member State of first entry;’;

(vii) point (k) shall be replaced by the following:

‘(k) the applicant’s home address;’;

(viii) in point (l), the word ‘school’ shall be replaced by: ‘educational establishment’;

(ix) in point (m), the words ‘father and mother’ shall be replaced by ‘parental authority or legal guardian’;

4. the following point shall be added to Article 10(1):

‘(k) if applicable, the information indicating that the visa sticker has been filled in manually.’;

5. in Article 11, the introductory paragraph shall be replaced by the following:

‘Where the visa authority representing another Member State discontinues the examination of the application, it shall add the following data to the application file:’;

6. Article 12 shall be amended as follows:

(a) in paragraph 1, point (a) shall be replaced by the following:

‘(a) status information indicating that the visa has been refused and whether that authority refused it on behalf of another Member State;’;

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(b) paragraph 2 shall be replaced by the following:

‘2. The application file shall also indicate the ground(s) for refusal of the visa, which shall be one or more of the following:

(a) the applicant:

(i) presents a travel document which is false, counterfeit or forged;

(ii) does not provide justification for the purpose and conditions of the intended stay;

(iii) does not provide proof of sufficient means of subsistence, both for the duration of the intended stay and for the return to his country of origin or residence, or for the transit to a third country into which he is certain to be admitted, or is not in a position to acquire such means lawfully;

(iv) has already stayed for three months during the current six-month period on the territory of the Member States on a basis of a uniform visa or a visa with limited territorial validity;

(v) is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;

(vi) is considered to be a threat to public policy, internal security or public health as defined in Article 2(19) of the Schengen Borders Code or to the international relations of any of the Member States, in particular where an alert has been issued in Member States’ national databases for the purpose of refusing entry on the same grounds;

(vii) does not provide proof of holding adequate and valid travel medical insurance, where applicable;

(b) the information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable;

(c) the applicant’s intention to leave the territory of the Member States before the expiry of the visa could not be ascertained;

(d) sufficient proof that the applicant has not been in a position to apply for a visa in advance justifying application for a visa at the border was not provided.’;

7. Article 13 shall be replaced by the following:

‘Article 13

Data to be added for a visa annulled or revoked

1. Where a decision has been taken to annul or to revoke a visa, the visa authority that has taken the decision shall add the following data to the application file:

(a) status information indicating that the visa has been annulled or revoked;

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(b) authority that annulled or revoked the visa, including its location;

(c) place and date of the decision.

2. The application file shall also indicate the ground(s) for annulment or revocation, which shall be:

(a) one or more of the ground(s) listed in Article 12(2);

(b) the request of the visa holder to revoke the visa.';

8. Article 14 shall be amended as follows:

(a) paragraph 1 shall be amended as follows:

(i) the introductory paragraph shall be replaced by the following:

'1. Where a decision has been taken to extend the period of validity and/or the duration of stay of an issued visa, the visa authority which extended the visa shall add the following data to the application file:';

(ii) point (d) shall be replaced by the following:

'(d) the number of the visa sticker of the extended visa;';

(iii) point (g) shall be replaced by the following:

'(g) the territory in which the visa holder is entitled to travel, if the territorial validity of the extended visa differs from that of the original visa;';

(b) in paragraph 2, point (c) shall be deleted;

9. in Article 15(1), the words 'extend or shorten the validity of the visa' shall be replaced by 'or extend the visa';

10. Article 17 shall be amended as follows:

(a) point 4 shall be replaced by the following:

'4. Member State of first entry;';

(b) point 6 shall be replaced by the following:

'6. the type of visa issued;';

(c) point 11 shall be replaced by the following:

'11. main purpose(s) of the journey;';

11. in Article 18(4)(c), Article 19(2)(c), Article 20(2)(d), Article 22(2)(d), the words 'or shortened' shall be deleted;

12. in Article 23(1)(d), the word 'shortened' shall be deleted.

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Article 55

Amendments to Regulation (EC) No 562/2006

Annex V, Part A of Regulation (EC) No 562/2006 is hereby amended as follows:

(a) point 1(c), shall be replaced by the following:

'(c) annul or revoke the visas, as appropriate, in accordance with the conditions laid down in Article 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community code on visas (Visa Code) (*);

(*) OJ L 243, 15.9.2009, p. 1.';

(b) point 2 shall be deleted.

Article 56

Repeals

1. Articles 9 to 17 of the Convention implementing the Schengen Agreement of 14 June 1985 shall be repealed.

2. The following shall be repealed:

(a) Decision of the Schengen Executive Committee of 28 April 1999 on the definitive versions of the Common Manual and the Common Consular Instructions (SCH/Com-ex (99) 13 (the Common Consular Instructions, including the Annexes);

(b) Decisions of the Schengen Executive Committee of 14 December 1993 extending the uniform visa (SCH/Com-ex (93) 21) and on the common principles for cancelling, rescinding or shortening the length of validity of the uniform visa (SCH/Com-ex (93) 24), Decision of the Schengen Executive Committee of 22 December 1994 on the exchange of statistical information on the issuing of uniform visas (SCH/Com-ex (94) 25), Decision of the Schengen Executive Committee of 21 April 1998 on the exchange of statistics on issued visas (SCH/Com-ex (98) 12) and Decision of the Schengen Executive Committee of 16 December 1998 on the introduction of a harmonised form providing proof of invitation, sponsorship and accommodation (SCH/Com-ex (98) 57);

(c) Joint Action 96/197/JHA of 4 March 1996 on airport transit arrangements ([1]);

(d) Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications ([2]);

(e) Council Regulation (EC) No 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa ([3]);

([1]) OJ L 63, 13.3.1996, p. 8.
([2]) OJ L 116, 26.4.2001, p. 2.
([3]) OJ L 150, 6.6.2001, p. 4.

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(f) Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit ([1]);

(g) Article 2 of Regulation (EC) No 390/2009 of the European Parliament and of the Council of 23 April 2009 amending the Common Consular Instructions on visas for diplomatic and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications ([2]).

3. References to repealed instruments shall be construed as references to this Regulation and read in accordance with the correlation table in Annex XIII.

Article 57

Monitoring and evaluation

1. Two years after all the provisions of this Regulation have become applicable, the Commission shall produce an evaluation of its application. This overall evaluation shall include an examination of the results achieved against objectives and of the implementation of the provisions of this Regulation, without prejudice to the reports referred to in paragraph 3.

2. The Commission shall transmit the evaluation referred to in paragraph 1 to the European Parliament and the Council. On the basis of the evaluation, the Commission shall submit, if necessary, appropriate proposals with a view to amending this Regulation.

3. The Commission shall present, three years after the VIS is brought into operation and every four years thereafter, a report to the European Parliament and to the Council on the implementation of Articles 13, 17, 40 to 44 of this Regulation, including the implementation of the collection and use of biometric identifiers, the suitability of the ICAO standard chosen, compliance with data protection rules, experience with external service providers with specific reference to the collection of biometric data, the implementation of the 59-month rule for the copying of fingerprints and the organisation of the procedures relating to applications. The report shall also include, on the basis of Article 17(12), (13) and (14) and of Article 50(4) of the VIS Regulation, the cases in which fingerprints could factually not be provided or were not required to be provided for legal reasons, compared with the number of cases in which fingerprints were taken. The report shall include information on cases in which a person who could factually not provide fingerprints was refused a visa. The report shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.

4. The first of the reports referred to in paragraph 3 shall also address the issue of the sufficient reliability for identification and verification purposes of fingerprints of children under the age of 12 and, in particular, how fingerprints evolve with age, on the basis of the results of a study carried out under the responsibility of the Commission.

([1]) OJ L 64, 7.3.2003, p. 1.
([2]) OJ L 131, 28.5.2009, p. 1.

▼B

Article 58

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

2. It shall apply from 5 April 2010.

3. Article 52 and Article 53(1)(a) to (h) and (2) shall apply from 5 October 2009.

4. As far as the Schengen Consultation Network (Technical Specifications) is concerned, Article 56(2)(d) shall apply from the date referred to in Article 46 of the VIS Regulation.

5. Article 32(2) and (3), Article 34(6) and (7) and Article 35(7) shall apply from 5 April 2011.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

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ANNEX I

Harmonised application form (1)

	Application for Schengen Visa This application form is free	PHOTO

1. Surname (Family name) (x)			For official use only Date of application: Visa application number: Application lodged at ☐ Embassy/consulate ☐ CAC ☐ Service provider ☐ Commercial intermediary ☐ Border Name: ☐ Other File handled by: Supporting documents: ☐ Travel document ☐ Means of subsistence ☐ Invitation ☐ Means of transport ☐ TMI ☐ Other: Visa decision: ☐ Refused ☐ Issued: ☐ A ☐ C ☐ LTV ☐ Valid From ..... Until ..... Number of entries: ☐ 1 ☐ 2 ☐ Multiple Number of days:
2. Surname at birth (Former family name(s)) (x)			
3. First name(s) (Given name(s)) (x)			
4. Date of birth (day-month-year)	5. Place of birth 6. Country of birth	7. Current nationality Nationality at birth, if different:	
8. Sex ☐ Male ☐ Female	9. Marital status ☐ Single ☐ Married ☐ Separated ☐ Divorced ☐ Widow(er) ☐ Other (please specify)		
10. In the case of minors: Surname, first name, address (if different from applicant's) and nationality of parental authority/legal guardian			
11. National identity number, where applicable			
12. Type of travel document ☐ Ordinary passport ☐ Diplomatic passport ☐ Service passport ☐ Official passport ☐ Special passport ☐ Other travel document (please specify)			
13. Number of travel document	14. Date of issue	15. Valid until	16. Issued by
17. Applicant's home address and e-mail address		Telephone number(s)	
18. Residence in a country other than the country of current nationality ☐ No ☐ Yes. Residence permit or equivalent ..... No ..... Valid until			
* 19. Current occupation			
* 20. Employer and employer's address and telephone number. For students, name and address of educational establishment.			
21. Main purpose(s) of the journey: ☐ Tourism ☐ Business ☐ Visiting family or friends ☐ Cultural ☐ Sports ☐ Official visit ☐ Medical reasons ☐ Study ☐ Transit ☐ Airport transit ☐ Other (please specify)			

(1) No logo is required for Norway, Iceland and Switzerland.

▼B

22. Member State(s) of destination	23. Member State of first entry	
24. Number of entries requested ☐ Single entry ☐ Two entries ☐ Multiple entries	25. Duration of the intended stay or transit Indicate number of days	

The fields marked with * shall not be filled in by family members of EU, EEA or CH citizens (spouse, child or dependent ascendant) while exercising their right to free movement. Family members of EU, EEA or CH citizens shall present documents to prove this relationship and fill in fields No 34 and 35.

(x) Fields 1-3 shall be filled in in accordance with the data in the travel document.

26. Schengen visas issued during the past three years ☐ No ☐ Yes. Date(s) of validity from ..... to		
27. Fingerprints collected previously for the purpose of applying for a Schengen visa ☐ No ☐ Yes ..... Date, if known		
28. Entry permit for the final country of destination, where applicable Issued by ..... Valid from ..... until		
29. Intended date of arrival in the Schengen area	30. Intended date of departure from the Schengen area	
* 31. Surname and first name of the inviting person(s) in the Member State(s). If not applicable, name of hotel(s) or temporary accommodation(s) in the Member State(s)		
Address and e-mail address of inviting person(s)/hotel(s)/temporary accommodation(s)	Telephone and telefax	
* 32. Name and address of inviting company/organisation	Telephone and telefax of company/organisation	
Surname, first name, address, telephone, telefax, and e-mail address of contact person in company/organisation		

* 33. Cost of travelling and living during the applicant's stay is covered		
☐ by the applicant himself/herself Means of support ☐ Cash ☐ Traveller's cheques ☐ Credit card ☐ Prepaid accommodation ☐ Prepaid transport ☐ Other (please specify)	☐ by a sponsor (host, company, organisation), please specify ..... ☐ referred to in field 31 or 32 ..... ☐ other (please specify) Means of support ☐ Cash ☐ Accommodation provided ☐ All expenses covered during the stay ☐ Prepaid transport ☐ Other (please specify)	

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34. Personal data of the family member who is an EU, EEA or CH citizen			
Surname		First name(s)	
Date of birth	Nationality	Number of travel document or ID card	
35. Family relationship with an EU, EEA or CH citizen ☐ spouse ☐ child ..... ☐ grandchild ☐ dependent ascendant			
36. Place and date	37. Signature (for minors, signature of parental authority/legal guardian)		

I am aware that the visa fee is not refunded if the visa is refused.

Applicable in case a multiple-entry visa is applied for (cf. field No 24): I am aware of the need to have an adequate travel medical insurance for my first stay and any subsequent visits to the territory of Member States.

I am aware of and consent to the following: the collection of the data required by this application form and the taking of my photograph and, if applicable, the taking of fingerprints, are mandatory for the examination of the visa application; and any personal data concerning me which appear on the visa application form, as well as my fingerprints and my photograph will be supplied to the relevant authorities of the Member States and processed by those authorities, for the purposes of a decision on my visa application. Such data as well as data concerning the decision taken on my application or a decision whether to annul, revoke or extend a visa issued will be entered into, and stored in the Visa Information System (VIS) [1] for a maximum period of five years, during which it will be accessible to the visa authorities and the authorities competent for carrying out checks on visas at external borders and within the Member States, immigration and asylum authorities in the Member States for the purposes of verifying whether the conditions for the legal entry into, stay and residence on the territory of the Member States are fulfilled, of identifying persons who do not or who no longer fulfil these conditions, of examining an asylum application and of determining responsibility for such examination. Under certain conditions the data will be also available to designated authorities of the Member States and to Europol for the purpose of the prevention, detection and investigation of terrorist offences and of other serious criminal offences. The authority of the Member State responsible for processing the data is: […]. I am aware that I have the right to obtain in any of the Member States notification of the data relating to me recorded in the VIS and of the Member State which transmitted the data, and to request that data relating to me which are inaccurate be corrected and that data relating to me processed unlawfully be deleted. At my express request, the authority examining my application will inform me of the manner in which I may exercise my right to check the personal data concerning me and have them corrected or deleted, including the related remedies according to the national law of the State concerned. The national supervisory authority of that Member State [contact details] will hear claims concerning the protection of personal data. I declare that to the best of my knowledge all particulars supplied by me are correct and complete. I am aware that any false statements will lead to my application being rejected or to the annulment of a visa already granted and may also render me liable to prosecution under the law of the Member State which deals with the application. I undertake to leave the territory of the Member States before the expiry of the visa, if granted. I have been informed that possession of a visa is only one of the prerequisites for entry into the European territory of the Member States. The mere fact that a visa has been granted to me does not mean that I will be entitled to compensation if I fail to comply with the relevant provisions of Article 5(1) of Regulation (EC) No 562/2006 (Schengen Borders Code) and I am therefore refused entry. The prerequisites for entry will be checked again on entry into the European territory of the Member States.

Place and date	Signature (for minors, signature of parental authority/legal guardian):

[1] In so far as the VIS is operational.

▼B

ANNEX II

Non-exhaustive list of supporting documents

The supporting documents referred to in Article 14, to be submitted by visa applicants may include the following:

A. DOCUMENTATION RELATING TO THE PURPOSE OF THE JOURNEY

1. for business trips:

   (a) an invitation from a firm or an authority to attend meetings, conferences or events connected with trade, industry or work;

   (b) other documents which show the existence of trade relations or relations for work purposes;

   (c) entry tickets for fairs and congresses, if appropriate;

   (d) documents proving the business activities of the company;

   (e) documents proving the applicant's employment status in the company;

2. for journeys undertaken for the purposes of study or other types of training:

   (a) a certificate of enrolment at an educational establishment for the purposes of attending vocational or theoretical courses within the framework of basic and further training;

   (b) student cards or certificates of the courses to be attended;

3. for journeys undertaken for the purposes of tourism or for private reasons:

   (a) documents relating to accommodation:

      — an invitation from the host if staying with one,

      — a document from the establishment providing accommodation or any other appropriate document indicating the accommodation envisaged;

   (b) documents relating to the itinerary:

      — confirmation of the booking of an organised trip or any other appropriate document indicating the envisaged travel plans,

      — in the case of transit: visa or other entry permit for the third country of destination; tickets for onward journey;

4. for journeys undertaken for political, scientific, cultural, sports or religious events or other reasons:

   — invitation, entry tickets, enrolments or programmes stating (wherever possible) the name of the host organisation and the length of stay or any other appropriate document indicating the purpose of the journey;

5. for journeys of members of official delegations who, following an official invitation addressed to the government of the third country concerned, participate in meetings, consultations, negotiations or exchange programmes, as well as in events held in the territory of a Member State by intergovernmental organisations:

   — a letter issued by an authority of the third country concerned confirming that the applicant is a member of the official delegation travelling to a Member State to participate in the abovementioned events, accompanied by a copy of the official invitation;

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6. for journeys undertaken for medical reasons:

   — an official document of the medical institution confirming necessity for medical care in that institution and proof of sufficient financial means to pay for the medical treatment.

B. DOCUMENTATION ALLOWING FOR THE ASSESSMENT OF THE APPLICANT'S INTENTION TO LEAVE THE TERRITORY OF THE MEMBER STATES

1. reservation of or return or round ticket;

2. proof of financial means in the country of residence;

3. proof of employment: bank statements;

4. proof of real estate property;

5. proof of integration into the country of residence: family ties; professional status.

C. DOCUMENTATION IN RELATION TO THE APPLICANT'S FAMILY SITUATION

1. consent of parental authority or legal guardian (when a minor does not travel with them);

2. proof of family ties with the host/inviting person.

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ANNEX III

UNIFORM FORMAT AND USE OF THE STAMP INDICATING THAT A VISA APPLICATION IS ADMISSIBLE

… visa … ([1])

xx/xx/xxxx ([2]) … ([3])

Example:

C visa FR

22.4.2009 Consulat de France

Djibouti

The stamp shall be placed on the first available page that contains no entries or stamps in the travel document.

([1]) Code of the Member State examining the application. The codes as set out in Annex VII point 1.1 are used.
([2]) Date of application (eight digits: xx day, xx month, xxxx year).
([3]) Authority examining the visa application.

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ANNEX IV

Common list of third countries listed in Annex I to Regulation (EC) No 539/2001, whose nationals are required to be in possession of an airport transit visa when passing through the international transit area of airports situated on the territory of the Member States

AFGHANISTAN

BANGLADESH

DEMOCRATIC REPUBLIC OF THE CONGO

ERITREA

ETHIOPIA

GHANA

IRAN

IRAQ

NIGERIA

PAKISTAN

SOMALIA

SRI LANKA

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ANNEX V

LIST OF RESIDENCE PERMITS ENTITLING THEIR HOLDERS TO TRANSIT THROUGH THE AIRPORTS OF MEMBER STATES WITHOUT BEING REQUIRED TO HOLD AN AIRPORT TRANSIT VISA

ANDORRA:

— Tarjeta provisional de estancia y de trabajo (provisional residence and work permit) (white). These are issued to seasonal workers; the period of validity depends on the duration of employment, but never exceeds six months. This permit is not renewable,

— Tarjeta de estancia y de trabajo (residence and work permit) (white). This permit is issued for six months and may be renewed for another year,

— Tarjeta de estancia (residence permit) (white). This permit is issued for six months and may be renewed for another year,

— Tarjeta temporal de residencia (temporary residence permit) (pink). This permit is issued for one year and may be renewed twice, each time for another year,

— Tarjeta ordinaria de residencia (ordinary residence permit) (yellow). This permit is issued for three years and may be renewed for another three years,

— Tarjeta privilegiada de residencia (special residence permit) (green). This permit is issued for five years and is renewable, each time for another five years,

— Autorización de residencia (residence authorisation) (green). This permit is issued for one year and is renewable, each time for another three years,

— Autorización temporal de residencia y de trabajo (temporary residence and work authorisation) (pink). This permit is issued for two years and may be renewed for another two years,

— Autorización ordinaria de residencia y de trabajo (ordinary residence and work authorisation) (yellow). This permit is issued for five years,

— Autorización privilegiada de residencia y de trabajo (special residence and work authorisation) (green). This permit is issued for 10 years and is renewable, each time for another 10 years.

CANADA:

— Permanent resident card (plastic card).

JAPAN:

— Re-entry permit to Japan.

SAN MARINO:

— Permesso di soggiorno ordinario (validità illimitata) (ordinary residence permit (no expiry date)),

— Permesso di soggiorno continuativo speciale (validità illimitata) (special permanent residence permit (no expiry date)),

— Carta d'identità de San Marino (validità illimitata) (San Marino identity card (no expiry date)).

UNITED STATES OF AMERICA:

— Form I-551 permanent resident card (valid for 2 to 10 years),

— Form I-551 Alien registration receipt card (valid for 2 to 10 years),

— Form I-551 Alien registration receipt card (no expiry date),

— Form I-327 Re-entry document (valid for two years — issued to holders of a I-551),

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— Resident alien card (valid for 2 or 10 years or no expiry date. This document guarantees the holder's return only if his stay outside the USA has not exceeded one year),

— Permit to re-enter (valid for two years. This document guarantees the holder's return only if his stay outside the USA has not exceeded two years),

— Valid temporary residence stamp in a valid passport (valid for one year from the date of issue).

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ANNEX VI

STANDARD FORM FOR NOTIFYING AND MOTIVATING REFUSAL, ANNULMENT OR REVOCATION OF A VISA

(1)

REFUSAL/ANNULMENT/REVOCATION OF VISA

Ms/Mr _____,

☐ The _____ Embassy/Consulate-General/Consulate/[other competent authority] in _____ _____ [on behalf of (name of represented Member State)];

☐ [Other competent authority] of _____

☐ The authorities responsible for checks on persons at _____

has/have

☐ examined your visa application;

☐ examined your visa, number: _____ , issued: _____ [day/month/year].

☐ The visa has been refused ☐ The visa has been annulled ☐ The visa has been revoked

This decision is based on the following reason(s):

1. ☐ a false/counterfeit/forged travel document was presented
2. ☐ justification for the purpose and conditions of the intended stay was not provided
3. ☐ you have not provided proof of sufficient means of subsistence, for the duration of the intended stay or for the return to the country of origin or residence, or for the transit to a third country into which you are certain to be admitted, or you are not in a position to acquire such means lawfully
4. ☐ you have already stayed for three months during the current six-month period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity
5. ☐ an alert has been issued in the Schengen Information System (SIS) for the purpose of refusing entry by _____ (indication of Member State)
6. ☐ one or more Member State(s) consider you to be a threat to public policy, internal security, public health as defined in Article 2(19) of Regulation (EC) No 562/2006 (Schengen Borders Code) or the international relations of one or more of the Member States)
7. ☐ proof of holding an adequate and valid travel medical insurance was not provided
8. ☐ the information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable
9. ☐ your intention to leave the territory of the Member States before the expiry of the visa could not be ascertained

(1) No logo is required for Norway, Iceland and Switzerland.

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10. ☐ sufficient proof that you have not been in a position to apply for a visa in advance, justifying application for a visa at the border, was not provided

11. ☐ revocation of the visa was requested by the visa holder ([1]).

Remarks:

Comments: The person concerned may appeal against the decision to refuse/annul/revoke a visa as provided for in national law. The person concerned must receive a copy of this document. Each Member State must indicate the references to the national law and the procedure relating to the right of appeal, including the competent authority with which an appeal may be lodged, as well as the time limit for lodging such an appeal.

Date and stamp of embassy/consulate-general/consulate/of the authorities responsible for checks on persons/of other competent authorities

Signature of person concerned ([2])

([1]) Revocation of a visa based on this reason is not subject to the right of appeal.
([2]) If required by national law.

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ANNEX VII

FILLING IN THE VISA STICKER

1. Mandatory entries section

1.1. 'VALID FOR' heading:

This heading indicates the territory in which the visa holder is entitled to travel.

This heading may be completed in one of the following ways only:

(a) Schengen States;

(b) Schengen State or Schengen States to whose territory the validity of the visa is limited (in this case the following abbreviations are used):

BE BELGIUM

CZ CZECH REPUBLIC

DK DENMARK

DE GERMANY

EE ESTONIA

GR GREECE

ES SPAIN

FR FRANCE

IT ITALY

LV LATVIA

LT LITHUANIA

LU LUXEMBOURG

HU HUNGARY

MT MALTA

NL NETHERLANDS

AT AUSTRIA

PL POLAND

PT PORTUGAL

SI SLOVENIA

SK SLOVAKIA

FI FINLAND

SE SWEDEN

IS ICELAND

NO NORWAY

CH SWITZERLAND

1.2. When the sticker is used to issue a uniform visa this heading is filled in using the words 'Schengen States', in the language of the issuing Member State.

1.3. When the sticker is used to issue a visa with limited territorial validity pursuant to Article 25(1) of this Regulation this heading is filled in with the name(s) of the Member State(s) to which the visa holder's stay is limited, in the language of the issuing Member State.

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1.4. When the sticker is used to issue a visa with limited territorial validity pursuant to Article 25(3) of this Regulation, the following options for the codes to be entered may be used:

(a) entry of the codes for the Member States concerned;

(b) entry of the words ‘Schengen States’, followed in brackets by the minus sign and the codes of the Member States for whose territory the visa is not valid;

(c) in case the ‘valid for’ field is not sufficient for entering all codes for the Member States (not) recognising the travel document concerned the font size of the letters used is reduced.

2. ‘FROM ... TO’ heading:

This heading indicates the period of the visa holder’s stay as authorised by the visa.

The date from which the visa holder may enter the territory for which the visa is valid is written as below, following the word ‘FROM’:

— the day is written using two digits, the first of which is a zero if the day in question is a single digit,

— horizontal dash,

— the month is written using two digits, the first of which is a zero if the month in question is a single digit,

— horizontal dash,

— the year is written using two digits, which correspond with the last two digits of the year.

For example: 05-12-07 = 5 December 2007.

The date of the last day of the period of the visa holder’s authorised stay is entered after the word ‘TO’ and is written in the same way as the first date. The visa holder must have left the territory for which the visa is valid by midnight on that date.

3. ‘NUMBER OF ENTRIES’ heading:

This heading shows the number of times the visa holder may enter the territory for which the visa is valid, i.e. it refers to the number of periods of stay which may be spread over the entire period of validity, see 4.

The number of entries may be one, two or more. This number is written to the right-hand side of the preprinted part, using ‘01’, ‘02’ or the abbreviation ‘MULT’, where the visa authorises more than two entries.

When a multiple airport transit visa is issued pursuant to Article 26(3) of this Regulation, the visa’s validity is calculated as follows: first date of departure plus six months.

The visa is no longer valid when the total number of exits made by the visa holder equals the number of authorised entries, even if the visa holder has not used up the number of days authorised by the visa.

4. ‘DURATION OF VISIT ... DAYS’ heading:

This heading indicates the number of days during which the visa holder may stay in the territory for which the visa is valid. This stay may be continuous or, depending on the number of days authorised, spread over several periods between the dates mentioned under 2, bearing in mind the number of entries authorised under 3.

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The number of days authorised is written in the blank space between 'DURATION OF VISIT' and 'DAYS', in the form of two digits, the first of which is a zero if the number of days is less than 10.

The maximum number of days that may be entered under this heading is 90.

When a visa is valid for more than six months, the duration of stays is 90 days in every six-month period.

5. 'ISSUED IN ... ON …' heading:

This heading gives the name of the location where the issuing authority is situated. The date of issue is indicated after 'ON'.

The date of issue is written in the same way as the date referred to in 2.

6. 'PASSPORT NUMBER' heading:

This heading indicates the number of the travel document to which the visa sticker is affixed.

In case the person to whom the visa is issued is included in the passport of the spouse, parental authority or legal guardian, the number of the travel document of that person is indicated.

When the applicant's travel document is not recognised by the issuing Member State, the uniform format for the separate sheet for affixing visas is used for affixing the visa.

The number to be entered under this heading, if the visa sticker is affixed to the separate sheet, is not the passport number but the same typographical number as appears on the form, made up of six digits.

7. 'TYPE OF VISA' heading:

In order to facilitate matters for the control authorities, this heading specifies the type of visa using the letters A, C and D as follows:

A: airport transit visa (as defined in Article 2(5) of this Regulation)

C: visa (as defined in Article 2(2) of this Regulation)

D: long-stay visa

8. 'SURNAME AND FIRST NAME' heading:

The first word in the 'surname' box followed by the first word in the 'first name' box of the visa holder's travel document is written in that order. The issuing authority verifies that the name and first name which appear in the travel document and which are to be entered under this heading and in the section to be electronically scanned are the same as those appearing in the visa application. If the number of characters of the surname and first name exceeds the number of spaces available, the excess characters are replaced by a dot (.).

9. (a) Mandatory entries to be added in the 'COMMENTS' section

— in the case of a visa issued on behalf of another Member State pursuant to Article 8, the following mention is added: 'R/[Code of represented Member State]',

— in the case of a visa issued for the purpose of transit, the following mention is added: 'TRANSIT',

▼M1

— where all data referred to in Article 5(1) of the VIS Regulation is registered in the Visa Information System, the following mention is added: 'VIS',

▼M1

— where only the data referred to in points (a) and (b) of Article 5(1) of the VIS Regulation is registered in the Visa Information System but the data referred to in point (c) of that paragraph was not collected because the collection of fingerprints was not mandatory in the region concerned, the following mention is added: 'VIS 0';

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(b) National entries in 'COMMENTS' section

This section also contains the comments in the language of the issuing Member State relating to national provisions. However, such comments shall not duplicate the mandatory comments referred to in point 1;

(c) Section for the photograph

The visa holder's photograph, in colour, shall be integrated in the space reserved for that purpose.

The following rules shall be observed with respect to the photograph to be integrated into the visa sticker.

The size of the head from chin to crown shall be between 70 % and 80 % of the vertical dimension of the surface of the photograph.

The minimum resolution requirements shall be:

— 300 pixels per inch (ppi), uncompressed, for scanning,

— 720 dots per inch (dpi) for colour printing of photos.

10. Machine-readable zone

This section is made up of two lines of 36 characters (OCR B-10 cpi).

First line: 36 characters (mandatory)

Positions	Number of characters	Heading contents	Specifications
1-2	2	Type of document	First character: V Second character: code indicating type of visa (A, C or D)
3-5	3	Issuing State	ICAO alphabetic code 3-character: BEL, CHE, CZE, DNK, D<<, EST, GRC, ESP, FRA, ITA, LVA, LTU, LUX, HUN, MLT, NLD, AUT, POL, PRT, SVN, SVK, FIN, SWE, ISL, NOR
6-36	31	Surname and first name	The surname should be separated from the first names by 2 symbols (<<); individual components of the name should be separated by one symbol (<); spaces which are not needed should be filled in with one symbol (<)

Second line: 36 characters (mandatory)

Positions	Number of characters	Heading contents	Specifications
1	9	Visa number	This is the number printed in the top right-hand corner of the sticker
10	1	Control character	This character is the result of a complex calculation, based on the previous area according to an algorithm defined by the ICAO
11	3	Applicant's nationality	Alphabetic coding according to ICAO 3-character codes

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Positions	Number of characters	Heading contents	Specifications
14	6	Date of birth	The order followed is YYMMDD where: YY = year (mandatory) MM = month or << if unknown DD = day or << if unknown
20	1	Control character	This character is the result of a complex calculation, based on the previous area according to an algorithm defined by the ICAO
21	1	Sex	F = Female, M = Male, < = Not specified
22	6	Date on which the visa's validity ends	The order followed is YYMMDD without a filler
28	1	Control character	This character is the result of a complex calculation, based on the previous area according to an algorithm defined by the ICAO
29	1	Territorial validity	(a) For LTV visas, insert the letter T (b) For uniform visas insert the filler <
30	1	Number of entries	1, 2, or M
31	2	Duration of stay	(a) Short stay: number of days should be inserted in the visual reading area (b) Long stay: <<
33	4	Start of validity	The structure is MMDD without any filler.

▼B

ANNEX VIII

AFFIXING THE VISA STICKER

1. The visa sticker shall be affixed to the first page of the travel document that contains no entries or stamps — other than the stamp indicating that an application is admissible.

2. The sticker shall be aligned with and affixed to the edge of the page of the travel document. The machine-readable zone of the sticker shall be aligned with the edge of the page.

3. The stamp of the issuing authorities shall be placed in the 'COMMENTS' section in such a manner that it extends beyond the sticker onto the page of the travel document.

4. Where it is necessary to dispense with the completion of the section to be scanned electronically, the stamp may be placed in this section to render it unusable. The size and content of the stamp to be used shall be determined by the national rules of the Member State.

5. To prevent re-use of a visa sticker affixed to the separate sheet for affixing a visa, the seal of the issuing authorities shall be stamped to the right, straddling the sticker and the separate sheet, in such a way as neither to impede reading of the headings and the comments nor to enter the machine-readable zone.

6. The extension of a visa, pursuant to Article 33 of this Regulation, shall take the form of a visa sticker. The seal of the issuing authorities shall be affixed to the visa sticker.

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ANNEX IX

PART 1

Rules for issuing visas at the border to seafarers in transit subject to visa requirements

These rules relate to the exchange of information between the competent authorities of the Member States with respect to seafarers in transit subject to visa requirements. Insofar as a visa is issued at the border on the basis of the information that has been exchanged, the responsibility lies with the Member State issuing the visa.

For the purposes of these rules:

'Member State port': means a port constituting an external border of a Member State;

'Member State airport': means an airport constituting an external border of a Member State.

I. Signing on a vessel berthed or expected at a Member State port (entry into the territory of the Member States)

— the shipping company or its agent shall inform the competent authorities at the Member State port where the ship is berthed or expected that seafarers subject to visa requirements are due to enter via a Member State airport, land or sea border. The shipping company or its agent shall sign a guarantee in respect of those seafarers that all expenses for the stay and, if necessary, for the repatriation of the seafarers will be covered by the shipping company,

— those competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and shall examine whether the other conditions for entry into the territory of the Member States have been satisfied. The travel route within the territory of the Member States shall also be verified e.g. by reference to the (airline) tickets,

— when seafarers are due to enter via a Member State airport, the competent authorities at the Member State port shall inform the competent authorities at the Member State airport of entry, by means of a duly completed form for seafarers in transit who are subject to visa requirements (as set out in Part 2), sent by fax, electronic mail or other means, of the results of the verification and shall indicate whether a visa may in principle be issued at the border. When seafarers are due to enter via a land or a sea border, the competent authorities at the border post via which the seafarer concerned enters the territory of the Member States shall be informed by the same procedure,

— where the verification of the available data is positive and the outcome is clearly consistent with the seafarer's declaration or documents, the competent authorities at the Member State airport of entry or exit may issue a visa at the border the authorised stay of which shall correspond to what is necessary for the purpose of the transit. Furthermore, in such cases the seafarer's travel document shall be stamped with a Member State entry or exit stamp and given to the seafarer concerned.

II. Leaving service from a vessel that has entered a Member State port (exit from the territory of the Member States)

— the shipping company or its agent shall inform the competent authorities at that Member State port of entry of seafarers subject to visa requirements who are due to leave their service and exit from the Member States territory via a Member State airport, land or sea border. The shipping company or its agent shall sign a guarantee in respect of those seafarers that all expenses for the stay and, if necessary, for the repatriation costs of the seafarers will be covered by the shipping company,

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— the competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and shall examine whether the other conditions for entry into the territory of the Member States have been satisfied. The travel route within the territory of the Member States shall also be verified e.g. by reference to the (airline) tickets,

— where the verification of the available data is positive, the competent authorities may issue a visa the authorised stay of which shall correspond to what is necessary for the purpose of the transit.

III. Transferring from a vessel that entered a Member State port to another vessel

— the shipping company or its agent shall inform the competent authorities at that Member State port of entry of seafarers subject to visa requirements who are due to leave their service and exit from the territory of the Member States via another Member State port. The shipping company or its agent shall sign a guarantee in respect of those seafarers that all expenses for the stay and, if necessary, for the repatriation of the seafarers will be covered by the shipping company,

— the competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and shall examine whether the other conditions for entry into the territory of the Member States have been satisfied. The competent authorities at the Member State port from which the seafarers will leave the territory of the Member States by ship shall be contacted for the examination. A check shall be carried out to establish whether the ship they are joining is berthed or expected there. The travel route within the territory of the Member States shall also be verified,

— where the verification of the available data is positive, the competent authorities may issue a visa the authorised stay of which shall correspond to what is necessary for the purpose of the transit.

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PART 2

FORM FOR SEAFARERS IN TRANSIT WHO ARE SUBJECT TO VISA REQUIREMENTS				
FOR OFFICIAL USE:				
ISSUER: (STAMP) SURNAME/CODE OF OFFICIAL:		RECIPIENT: AUTHORITY		
DATA ON SEAFARER:				
SURNAME(S):	1A	FORENAME(S):		1B
NATIONALITY:	1C	RANK/GRADE:		1D
PLACE OF BIRTH:	2A	DATE OF BIRTH:		2B
PASSPORT NUMBER:	3A	SEAMAN'S BOOK NUMBER:		4A
DATE OF ISSUE:	3B	DATE OF ISSUE:		4B
PERIOD OF VALIDITY:	3C	PERIOD OF VALIDITY:		4C
DATA ON VESSEL AND SHIPPING AGENT:				
NAME OF SHIPPING AGENT:	5A	TELEPHONE NUMBER		5B
NAME OF VESSEL IMO NUMBER	6A 6B	FLAG:		6C
DATE OF ARRIVAL:	7A	ORIGIN OF VESSEL:		7B
DATE OF DEPARTURE:	8A	DESTINATION OF VESSEL:		8B
DATA ON MOVEMENT OF SEAFARER:				
FINAL DESTINATION OF SEAFARER:				9
REASONS FOR APPLICATION: SIGNING ON ☐		TRANSFER ☐	LEAVING SERVICE ☐	10
MEANS OF TRANSPORT	CAR ☐	TRAIN ☐	AEROPLANE ☐	11
DATE OF:	ARRIVAL:	TRANSIT:	DEPARTURE:	12
	CAR (*) ☐ REGISTRATION No:	TRAIN (*) ☐ JOURNEY ROUTE:		
FLIGHT INFORMATION:	DATE:	TIME:	FLIGHT NUMBER:	
Formal declaration signed by the shipping agent or the ship owner confirming his responsibility for the stay and, if necessary, for the repatriation costs of the seafarer.				

(*) = to be completed only if data are available.

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DETAILED DESCRIPTION OF FORM

Points 1-4: the identity of the seafarer

(1)	A. Surname(s)
	B. Forename(s)
	C. Nationality
	D. Rank/Grade
(2)	A. Place of birth
	B. Date of birth
(3)	A. Passport number
	B. Date of issue
	C. Period of validity
(4)	A. Seaman's book number
	B. Date of issue
	C. Period of validity

As to points 3 and 4: depending on the nationality of the seafarer and the Member State being entered, a travel document or a seaman's book may be used for identification purposes.

Points 5-8: the shipping agent and the vessel concerned

(5)	Name of shipping agent (the individual or corporation that represents the ship owner on the spot in all matters relating to the ship owner's duties in fitting out the vessel) under 5A and telephone number (and other contact details as fax number, electronic mail address) under 5B
(6)	A. Name of vessel
	B. IMO-number (this number consists of 7 numbers and is also known as 'Lloyds-number')
	C. Flag (under which the merchant vessel is sailing)
(7)	A. Date of arrival of vessel
	B. Origin (port) of vessel
	Letter 'A' refers to the vessel's date of arrival in the port where the seafarer is to sign on
(8)	A. Date of departure of vessel
	B. Destination of vessel (next port)

As to points 7A and 8A: indications regarding the length of time for which the seafarer may travel in order to sign on.

It should be remembered that the route followed is very much subject to unexpected interferences and external factors such as storms, breakdowns, etc.

Points 9-12: purpose of the seafarer's journey and his destination

(9) The 'final destination' is the end of the seafarer's journey. This may be either the port at which he is to sign on or the country to which he is heading if he is leaving service.

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(10) Reasons for application

(a) In the case of signing on, the final destination is the port at which the seafarer is to sign on.

(b) In the case of transfer to another vessel within the territory of the Member States, it is also the port at which the seafarer is to sign on. Transfer to a vessel situated outside the territory of the Member States must be regarded as leaving service.

(c) In the case of leaving service, this can occur for various reasons, such as end of contract, accident at work, urgent family reasons, etc.

(11) Means of transport

List of means used within the territory of the Member States by the seafarer in transit who is subject to a visa requirement, in order to reach his final destination. On the form, the following three possibilities are envisaged:

(a) car (or coach);

(b) train;

(c) aeroplane.

(12) Date of arrival (on the territory of the Member States)

Applies primarily to a seafarer at the first Member State airport or border crossing point (since it may not always be an airport) at the external border via which he wishes to enter the territory of the Member States.

Date of transit

This is the date on which the seafarer signs off at a port in the territory of the Member States and heads towards another port also situated in the territory of the Member States.

Date of departure

This is the date on which the seafarer signs off at a port in the territory of the Member States to transfer to another vessel at a port situated outside the territory of the Member States, or the date on which the seafarer signs off at a port in the territory of the Member States to return to his home (outside the territory of the Member States).

After determining the three means of travel, available information should also be provided concerning those means:

(a) car, coach: registration number;

(b) train: name, number, etc.;

(c) flight data: date, time, number.

(13) Formal declaration signed by the shipping agent or the ship owner confirming his responsibility for the expenses for the stay and, if necessary, for the repatriation of the seafarer.

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ANNEX X

LIST OF MINIMUM REQUIREMENTS TO BE INCLUDED IN THE LEGAL INSTRUMENT IN THE CASE OF COOPERATION WITH EXTERNAL SERVICE PROVIDERS

A. In relation to the performance of its activities, the external service provider shall, with regard to data protection:

(a) prevent at all times any unauthorised reading, copying, modification or deletion of data, in particular during their transmission to the diplomatic mission or consular post of the Member State(s) competent for processing an application;

(b) in accordance with the instructions given by the Member State(s) concerned, transmit the data,

— electronically, in encrypted form, or

— physically, in a secured way;

(c) transmit the data as soon as possible:

— in the case of physically transferred data, at least once a week,

— in the case of electronically transferred encrypted data, at the latest at the end of the day of their collection;

(d) delete the data immediately after their transmission and ensure that the only data that might be retained shall be the name and contact details of the applicant for the purposes of the appointment arrangements, as well as the passport number, until the return of the passport to the applicant, where applicable;

(e) ensure all the technical and organisational security measures required to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the cooperation involves the transmission of files and data to the diplomatic mission or consular post of the Member State(s) concerned and all other unlawful forms of processing personal data;

(f) process the data only for the purposes of processing the personal data of applicants on behalf of the Member State(s) concerned;

(g) apply data protection standards at least equivalent to those set out in Directive 95/46/EC;

(h) provide applicants with the information required pursuant to Article 37 of the VIS Regulation.

B. In relation to the performance of its activities, the external service provider shall, with regard to the conduct of staff:

(a) ensure that its staff are appropriately trained;

(b) ensure that its staff in the performance of their duties:

— receive applicants courteously,

— respect the human dignity and integrity of applicants,

— do not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, and

— respect the rules of confidentiality which shall also apply once members of staff have left their job or after suspension or termination of the legal instrument;

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(c) provide identification of the staff working for the external service provider at all times;

(d) prove that its staff do not have criminal records and have the requisite expertise.

C. In relation to the verification of the performance of its activities, the external service provider shall:

(a) provide for access by staff entitled by the Member State(s) concerned to its premises at all times without prior notice, in particular for inspection purposes;

(b) ensure the possibility of remote access to its appointment system for inspection purposes;

(c) ensure the use of relevant monitoring methods (e.g. test applicants; webcam);

(d) ensure access to proof of data protection compliance, including reporting obligations, external audits and regular spot checks;

(e) report to the Member State(s) concerned without delay any security breaches or any complaints from applicants on data misuse or unauthorised access, and coordinate with the Member State(s) concerned in order to find a solution and give explanatory responses promptly to the complaining applicants.

D. In relation to general requirements, the external service provider shall:

(a) act under the instructions of the Member State(s) competent for processing the application;

(b) adopt appropriate anti-corruption measures (e.g. provisions on staff remuneration; cooperation in the selection of staff members employed on the task; two-man-rule; rotation principle);

(c) respect fully the provisions of the legal instrument, which shall contain a suspension or termination clause, in particular in the event of breach of the rules established, as well as a revision clause with a view to ensuring that the legal instrument reflects best practice.

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ANNEX XI

SPECIFIC PROCEDURES AND CONDITIONS FACILITATING THE ISSUING OF VISAS TO MEMBERS OF THE OLYMPIC FAMILY PARTICIPATING IN THE OLYMPIC GAMES AND PARALYMPIC GAMES

CHAPTER 1

Purpose and definitions

Article 1

Purpose

The following specific procedures and conditions facilitate the application for and issuing of visas to members of the Olympic family for the duration of the Olympic and Paralympic Games organised by a Member State.

In addition, the relevant provisions of the Community *acquis* concerning procedures for applying for and issuing visas shall apply.

Article 2

Definitions

For the purposes of this Regulation:

1. 'Responsible organisations' relate to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the Olympic and/or Paralympic Games, and they mean the official organisations, in terms of the Olympic Charter, which are entitled to submit lists of members of the Olympic family to the Organising Committee of the Member State hosting the Olympic and Paralympic Games with a view to the issue of accreditation cards for the Games;

2. 'Member of the Olympic family' means any person who is a member of the International Olympic Committee, the International Paralympic Committee, International Federations, the National Olympic and Paralympic Committees, the Organising Committees of the Olympic Games and the national associations, such as athletes, judges/referees, coaches and other sports technicians, medical personnel attached to teams or individual sportsmen/women and media-accredited journalists, senior executives, donors, sponsors or other official invitees, who agree to be guided by the Olympic Charter, act under the control and supreme authority of the International Olympic Committee, are included on the lists of the responsible organisations and are accredited by the Organising Committee of the Member State hosting the Olympic and Paralympic Games as participants in the [year] Olympic and/or Paralympic Games;

3. 'Olympic accreditation cards' which are issued by the Organising Committee of the Member State hosting the Olympic and Paralympic Games in accordance with its national legislation means one of two secure documents, one for the Olympic Games and one for the Paralympic Games, each bearing a photograph of its holder, establishing the identity of the member of the Olympic family and authorising access to the facilities at which competitions are held and to other events scheduled throughout the duration of the Games;

4. 'Duration of the Olympic Games and Paralympic Games' means the period during which the Olympic Games and the period during which the Paralympic Games take place;

5. 'Organising Committee of the Member State hosting the Olympic and Paralympic Games' means the Committee set up on by the hosting Member State in accordance with its national legislation to organise the Olympic and Paralympic Games, which decides on accreditation of members of the Olympic family taking part in those Games;

6. 'Services responsible for issuing visas' means the services designated by the Member State hosting the Olympic Games and Paralympic Games to examine applications and issue visas to members of the Olympic family.

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CHAPTER II

Issuing of visas

Article 3

Conditions

A visa may be issued pursuant to this Regulation only where the person concerned:

(a) has been designated by one of the responsible organisations and accredited by the Organising Committee of the Member State hosting the Olympic and Paralympic Games as a participant in the Olympic and/or Paralympic Games;

(b) holds a valid travel document authorising the crossing of the external borders, as referred to in Article 5 of the Schengen Borders Code;

(c) is not a person for whom an alert has been issued for the purpose of refusing entry;

(d) is not considered to be a threat to public policy, national security or the international relations of any of the Member States.

Article 4

Filing of the application

1. Where a responsible organisation draws up a list of the persons selected to take part in the Olympic and/or Paralympic Games, it may, together with the application for the issue of an Olympic accreditation card for the persons selected, file a collective application for visas for those persons selected who are required to be in possession of a visa in accordance with Regulation (EC) No 539/2001, except where those persons hold a residence permit issued by a Member State or a residence permit issued by the United Kingdom or Ireland, in accordance with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [1].

2. A collective application for visas for the persons concerned shall be forwarded at the same time as applications for the issue of an Olympic accreditation card to the Organising Committee of the Member State hosting the Olympic and Paralympic Games in accordance with the procedure established by it.

3. Individual visa applications shall be submitted for each person taking part in the Olympic and/or Paralympic Games.

4. The Organising Committee of the Member State hosting the Olympic and Paralympic Games shall forward to the services responsible for issuing visas, a collective application for visas as quickly as possible, together with copies of applications for the issue of an Olympic accreditation card for the persons concerned, bearing their full name, nationality, sex and date and place of birth and the number, type and expiry date of their travel document.

Article 5

Examination of the collective application for visas and type of the visa issued

1. The visa shall be issued by the services responsible for issuing visas following an examination designed to ensure that the conditions set out in Article 3 are met.

2. The visa issued shall be a uniform, multiple-entry visa authorising a stay of not more than three months for the duration of the Olympic and/or Paralympic Games.

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[1] OJ L 158, 30.4.2004, p. 77.

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3. Where the member of the Olympic family concerned does not meet the conditions set out in point (c) or (d) of Article 3, the services responsible for issuing visas may issue a visa with limited territorial validity in accordance with Article 25 of this Regulation.

Article 6

Form of the visa

1. The visa shall take the form of two numbers entered on the Olympic accreditation card. The first number shall be the visa number. In the case of a uniform visa, that number shall be made up of seven (7) characters comprising six (6) digits preceded by the letter 'C'. In the case of a visa with limited territorial validity, that number shall be made up of eight (8) characters comprising six (6) digits preceded by the letters 'XX' ([1]). The second number shall be the number of the travel document of the person concerned.

2. The services responsible for issuing visas shall forward the visa numbers to the Organising Committee of the Member State hosting the Olympic and Paralympic Games for the purpose of issuing Olympic accreditation cards.

Article 7

Waiver of fees

The examination of visa applications and the issue of visas shall not give rise to any fees being charged by the services responsible for issuing visas.

CHAPTER III

General and final provisions

Article 8

Cancellation of a visa

Where the list of persons put forward as participants in the Olympic and/or Paralympic Games is amended before the Games begin, the responsible organisations shall inform without any delay the Organising Committee of the Member State hosting the Olympic and Paralympic Games thereof so that the Olympic accreditation cards of the persons removed from the list may be revoked. The Organising Committee shall notify the services responsible for issuing visas thereof and shall inform them of the numbers of the visas in question.

The services responsible for issuing visas shall cancel the visas of the persons concerned. They shall immediately inform the authorities responsible for border checks thereof, and the latter shall without delay forward that information to the competent authorities of the other Member States.

Article 9

External border checks

1. The entry checks carried out on members of the Olympic family who have been issued visas in accordance with this Regulation shall, when such members cross the external borders of the Member States, be limited to checking compliance with the conditions set out in Article 3.

2. For the duration of the Olympic and/or Paralympic Games:

(a) entry and exit stamps shall be affixed to the first free page of the travel document of those members of the Olympic family for whom it is necessary to affix such stamps in accordance with Article 10(1) of the Schengen Borders Code. On first entry, the visa number shall be indicated on that same page;

([1]) Reference to the ISO code of the organising Member State.

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(b) the conditions for entry provided for in Article 5(1)(c) of the Schengen Borders Code shall be presumed to be fulfilled once a member of the Olympic family has been duly accredited.

3. Paragraph 2 shall apply to members of the Olympic family who are third-country nationals, whether or not they are subject to the visa requirement under Regulation (EC) No 539/2001.

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ANNEX XII

ANNUAL STATISTICS ON UNIFORM VISAS, VISAS WITH LIMITED TERRITORIAL VALIDITY AND AIRPORT TRANSIT VISAS

Data to be submitted to the Commission within the deadline set out in Article 46 for each location where individual Member States issue visas:

— total of A visas applied for (including multiple A visas),

— total of A visas issued (including multiple A visas),

— total of multiple A visas issued,

— total of A visas not issued (including multiple A visas),

— total of C visas applied for (including multiple-entry C visas),

— total of C visas issued (including multiple-entry C visas),

— total of multiple-entry C visas issued,

— total of C visas not issued (including multiple-entry C visas),

— total of LTV visas issued.

General rules for the submission of data:

— the data for the complete previous year shall be compiled in one single file,

— the data shall be provided using the common template provided by the Commission,

— data shall be available for the individual locations where the Member State concerned issue visas and grouped by third country,

— 'Not issued' covers data on refused visas and applications where the examination has been discontinued as provided for in Article 8(2).

In the event of data being neither available nor relevant for one particular category and a third country, Member States shall leave the cell empty (and not enter '0' (zero), 'N.A.' (non-applicable) or any other value).

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ANNEX XIII

CORRELATION TABLE

Provision of this Regulation	Provision of the Schengen Convention (CSA), Common Consular Instructions (CCI) or of the Schengen Executive Committee (SCH/Com-ex) replaced
TITLE I	
GENERAL PROVISIONS	
Article 1 Objective and scope	CCI, Part I.1. Scope (CSA Articles 9 and 10)
Article 2 Definitions (1)-(4)	CCI: Part I. 2. Definitions and types of visas CCI: Part IV 'Legal basis' CSA: Articles 11(2), 14(1), 15, 16
TITLE II	
AIRPORT TRANSIT VISA	
Article 3 Third-country nationals required to hold an airport transit visa	Joint Action 96/197/JHA, CCI, Part I. 2.1.1
TITLE III	
PROCEDURES AND CONDITIONS FOR ISSUING VISAS	
CHAPTER I	
Authorities taking part in the procedures relating to applications	
Article 4 Authorities competent for taking part in the procedures relating to applications	CCI Part II. 4., CSA, Art. 12(1), Regulation (EC) No 415/2003
Article 5 Member State competent for examining and deciding on an application	CCI, Part II 1.1(a) (b), CSA Article 12(2)
Article 6 Consular territorial competence	CCI, Part II, 1.1 and 3
Article 7 Competence to issue visas to third-country nationals legally present within the territory of a Member State	—
Article 8 Representation agreements	CCI, Part II, 1.2
CHAPTER II	
Application	
Article 9 Practical modalities for lodging an application	CCI, Annex 13, note (Article 10(1))
Article 10 General rules for lodging an application	—

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Article 11 Application form	CCI, Part III. 1.1.
Article 12 Travel document	CCI, Part III. 2. (a), CSA, Article 13(1) and (2)
Article 13 Biometric identifiers	CCI, Part III. 1.2 (a) and (b)
Article 14 Supporting documents	CCI, Part III.2(b) and Part V.1.4, Comex (98) 57
Article 15 Travel medical insurance	CCI, Part V, 1.4
Article 16 Visa fee	CCI Part VII. 4. and Annex 12
Article 17 Service fee	CCI, Part VII, 1.7

CHAPTER III

Examination of and decision on an application

Article 18 Verification of consular competence	—
Article 19 Admissibility	—
Article 20 Stamp indicating that an application is admissible	CCI, Part VIII, 2
Article 21 Verification of entry conditions and risk assessment	CCI, Part III.4 and Part V.1.
Article 22 Prior consultation of central authorities of other Member States	CCI, Part II, 2.3 and Part V, 2.3(a)-(d)
Article 23 Decision on the application	CCI, Part V. 2.1 (second indent), 2.2, CCI

CHAPTER IV

Issuing of the visa

Article 24 Issuing of a uniform visa	CCI, Part V, 2.1
Article 25 Issuing of a visa with limited territorial validity	CCI, Part V, 3, Annex 14, CSA 11(2), 14(1) and 16
Article 26 Issuing of an airport transit visa	CCI, Part I, 2.1.1 — Joint Action 96/197/JHA
Article 27 Filling in the visa sticker	CCI, Part VI.1-2-3-4
Article 28 Invalidation of a completed visa sticker	CCI, Part VI, 5.2

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Article 29 Affixing a visa sticker	CCI, Part VI, 5.3
Article 30 Rights derived from an issued visa	CCI, Part I, 2.1, last sentence
Article 31 Information of central authorities of other Member States	—
Article 32 Refusal of a visa	—

CHAPTER V

Modification of an issued visa

Article 33 Extension	Com-ex (93) 21
Article 34 Annulment and revocation	Com-ex (93) 24 and Annex 14 to the CCI

CHAPTER VI

Visas issued at the external borders

Article 35 Visas applied for at the external border Article 36 Visas issued to seafarers in transit at the external border	Regulation (EC) No 415/2003

TITLE IV

ADMINISTRATIVE MANAGEMENT AND ORGANISATION

Article 37 Organisation of visa sections	CCI, VII, 1-2-3
Article 38 Resources for examining applications and monitoring of consulates	—
	CCI, Part VII, 1A
Article 39 Conduct of staff	CCI, Part III.5
Article 40 Forms of cooperation Article 41 Cooperation between Member States	CCI, Part VII, 1AA
Article 42 Recourse to honorary consuls	CCI, Part VII, AB
Article 43 Cooperation with external service providers	CCI, Part VII, 1B
Article 44 Encryption and secure transfer of data	CCI, Part II, 1.2, PART VII, 1.6, sixth, seventh, eighth and ninth subparagraphs

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Article 45 Member States' cooperation with commercial intermediaries	CCI, VIII, 5.2
Article 46 Compilation of statistics	SCH Com-ex (94) 25 and (98) 12
Article 47 Information to the general public	—

TITLE V

LOCAL SCHENGEN COOPERATION

Article 48 Local Schengen cooperation between Member States' consulates	CCI, VIII, 1-3-4

TITLE VI

FINAL PROVISIONS

Article 49 Arrangements in relation to the Olympic Games and Paralympic Games	—
Articles 50 Amendments to the Annexes	—
Article 51 Instructions on the practical application of the Visa Code	—
Article 52 Committee procedure	—
Article 53 Notification	—
Article 54 Amendments to Regulation (EC) No 767/2008	—
Article 55 Amendments to Regulation (EC) No 562/2006	—
Article 56 Repeals	—
Article 57 Monitoring and evaluation	—
Article 58 Entry into force	—

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ANNEXES

Annex I Harmonised application form	CCI, Annex 16
Annex II Non-exhaustive list of supporting documents	Partially CCI, V, 1.4.
Annex III Uniform format and use of the stamp indicating that a visa application is admissible	CCI, VIII, 2
Annex IV Common list of third countries, listed in Annex I to Regulation (EC) No 539/2001whose nationals are required to be in possession of an airport transit visa when passing through the international transit area of airports situated on the territory of the Member States	CCI, Annex 3, Part I
Annex V List of residence permits entitling their holders to transit through the airports of Member States without being required to hold an airport transit visa	CCI, Annex 3, Part III
Annex VI Standard form for notifying and motivating refusal, annulment or revocation of a visa	—
Annex VII Filling in the visa sticker	CCI, Part VI, 1-4, Annex 10
Annex VIII Affixing the visa sticker	CCI, Part VI, 5.3
Annex IX Rules for issuing visas at the border to seafarers in transit subject to visa requirements	Regulation (EC) No 415/2003, Annexes I and II
Annex X List of minimum requirements to be included in the legal instrument in the case of cooperation with external service providers	CCI, Annex 19
Annex XI Specific procedures and conditions facilitating the issuing of visas to members of the Olympic Family participating in the Olympic Games and Paralympic Games	—
Annex XII Annual statistics on uniform visas, visas with limited territorial validity and airport transit visas	—

►B REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 March 2006

establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

(OJ L 105, 13.4.2006, p. 1)

Amended by:

		Official Journal		
		No	page	date
►M1	Regulation (EC) No 296/2008 of the European Parliament and of the Council of 11 March 2008	L 97	60	9.4.2008
►M2	Regulation (EC) No 81/2009 of the European Parliament and of the Council of 14 January 2009	L 35	56	4.2.2009
►M3	Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009	L 243	1	15.9.2009
►M4	Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010	L 85	1	31.3.2010

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REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 March 2006

establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(1) and (2)(a) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([1]),

Whereas:

(1) The adoption of measures under Article 62(1) of the Treaty with a view to ensuring the absence of any controls on persons crossing internal borders forms part of the Union's objective of establishing an area without internal borders in which the free movement of persons is ensured, as set out in Article 14 of the Treaty.

(2) In accordance with Article 61 of the Treaty, the creation of an area in which persons may move freely is to be flanked by other measures. The common policy on the crossing of external borders, as provided for by Article 62(2) of the Treaty, is such a measure.

(3) The adoption of common measures on the crossing of internal borders by persons and border control at external borders should reflect the Schengen *acquis* incorporated in the European Union framework, and in particular the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ([2]) and the Common Manual ([3]).

(4) As regards border control at external borders, the establishment of a 'common corpus' of legislation, particularly via consolidation and development of the *acquis*, is one of the fundamental components of the common policy on the management of the external borders, as defined in the Commission Communication of 7 May 2002'Towards integrated management of the external borders of the Member States of the European Union'. This objective was included in the 'Plan for the management of the external borders of the Member States of the European Union', approved by the Council on 13 June 2002 and endorsed by the Seville European Council on 21 and 22 June 2002 and by the Thessaloniki European Council on 19 and 20 June 2003.

(5) The definition of common rules on the movement of persons across borders neither calls into question nor affects the rights of free movement enjoyed by Union citizens and members of their families and by third-country nationals and members of their families who, under agreements between the Community and its Member States, on the one hand, and those third

([1]) Opinion of the European Parliament of 23 June 2005 (not yet published in the Official Journal) and Council Decision of 21 February 2006.

([2]) OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1160/2005 of the European Parliament and of the Council (OJ L 191, 22.7.2005, p. 18).

([3]) OJ C 313, 16.12.2002, p. 97. Common Manual as last amended by Council Regulation (EC) No 2133/2004 (OJ L 369, 16.12.2004, p. 5).

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countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.

(6) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.

(7) Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

(8) Border control comprises not only checks on persons at border crossing points and surveillance between these border crossing points, but also an analysis of the risks for internal security and analysis of the threats that may affect the security of external borders. It is therefore necessary to lay down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance.

(9) Provision should be made for relaxing checks at external borders in the event of exceptional and unforeseeable circumstances in order to avoid excessive waiting time at borders crossing-points. The systematic stamping of the documents of third-country nationals remains an obligation in the event of border checks being relaxed. Stamping makes it possible to establish, with certainty, the date on which, and where, the border was crossed, without establishing in all cases that all required travel document control measures have been carried out.

(10) In order to reduce the waiting times of persons enjoying the Community right of free movement, separate lanes, indicated by uniform signs in all Member States, should, where circumstances allow, be provided at border crossing points. Separate lanes should be provided in international airports. Where it is deemed appropriate and if local circumstances so allow, Member States should consider installing separate lanes at sea and land border crossing points.

(11) Member States should ensure that control procedures at external borders do not constitute a major barrier to trade and social and cultural interchange. To that end, they should deploy appropriate numbers of staff and resources.

(12) Member States should designate the national service or services responsible for border-control tasks in accordance with their national law. Where more than one service is responsible in the same Member State, there should be close and constant cooperation between them.

(13) Operational cooperation and assistance between Member States in relation to border control should be managed and coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States established by Regulation (EC) No 2007/2004 ([1]).

(14) This Regulation is without prejudice to checks carried out under general police powers and security checks on persons identical to those carried out for domestic flights, to the possibilities for Member States to carry out exceptional checks on baggage in accordance with Council Regulation (EEC) No 3925/91 of 19

([1]) Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

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December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing ([1]), and to national law on carrying travel or identity documents or to the requirement that persons notify the authorities of their presence on the territory of the Member State in question.

(15) Member States should also have the possibility of temporarily reintroducing border control at internal borders in the event of a serious threat to their public policy or internal security. The conditions and procedures for doing so should be laid down, so as to ensure that any such measure is exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of border control at internal borders should be restricted to the bare minimum needed to respond to that threat.

(16) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. Border control should not be carried out or formalities imposed solely because such a border is crossed.

(17) Provision should be made for a procedure enabling the Commission to adapt certain detailed practical rules governing border control. In such cases, the measures needed to implement this Regulation should be taken pursuant to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([2]).

(18) Provision should also be made for a procedure enabling the Member States to notify the Commission of changes to other detailed practical rules governing border control.

(19) Since the objective of this Regulation, namely the establishment of rules applicable to the movement of persons across borders cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(20) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement.

(21) By way of derogation from Article 299 of the Treaty, the only territories of France and the Netherlands to which this Regulation applies are those in Europe. It does not affect the specific arrangements applied in Ceuta and Melilla, as defined in the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 ([3]).

(22) 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 taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that

([1]) OJ L 374, 31.12.1991, p. 4. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).
([2]) OJ L 184, 17.7.1999, p. 23.
([3]) OJ L 239, 22.9.2000, p. 69.

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this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law or not.

(23) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* ([1]) which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC ([2]) on certain arrangements for the application of that Agreement.

(24) An arrangement has to be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchanges of Letters between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning committees which assist the European Commission in the exercise of its executive powers ([3]), annexed to the above-mentioned Agreement.

(25) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC ([4]) and 2004/860/EC ([5]).

(26) An arrangement has to be made to allow representatives of Switzerland to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchange of Letters between the Community and Switzerland, annexed to the above-mentioned Agreement.

(27) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ([6]). The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

([1]) OJ L 176, 10.7.1999, p. 36.
([2]) OJ L 176, 10.7.1999, p. 31.
([3]) OJ L 176, 10.7.1999, p. 53.
([4]) Council Decision 2004/849/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 368, 15.12.2004, p. 26).
([5]) Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).
([6]) OJ L 131, 1.6.2000, p. 43.

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(28) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* [1]. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(29) In this Regulation, the first sentence of Article 1, Article 5(4)(a), Title III and the provisions of Title II and the annexes thereto referring to the Schengen Information System (SIS) constitute provisions building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession,

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter and principles

This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the European Union.

It establishes rules governing border control of persons crossing the external borders of the Member States of the European Union.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. ‘internal borders’ means:

   (a) the common land borders, including river and lake borders, of the Member States;

   (b) the airports of the Member States for internal flights;

   (c) sea, river and lake ports of the Member States for regular ferry connections;

2. ‘external borders’ means the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders;

3. ‘internal flight’ means any flight exclusively to or from the territories of the Member States and not landing in the territory of a third country;

4. ‘regular ferry connection’ means any ferry connection between the same two or more ports situated in the territory of the Member States, not calling at any ports outside the territory of the Member States and consisting of the transport of passengers and vehicles according to a published timetable;

5. ‘persons enjoying the Community right of free movement’ means:

   (a) Union citizens within the meaning of Article 17(1) of the Treaty, and third-country nationals who are members of the

[1] OJ L 64, 7.3.2002, p. 20.

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family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [1] applies;

(b) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;

6. 'third-country national' means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty and who is not covered by point 5 of this Article;

7. 'persons for whom an alert has been issued for the purposes of refusing entry' means any third-country national for whom an alert has been issued in the Schengen Information System (SIS) in accordance with and for the purposes laid down in Article 96 of the Schengen Convention;

8. 'border crossing point' means any crossing-point authorised by the competent authorities for the crossing of external borders;

9. 'border control' means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;

10. 'border checks' means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it;

11. 'border surveillance' means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks;

12. 'second line check' means a further check which may be carried out in a special location away from the location at which all persons are checked (first line);

13. 'border guard' means any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with this Regulation and national law, border control tasks;

14. 'carrier' means any natural or legal person whose profession it is to provide transport of persons;

15. 'residence permit' means:

(a) all residence permits issued by the Member States according to the uniform format laid down by Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals [2];

(b) all other documents issued by a Member State to third-country nationals authorising a stay in, or re-entry into, its territory, with the exception of temporary permits issued pending examination of a first application for a residence permit as referred to in point (a) or an application for asylum;

16. 'cruise ship' means a ship which follows a given itinerary in accordance with a predetermined programme, which includes a

[1] OJ L 158, 30.4.2004, p. 77.
[2] OJ L 157, 15.6.2002, p. 1.

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programme of tourist activities in the various ports, and which normally neither takes passengers on nor allows passengers to disembark during the voyage;

17. 'pleasure boating' means the use of pleasure boats for sporting or tourism purposes;

18. 'coastal fisheries' means fishing carried out with the aid of vessels which return every day or within 36 hours to a port situated in the territory of a Member State without calling at a port situated in a third country;

19. 'threat to public health' means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.

Article 3

Scope

This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:

(a) the rights of persons enjoying the Community right of free movement;

(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.

TITLE II

EXTERNAL BORDERS

CHAPTER I

Crossing of external borders and conditions for entry

Article 4

Crossing of external borders

1. External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

Member States shall notify the list of their border crossing points to the Commission in accordance with Article 34.

2. By way of derogation from paragraph 1, exceptions to the obligation to cross external borders only at border crossing points and during the fixed opening hours may be allowed:

(a) in connection with pleasure boating or coastal fishing;

(b) for seamen going ashore to stay in the area of the port where their ships call or in the adjacent municipalities;

(c) for individuals or groups of persons, where there is a requirement of a special nature, provided that they are in possession of the permits required by national law and that there is no conflict with the interests of public policy and the internal security of the Member States;

(d) for individuals or groups of persons in the event of an unforeseen emergency situation.

3. Without prejudice to the exceptions provided for in paragraph 2 or to their international protection obligations, Member States shall

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introduce penalties, in accordance with their national law, for the unauthorised crossing of external borders at places other than border crossing points or at times other than the fixed opening hours. These penalties shall be effective, proportionate and dissuasive.

Article 5

Entry conditions for third-country nationals

1. For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document or documents authorising them to cross the border;

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(b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [1], except where they hold a valid residence permit or a valid long-stay visa;

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(c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;

(e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

2. A non-exhaustive list of supporting documents which the border guard may request from the third-country national in order to verify the fulfilment of the conditions set out in paragraph 1, point c, is included in Annex I.

3. Means of subsistence shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed.

Reference amounts set by the Member States shall be notified to the Commission in accordance with Article 34.

The assessment of sufficient means of subsistence may be based on the cash, travellers' cheques and credit cards in the third-country national's possession. Declarations of sponsorship, where such declarations are provided for by national law and letters of guarantee from hosts, as defined by national law, where the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence.

4. By way of derogation from paragraph 1:

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(a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but who hold a residence permit, a long-stay visa or a re-entry visa issued by one of the Member States or, where required, a residence permit or a long-stay visa and a re-entry visa, shall be authorised to enter the territories of the other Member States for transit purposes so that they may reach the

[1] OJ L 81, 21.3.2001, p. 1.

▼M4

territory of the Member State which issued the residence permit, long-stay visa or re-entry visa, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit;

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(b) third-country nationals who fulfil the conditions laid down in paragraph 1, except for that laid down in point (b), and who present themselves at the border may be authorised to enter the territories of the Member States, if a visa is issued at the border in accordance with Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit ([1]).

Visas issued at the border shall be recorded on a list.

If it is not possible to affix a visa in the document, it shall, exceptionally, be affixed on a separate sheet inserted in the document. In such a case, the uniform format for forms for affixing the visa, laid down by Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form ([2]), shall be used;

(c) third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorised by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations. Where the third-country national concerned is the subject of an alert as referred to in paragraph 1(d), the Member State authorising him or her to enter its territory shall inform the other Member States accordingly.

CHAPTER II

Control of external borders and refusal of entry

Article 6

Conduct of border checks

1. Border guards shall, in the performance of their duties, fully respect human dignity.

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

2. While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 7

Border checks on persons

1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

The checks may also cover the means of transport and objects in the possession of the persons crossing the border. The law of the Member State concerned shall apply to any searches which are carried out.

([1]) OJ L 64, 7.3.2003, p. 1.
([2]) OJ L 53, 23.2.2002, p. 4.

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2. All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting.

The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the Community right of free movement.

However, on a non-systematic basis, when carrying out minimum checks on persons enjoying the Community right of free movement, border guards may consult national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.

The consequences of such consultations shall not jeopardise the right of entry of persons enjoying the Community right of free movement into the territory of the Member State concerned as laid down in Directive 2004/38/EC.

3. On entry and exit, third-country nationals shall be subject to thorough checks.

(a) thorough checks on entry shall comprise verification of the conditions governing entry laid down in Article 5(1) and, where applicable, of documents authorising residence and the pursuit of a professional activity. This shall include a detailed examination covering the following aspects:

(i) verification that the third-country national is in possession of a document which is valid for crossing the border and which has not expired, and that the document is accompanied, where applicable, by the requisite visa or residence permit;

(ii) thorough scrutiny of the travel document for signs of falsification or counterfeiting;

(iii) examination of the entry and exit stamps on the travel document of the third-country national concerned, in order to verify, by comparing the dates of entry and exit, that the person has not already exceeded the maximum duration of authorised stay in the territory of the Member States;

(iv) verification regarding the point of departure and the destination of the third-country national concerned and the purpose of the intended stay, checking if necessary, the corresponding supporting documents;

(v) verification that the third-country national concerned has sufficient means of subsistence for the duration and purpose of the intended stay, for his or her return to the country of origin or transit to a third country into which he or she is certain to be admitted, or that he or she is in a position to acquire such means lawfully;

(vi) verification that the third-country national concerned, his or her means of transport and the objects he or she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States. Such verification shall include direct consultation of the data and alerts on persons and, where necessary, objects included in the SIS and in national data files and the action to be performed, if any, as a result of an alert;

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(aa) if the third country national holds a visa referred to in Article 5(1)(b), the thorough checks on entry shall also comprise verification of the identity of the holder of the visa and of the authenticity of the visa, by consulting the Visa Information System (VIS) in accordance with Article 18 of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) ([1]);

(ab) by way of derogation, where:

(i) traffic of such intensity arises that the waiting time at the border crossing point becomes excessive;

(ii) all resources have already been exhausted as regards staff, facilities and organisation; and

(iii) on the basis of an assessment there is no risk related to internal security and illegal immigration;

the VIS may be consulted using the number of the visa sticker in all cases and, on a random basis, the number of the visa sticker in combination with the verification of fingerprints.

However, in all cases where there is doubt as to the identity of the holder of the visa and/or the authenticity of the visa, the VIS shall be consulted systematically using the number of the visa sticker in combination with the verification of fingerprints.

This derogation may be applied only at the border crossing point concerned for as long as the above conditions are met;

(ac) the decision to consult the VIS in accordance with point (ab) shall be taken by the border guard in command at the border crossing point or at a higher level.

The Member State concerned shall immediately notify the other Member States and the Commission of any such decision;

(ad) each Member State shall transmit once a year a report on the application of point (ab) to the European Parliament and the Commission, which shall include the number of third-country nationals who were checked in the VIS using the number of the visa sticker only and the length of the waiting time referred to in point (ab)(i);

(ae) points (ab) and (ac) shall apply for a maximum period of three years, beginning three years after the VIS has started operations. The Commission shall, before the end of the second year of application of points (ab) and (ac), transmit to the European Parliament and to the Council an evaluation of their implementation. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose appropriate amendments to this Regulation;

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(b) thorough checks on exit shall comprise:

(i) verification that the third-country national is in possession of a document valid for crossing the border;

(ii) verification of the travel document for signs of falsification or counterfeiting;

(iii) whenever possible, verification that the third-country national is not considered to be a threat to public policy, internal security or the international relations of any of the Member States;

([1]) OJ L 218, 13.8.2008, p. 60.

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(c) In addition to the checks referred to in point (b) thorough checks on exit may also comprise:

(i) verification that the person is in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, except where he or she holds a valid residence permit; ►M2 such verification may comprise consultation of the VIS in accordance with Article 18 of Regulation (EC) No 767/2008; ◄

(ii) verification that the person did not exceed the maximum duration of authorised stay in the territory of the Member States;

(iii) consultation of alerts on persons and objects included in the SIS and reports in national data files;

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(d) for the purpose of identification of any person who may not fulfil, or who may no longer fulfil, the conditions for entry, stay or residence on the territory of the Member States, the VIS may be consulted in accordance with Article 20 of Regulation (EC) No 767/2008.

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4. Where facilities exist and if requested by the third-country national, such thorough checks shall be carried out in a private area.

5. Third-country nationals subject to a thorough second line check shall be given information on the purpose of, and procedure for, such a check.

This information shall be available in all the official languages of the Union and in the language(s) of the country or countries bordering the Member State concerned and shall indicate that the third-country national may request the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.

6. Checks on a person enjoying the Community right on free movement shall be carried out in accordance with Directive 2004/38/EC.

7. Detailed rules governing the information to be registered are laid down in Annex II.

Article 8

Relaxation of border checks

1. Border checks at external borders may be relaxed as a result of exceptional and unforeseen circumstances. Such exceptional and unforeseen circumstances shall be deemed to be those where unforeseeable events lead to traffic of such intensity that the waiting time at the border crossing point becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation.

2. Where border checks are relaxed in accordance with paragraph 1, border checks on entry movements shall in principle take priority over border checks on exit movements.

The decision to relax checks shall be taken by the border guard in command at the border crossing point.

Such relaxation of checks shall be temporary, adapted to the circumstances justifying it and introduced gradually.

3. Even in the event that checks are relaxed, the border guard shall stamp the travel documents of third-country nationals both on entry and exit, in accordance with Article 10.

4. Each Member State shall transmit once a year a report on the application of this Article to the European Parliament and the Commission.

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Article 9

Separate lanes and information on signs

1. Member States shall provide separate lanes, in particular at air border crossing points in order to carry out checks on persons, in accordance with Article 7. Such lanes shall be differentiated by means of the signs bearing the indications set out in the Annex III.

Member States may provide separate lanes at their sea and land border crossing points and at borders between Member States not applying Article 20 at their common borders. The signs bearing the indications set out in the Annex III shall be used if Member States provide separate lanes at those borders.

Member States shall ensure that such lanes are clearly signposted, including where the rules relating to the use of the different lanes are waived as provided for in paragraph 4, in order to ensure optimal flow levels of persons crossing the border.

2. (a) Persons enjoying the Community right of free movement are entitled to use the lanes indicated by the sign in part A of Annex III. They may also use the lanes indicated by the sign in part B of Annex III.

(b) All other persons shall use the lanes indicated by the sign in part B of Annex III.

The indications on the signs referred to in points (a) and (b) may be displayed in such language or languages as each Member State considers appropriate.

3. At sea and land border crossing points, Member States may separate vehicle traffic into different lanes for light and heavy vehicles and buses by using signs as shown in Part C of Annex III.

Member States may vary the indications on those signs where appropriate in the light of local circumstances.

4. In the event of a temporary imbalance in traffic flows at a particular border crossing point, the rules relating to the use of the different lanes may be waived by the competent authorities for the time necessary to eliminate such imbalance.

5. The adaptation of existing signs to the provisions of paragraphs 1, 2 and 3 shall be completed by 31 May 2009. Where Member States replace existing signs or put up new ones before that date, they shall comply with the indications provided for in those paragraphs.

Article 10

Stamping of the travel documents of third-country nationals

1. The travel documents of third-country nationals shall be systematically stamped on entry and exit. In particular an entry or exit stamp shall be affixed to:

(a) the documents, bearing a valid visa, enabling third-country nationals to cross the border;

(b) the documents enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border;

(c) the documents enabling third-country nationals not subject to a visa requirement to cross the border.

2. The travel documents of nationals of third countries who are members of the family of a Union citizen to whom Directive 2004/38/EC applies, but who do not present the residence card provided for in Article 10 of that Directive, shall be stamped on entry or exit.

▼B

The travel documents of nationals of third countries who are members of the family of nationals of third countries enjoying the Community right of free movement, but who do not present the residence card provided for in Article 10 of Directive 2004/38/EC, shall be stamped on entry or exit.

3. No entry or exit stamp shall be affixed:

(a) to the travel documents of Heads of State and dignitaries whose arrival has been officially announced in advance through diplomatic channels;

(b) to pilots' licences or the certificates of aircraft crew members;

(c) to the travel documents of seamen who are present within the territory of a Member State only when their ship puts in and in the area of the port of call;

(d) to the travel documents of crew and passengers of cruise ships who are not subject to border checks in accordance with point 3.2.3 of Annex VI;

(e) to documents enabling nationals of Andorra, Monaco and San Marino to cross the border.

Exceptionally, at the request of a third-country national, insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person. In that case, entry or exit shall be recorded on a separate sheet indicating the name and passport number. That sheet shall be given to the third-country national.

4. The practical arrangements for stamping are set out in Annex IV.

5. Whenever possible, third-country nationals shall be informed of the border guard's obligation to stamp their travel document on entry and exit, even where checks are relaxed in accordance with Article 8.

6. The Commission shall report to the European Parliament and the Council by the end of 2008 on the operation of the provisions on stamping travel documents.

Article 11

Presumption as regards fulfilment of conditions of duration of stay

1. If the travel document of a third-country national does not bear an entry stamp, the competent national authorities may presume that the holder does not fulfil, or no longer fulfils, the conditions of duration of stay applicable within the Member State concerned.

2. The presumption referred to in paragraph 1 may be rebutted where the third-country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member States, that he or she has respected the conditions relating to the duration of a short stay.

In such a case:

(a) where the third-country national is found on the territory of a Member State applying the Schengen *acquis* in full, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of one of the Member States applying the Schengen *acquis* in full;

(b) where the third-country national is found on the territory of a Member State in respect of which the decision contemplated in Article 3(2) of the 2003 Act of Accession has not been taken, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of such a Member State.

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In addition to the indications referred to in points (a) and (b), a form as shown in Annex VIII may be given to the third-country national.

Member States shall inform each other and the Commission and the Council General Secretariat of their national practices with regard to the indications referred to in this Article.

3. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be expelled by the competent authorities from the territory of the Member States concerned.

Article 12

Border surveillance

1. The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally.

2. The border guards shall use stationary or mobile units to carry out border surveillance.

That surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points.

3. Surveillance between border crossing points shall be carried out by border guards whose numbers and methods shall be adapted to existing or foreseen risks and threats. It shall involve frequent and sudden changes to surveillance periods, so that unauthorised border crossings are always at risk of being detected.

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance being to apprehend individuals crossing the border illegally. Surveillance may also be carried out by technical means, including electronic means.

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5. Additional measures governing surveillance may be adopted. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 33(2).

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Article 13

Refusal of entry

1. A third-country national who does not fulfil all the entry conditions laid down in Article 5(1) and does not belong to the categories of persons referred to in Article 5(4) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of

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contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national.

Lodging such an appeal shall not have suspensive effect on a decision to refuse entry.

Without prejudice to any compensation granted in accordance with national law, the third-country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to correction of the cancelled entry stamp, and any other cancellations or additions which have been made, by the Member State which refused entry.

4. The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned.

5. Member States shall collect statistics on the number of persons refused entry, the grounds for refusal, the nationality of the persons refused and the type of border (land, air or sea) at which they were refused entry. Member States shall transmit those statistics once a year to the Commission. The Commission shall publish every two years a compilation of the statistics provided by the Member States.

6. Detailed rules governing refusal of entry are given in Part A of Annex V.

CHAPTER III

Staff and resources for border control and cooperation between Member States

Article 14

Staff and resources for border control

Member States shall deploy appropriate staff and resources in sufficient numbers to carry out border control at the external borders, in accordance with Articles 6 to 13, in such a way as to ensure an efficient, high and uniform level of control at their external borders.

Article 15

Implementation of controls

1. The border control provided for by Articles 6 to 13 shall be carried out by border guards in accordance with the provisions of this Regulation and with national law.

When carrying out that border control, the powers to instigate criminal proceedings conferred on border guards by national law and falling outside the scope of this Regulation shall remain unaffected.

Member States shall ensure that the border guards are specialised and properly trained professionals. Member States shall encourage border guards to learn languages, in particular those necessary for the carrying-out of their tasks.

2. Member States shall notify to the Commission the list of national services responsible for border control under their national law in accordance with Article 34.

3. To control borders effectively, each Member State shall ensure close and constant cooperation between its national services responsible for border control.

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Article 16

Cooperation between Member States

1. The Member States shall assist each other and shall maintain close and constant cooperation with a view to the effective implementation of border control, in accordance with Articles 6 to 15. They shall exchange all relevant information.

2. Operational cooperation between Member States in the field of management of external borders shall be coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States (hereinafter referred to as the Agency) established by Regulation (EC) No 2007/2004.

3. Without prejudice to the competences of the Agency, Member States may continue operational cooperation with other Member States and/or third countries at external borders, including the exchange of liaison officers, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on the operational cooperation referred to in the first subparagraph.

4. Member States shall provide for training on the rules for border control and on fundamental rights. In that regard, account shall be taken of the common training standards as established and further developed by the Agency.

Article 17

Joint control

1. Member States which do not apply Article 20 to their common land borders may, up to the date of application of that Article, jointly control those common borders, in which case a person may be stopped only once for the purpose of carrying out entry and exit checks, without prejudice to the individual responsibility of Member States arising from Articles 6 to 13.

To that end, Member States may conclude bilateral arrangements between themselves.

2. Member States shall inform the Commission of any arrangements concluded in accordance with paragraph 1.

CHAPTER IV

Specific rules for border checks

Article 18

Specific rules for the various types of border and the various means of transport used for crossing the external borders

The specific rules set out in Annex VI shall apply to the checks carried out at the various types of border and on the various means of transport used for crossing border crossing points.

Those specific rules may contain derogations from Articles 5 and 7 to 13.

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Article 19

Specific rules for checks on certain categories of persons

1. The specific rules set out in Annex VII shall apply to checks on the following categories of persons:

(a) Heads of State and the members of their delegation(s);

(b) pilots of aircraft and other crew members;

(c) seamen;

(d) holders of diplomatic, official or service passports and members of international organisations;

(e) cross-border workers;

(f) minors.

Those specific rules may contain derogations from Articles 5 and 7 to 13.

2. Member States shall notify to the Commission the model cards issued by their Ministries of Foreign Affairs to accredited members of diplomatic missions and consular representations and members of their families in accordance with Article 34.

TITLE III

INTERNAL BORDERS

CHAPTER I

Abolition of border control at internal borders

Article 20

Crossing internal borders

Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out.

Article 21

Checks within the territory

The abolition of border control at internal borders shall not affect:

(a) the exercise of police powers by the competent authorities of the Member States under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks; that shall also apply in border areas. Within the meaning of the first sentence, the exercise of police powers may not, in particular, be considered equivalent to the exercise of border checks when the police measures:

  (i) do not have border control as an objective,

  (ii) are based on general police information and experience regarding possible threats to public security and aim, in particular, to combat cross-border crime,

  (iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders,

  (iv) are carried out on the basis of spot-checks;

(b) security checks on persons carried out at ports and airports by the competent authorities under the law of each Member State, by port

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or airport officials or carriers, provided that such checks are also carried out on persons travelling within a Member State;

(c) the possibility for a Member State to provide by law for an obligation to hold or carry papers and documents;

(d) the obligation on third-country nationals to report their presence on the territory of any Member State pursuant to the provisions of Article 22 of the Schengen Convention.

Article 22

Removal of obstacles to traffic at road crossing-points at internal borders

Member States shall remove all obstacles to fluid traffic flow at road crossing-points at internal borders, in particular any speed limits not exclusively based on road-safety considerations.

At the same time, Member States shall be prepared to provide for facilities for checks in the event that internal border controls are reintroduced.

CHAPTER II

Temporary reintroduction of border control at internal borders

Article 23

Temporary reintroduction of border control at internal borders

1. Where there is a serious threat to public policy or internal security, a Member State may exceptionally reintroduce border control at its internal borders for a limited period of no more than 30 days or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days, in accordance with the procedure laid down in Article 24 or, in urgent cases, with that laid down in Article 25. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

2. If the serious threat to public policy or internal security persists beyond the period provided for in paragraph 1, the Member State may prolong border control on the same grounds as those referred to in paragraph 1 and, taking into account any new elements, for renewable periods of up to 30 days, in accordance with the procedure laid down in Article 26.

Article 24

Procedure for foreseeable events

1. Where a Member State is planning to reintroduce border control at internal borders under Article 23(1), it shall as soon as possible notify the other Member States and the Commission accordingly, and shall supply the following information as soon as available:

(a) the reasons for the proposed reintroduction, detailing the events that constitute a serious threat to public policy or internal security;

(b) the scope of the proposed reintroduction, specifying where border control is to be reintroduced;

(c) the names of the authorised crossing-points;

(d) the date and duration of the proposed reintroduction;

(e) where appropriate, the measures to be taken by the other Member States.

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2. Following the notification from the Member State concerned, and with a view to the consultation provided for in paragraph 3, the Commission may issue an opinion without prejudice to Article 64(1) of the Treaty.

3. The information referred to in paragraph 1, as well as the opinion that the Commission may provide in accordance with paragraph 2, shall be the subject of consultations between the Member State planning to reintroduce border control, the other Member States and the Commission, with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control and the threats to public policy or internal security.

4. The consultation referred to in paragraph 3 shall take place at least fifteen days before the date planned for the reintroduction of border control.

Article 25

Procedure for cases requiring urgent action

1. Where considerations of public policy or internal security in a Member State demand urgent action to be taken, the Member State concerned may exceptionally and immediately reintroduce border control at internal borders.

2. The Member State reintroducing border control at internal borders shall notify the other Member States and the Commission accordingly, without delay, and shall supply the information referred to in Article 24 (1) and the reasons that justify the use of this procedure.

Article 26

Procedure for prolonging border control at internal borders

1. Member States may only prolong border control at internal borders under the provisions of Article 23(2) after having notified the other Member States and the Commission.

2. The Member State planning to prolong border control shall supply the other Member States and the Commission with all relevant information on the reasons for prolonging the border control at internal borders. The provisions of Article 24(2) shall apply.

Article 27

Informing the European Parliament

The Member State concerned or, where appropriate, the Council shall inform the European Parliament as soon as possible of the measures taken under Articles 24, 25 and 26. As of the third consecutive prolongation pursuant to Article 26, the Member State concerned shall, if requested, report to the European Parliament on the need for border control at internal borders.

Article 28

Provisions to be applied where border control is reintroduce at internal borders

Where border control at internal borders is reintroduced, the relevant provisions of Title II shall apply *mutatis mutandis*.

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Article 29

Report on the reintroduction of border control at internal borders

The Member State which has reintroduced border control at internal borders under Article 23 shall confirm the date on which that control is lifted and, at the same time or soon afterwards, present a report to the European Parliament, the Council and the Commission on the reintroduction of border control at internal borders, outlining, in particular, the operation of the checks and the effectiveness of the reintroduction of border control.

Article 30

Informing the public

The decision to reintroduce border control at internal borders shall be taken in a transparent manner and the public informed in full thereof, unless there are overriding security reasons for not doing so.

Article 31

Confidentiality

At the request of the Member State concerned, the other Member States, the European Parliament and the Commission shall respect the confidentiality of information supplied in connection with the reintroduction and prolongation of border control and the report drawn up under Article 29.

TITLE IV

FINAL PROVISIONS

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Article 32

Amendments to the Annexes

Annexes III, IV and VIII shall be amended in accordance with the regulatory procedure with scrutiny referred to in Article 33(2).

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Article 33

Committee

1. The Commission shall be assisted by a committee, hereinafter ‘the Committee’.

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2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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3. The Committee shall adopt its rules of procedure.

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Article 34

Notifications

1. Member States shall notify the Commission of:

(a) the list of residence permits;

(b) the list of their border crossing points;

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(c) the reference amounts required for the crossing of their external borders fixed annually by the national authorities;

(d) the list of national services responsible for border control;

(e) the specimen of model cards issued by Foreign Ministries.

2. The Commission shall make the information notified in conformity with paragraph 1 available to the Member States and the public through publication in the *Official Journal of the European Union*, C Series, and by any other appropriate means.

Article 35

Local border traffic

This Regulation shall be without prejudice to Community rules on local border traffic and to existing bilateral agreements on local border traffic.

Article 36

Ceuta and Melilla

The provisions of this Regulation shall not affect the special rules applying to the cities of Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the cities of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 ([1]).

Article 37

Notification of information by the Member States

By 26 October 2006, the Member States shall notify the Commission of national provisions relating to Article 21(c) and (d), the penalties as referred to in Article 4(3) and the bilateral arrangements concluded in accordance with Article 17(1). Subsequent changes to those provisions shall be notified within five working days.

The information notified by the Member States shall be published in the *Official Journal of the European Union*, C Series.

Article 38

Report on the application of Title III

The Commission shall submit to the European Parliament and the Council by 13 October 2009 a report on the application of Title III.

The Commission shall pay particular attention to any difficulties arising from the reintroduction of border control at internal borders. Where appropriate, it shall present proposals aimed at resolving such difficulties.

Article 39

Repeals

1. Articles 2 to 8 of the Convention implementing the Schengen Agreement of 14 June 1985 shall be repealed with effect from 13 October 2006.

2. The following shall be repealed with effect from the date referred to in paragraph 1:

(a) the Common Manual, including its annexes;

([1]) OJ L 239, 22.9.2000, p. 73.

▼B

(b) the decisions of the Schengen Executive Committee of 26 April 1994 (SCH/Com-ex (94) 1, rev 2), 22 December 1994 (SCH/Com-ex (94)17, rev. 4) and 20 December 1995 (SCH/Com-ex (95) 20, rev. 2);

(c) Annex 7 to the Common Consular Instructions;

(d) Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance ([1]);

(e) Council Decision 2004/581/EC of 29 April 2004 determining the minimum indications to be used on signs at external border crossing points ([2]);

(f) Council Decision 2004/574/EC of 29 April 2004 amending the Common Manual ([3]);

(g) Council Regulation (EC) No 2133/2004 of 13 December 2004 on the requirement for the competent authorities of the Member States to stamp systematically the travel documents of third country nationals when they cross the external borders of the Member States and amending the provisions of the Convention implementing the Schengen agreement and the Common Manual to this end ([4]).

3. References to the Articles deleted and instruments repealed shall be construed as references to this Regulation.

Article 40

Entry into force

This Regulation shall enter into force on 13 October 2006. However, Article 34 shall enter into force on the day after its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

([1]) OJ L 116, 26.4.2001, p. 5. Regulation amended by Decision 2004/927/EC (OJ L 396, 31.12.2004, p. 45).
([2]) OJ L 261, 6.8.2004, p. 119.
([3]) OJ L 261, 6.8.2004, p. 36.
([4]) OJ L 369, 16.12.2004, p. 5.

▼B

ANNEX I

Supporting documents to verify the fulfilment of entry conditions

The documentary evidence referred to in Article 5(2) may include the following:

(a) for business trips:

(i) an invitation from a firm or an authority to attend meetings, conferences or events connected with trade, industry or work;

(ii) other documents which show the existence of trade relations or relations for work purposes;

(iii) entry tickets for fairs and congresses if attending one;

(b) for journeys undertaken for the purposes of study or other types of training:

(i) a certificate of enrolment at a teaching institute for the purposes of attending vocational or theoretical courses in the framework of basic and further training;

(ii) student cards or certificates for the courses attended;

(c) for journeys undertaken for the purposes of tourism or for private reasons:

(i) supporting documents as regards lodging:

— an invitation from the host if staying with one,

— a supporting document from the establishment providing lodging or any other appropriate document indicating the accommodation envisaged;

(ii) supporting documents as regards the itinerary:

confirmation of the booking of an organised trip or any other appropriate document indicating the envisaged travel plans;

(iii) supporting documents as regards return:

a return or round-trip ticket;

(d) for journeys undertaken for political, scientific, cultural, sports or religious events or other reasons:

invitations, entry tickets, enrolments or programmes stating wherever possible the name of the host organisation and the length of stay or any other appropriate document indicating the purpose of the visit.

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ANNEX II

Registration of information

At all border crossing points, all service information and any other particularly important information shall be registered manually or electronically. The information to be registered shall include in particular:

(a) the names of the border guard responsible locally for border checks and of the other officers in each team;

(b) relaxation of checks on persons applied in accordance with Article 8;

(c) the issuing, at the border, of documents in place of passports and of visas;

(d) persons apprehended and complaints (criminal offences and administrative breaches);

(e) persons refused entry in accordance with Article 13 (grounds for refusal and nationalities);

(f) the security codes of entry and exit stamps, the identity of border guards to whom a given stamp is assigned at any given time or shift and the information relating to lost and stolen stamps;

(g) complaints from persons subject to checks;

(h) other particularly important police or judicial measures;

(i) particular occurrences.

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ANNEX III

Model signs indicating lanes at border crossing points

PART A

([1])

([1]) No logo is required for Norway and Iceland.

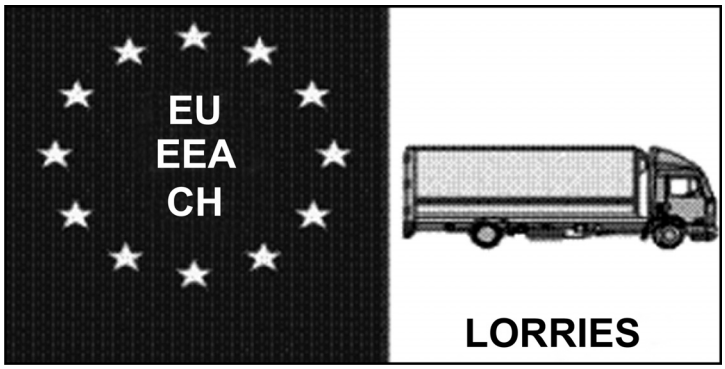
▼B

PART B

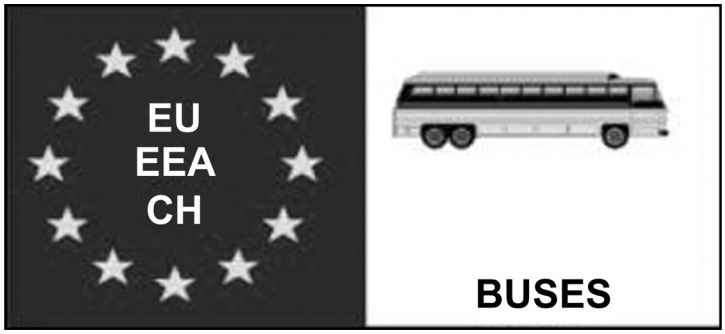
▼B

PART C

([1])



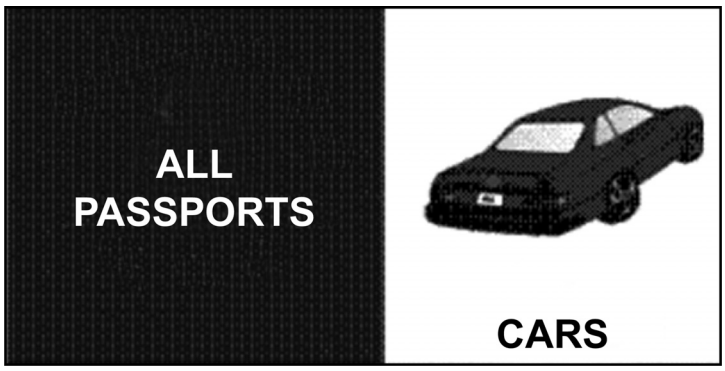
([1])



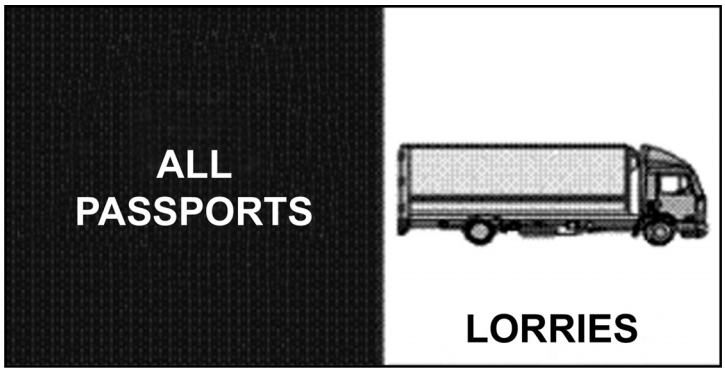
([1])

([1]) No logo is required for Norway and Iceland.

▼B


ALL
PASSPORTS
CARS


ALL
PASSPORTS
BUSES


ALL
PASSPORTS
LORRIES

▼B

ANNEX IV

Affixing stamps

1. The travel documents of third-country nationals shall be systematically stamped on entry and exit, in accordance with Article 10. The specifications of those stamps are laid down in the Schengen Executive Committee Decision SCH/COM-EX (94) 16 rev and SCH/Gem-Handb (93) 15 (CONFIDENTIAL).

2. The security codes on the stamps shall be changed at regular intervals not exceeding one month.

3. On the entry and exit of third-country nationals subject to the visa obligation, the stamp will, if possible, be affixed so that it covers the edge of the visa without affecting the legibility of the indications on the visa or the security features of the visa sticker. If several stamps must be affixed (for example in the case of a multiple-entry visa, this shall be done on the page facing the one on which the visa is affixed.

   If that page cannot be used, the stamp shall be entered on the following page. The machine readable zone shall not be stamped.

4. Member States shall designate national contact points responsible for exchanging information on the security codes of the entry and exit stamps used at border crossing points and shall inform the other Member States, the General Secretariat of the Council and the Commission thereof. Those contact points shall have access without delay to information regarding common entry and exit stamps used at the external border of the Member State concerned, and in particular to information on the following:

   (a) the border crossing point to which a given stamp is assigned;

   (b) the identity of the border guard to whom a given stamp is assigned at any given time;

   (c) the security code of a given stamp at any given time.

   Any inquiries regarding common entry and exit stamps shall be made through the abovementioned national contact points.

   The national contact points shall also forward immediately to the other contact points, the General Secretariat of the Council and the Commission information regarding a change in the contact points as well as lost and stolen stamps.

▼B

ANNEX V

PART A

Procedures for refusing entry at the border

1. When refusing entry, the competent border guard shall:

   (a) fill in the standard form for refusing entry, as shown in Part B. The third-country national concerned shall sign the form and shall be given a copy of the signed form. Where the third-country national refuses to sign, the border guard shall indicate this refusal in the form under the section 'comments';

   (b) affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the abovementioned standard form for refusing entry;

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   (c) annul or revoke the visas, as appropriate, in accordance with the conditions laid down in Article 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community code on visas (Visa Code) ([1]);

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   (d) record every refusal of entry in a register or on a list stating the identity and nationality of the third-country national concerned, the references of the document authorising the third-country national to cross the border and the reason for, and date of, refusal of entry;

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▼B

3. If a third-country national who has been refused entry is brought to the border by a carrier, the authority responsible locally shall:

   (a) order the carrier to take charge of the third-country national and transport him or her without delay to the third country from which he or she was brought, to the third country which issued the document authorising him or her to cross the border, or to any other third country where he or she is guaranteed admittance, or to find means of onward transportation in accordance with Article 26 of the Schengen Convention and Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 ([2]);

   (b) pending onward transportation, take appropriate measures, in compliance with national law and having regard to local circumstances, to prevent third-country nationals who have been refused entry from entering illegally;

4. If there are grounds both for refusing entry to a third-country national and arresting him or her, the border guard shall contact the authorities responsible to decide on the action to be taken in accordance with national law.

([1]) OJ L 243, 15.9.2009, p. 1.
([2]) OJ L 187, 10.7.2001, p. 45.

▼B

PART B

Standard form for refusal of entry at the border

Name of State

Logo of State (Name of Office)

_____

_____ (1)

REFUSAL OF ENTRY AT THE BORDER

On _____ at (time) _____ at the border crossing point _____

We, the undersigned, _____ have before us:

Surname _____ First name _____

Date of birth _____ Place of birth _____ Sex _____

Nationality _____ Resident in _____

Type of identity document _____ number _____

Issued in _____ on _____

Visa number _____type _____ issued by _____

valid from _____ until _____

For a period of _____ days on the following grounds: _____

Coming from _____ by means of _____ (indicate means of transport used, e.g. flight number), he/she is hereby informed that he/she is refused entry into the country pursuant to *(indicate references to the national law in force),* for the following reasons:

☐ (A) has no valid travel document(s)

☐ (B) has a false/counterfeit/forged travel document

☐ (C) has no valid visa or residence permit

☐ (D) has a false/counterfeit/forged visa or residence permit

☐ (E) has no appropriate documentation justifying the purpose and conditions of stay.

The following document(s) could not be provided: _____

☐ (F) has already stayed for three months during a six-month period on the territory of the Member States of the European Union

☐ (G) does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the country of origin or transit

☐ (H) is a person for whom an alert has been issued for the purposes of refusing entry

☐ in the SIS

☐ in the national register

☐ (I) is considered to be a *threat to public policy, internal security, public health or the international relations* of one or more of the Member States of the European Union *(each State must indicate the references to national law relating to such cases of refusal of entry*).

Comments

The person concerned may appeal against the decision to refuse entry as provided for in national law. The person concerned receives a copy of this document *(each State must indicate the references to the national law and procedure relating to the right of appeal)*.

Person concerned	Officer responsible for checks

(1) No logo is required for Norway and Iceland.

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ANNEX VI

Specific rules for the various types of border and the various means of transport used for crossing the Member States' external borders

1. **Land borders**

1.1. *Checks on road traffic*

1.1.1. To ensure effective checks on persons, while ensuring the safety and smooth flow of road traffic, movements at border crossing points shall be regulated in an appropriate manner. Where necessary, Member States may conclude bilateral agreements to channel and block traffic. They shall inform the Commission thereof pursuant to Article 37.

1.1.2. At land borders, Member States may, where they deem appropriate and if circumstances allow, install or operate separate lanes at certain border crossing points, in accordance with Article 9.

Separate lanes may be dispensed with at any time by the Member States' competent authorities, in exceptional circumstances and where traffic and infrastructure conditions so require.

Member States may cooperate with neighbouring countries with a view to the installation of separate lanes at external border crossing points.

1.1.3. As a general rule, persons travelling in vehicles may remain inside them during checks. However, if circumstances so require, persons may be requested to alight from their vehicles. Thorough checks will be carried out, if local circumstances allow, in areas designated for that purpose. In the interests of staff safety, checks will be carried out, where possible, by two border guards.

1.2. *Checks on rail traffic*

1.2.1. Checks shall be carried out both on train passengers and on railway staff on trains crossing external borders, including those on goods trains or empty trains. Those checks shall be carried out in either one of the following two ways:

— on the platform, in the first station of arrival or departure on the territory of a Member State,

— on board the train, during transit.

Member States may conclude bilateral agreements on how to conduct those checks. They shall inform the Commission thereof pursuant to Article 37.

1.2.2. By way of derogation from point 1.2.1 and in order to facilitate rail traffic flows of high-speed passenger trains, the Member States on the itinerary of these trains from third countries may also decide, by common agreement with third countries concerned, to carry out entry checks on persons in trains from third countries in either one of the following ways:

— in the stations in a third country where persons board the train,

— in the stations where persons disembark within the territory of the Member States,

— on board the train during transit between the stations on the territory of the Member States, provided that the persons stay on board the train in the previous station/stations.

1.2.3. With respect to high-speed trains from third countries making several stops in the territory of the Member States, if the rail transport carrier is in a position to board passengers exclusively for the remaining part of the journey within the territory of the Member States, such passengers shall be subject to entry checks either on the train or at the station of destination except where checks have been carried out pursuant to points 1.2.1 or 1.2.2 first indent.

Persons who wish to take the train exclusively for the remaining part of the journey within the territory of the Member States shall receive clear notification prior to the train's departure that they will be subject to entry checks during the journey or at the station of destination.

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1.2.4. When travelling in the opposite direction, the persons on board the train shall be subject to exit checks under similar arrangements.

1.2.5. The border guard may order the cavities of carriages to be inspected if necessary with the assistance of the train inspector, to ensure that persons or objects subject to border checks are not concealed in them.

1.2.6. Where there are reasons to believe that persons who have been reported or are suspected of having committed an offence, or third-country nationals intending to enter illegally, are hiding on a train, the border guard, if he or she cannot act in accordance with his national provisions, shall notify the Member States towards or within whose territory the train is moving.

2. **Air borders**

2.1. *Procedures for checks at international airports*

2.1.1. The competent authorities of the Member States shall ensure that the airport operator takes the requisite measures to physically separate the flows of passengers on internal flights from the flows of passengers on other flights. Appropriate infrastructures shall be set in place at all international airports to that end.

2.1.2. The place where border checks are carried out shall be determined in accordance with the following procedure:

(a) passengers on a flight from a third country who board an internal flight shall be subject to an entry check at the airport of arrival of the flight from a third country. Passengers on an internal flight who board a flight for a third country (transfer passengers) shall be subject to an exit check at the airport of departure of the latter flight;

(b) for flights from or to third countries with no transfer passengers and flights making more than one stop-over at the airports of the Member States where there is no change of aircraft:

(i) passengers on flights from or to third countries where there is no prior or subsequent transfer within the territory of the Member States shall be subject to an entry check at the airport of entry and an exit check at the airport of exit;

(ii) passengers on flights from or to third countries with more than one stop-over on the territory of the Member States where there is no change of aircraft (transit passengers), and provided that passengers cannot board the aircraft for the leg situated within the territory of the Member States, shall be subject to an entry check at the airport of arrival and an exit check at the airport of departure;

(iii) where an airline may, for flights from third countries with more than one stop-over within the territory of the Member States, board passengers only for the remaining leg within that territory, passengers shall be subject to an exit check at the airport of departure and an entry check at the airport of arrival.

Checks on passengers who, during those stop-overs, are already on board the aircraft and have not boarded in the territory of the Member States shall be carried out in accordance with point (b) (ii). The reverse procedure shall apply to that category of flights where the country of destination is a third country.

2.1.3. Border checks will normally not be carried out on the aircraft or at the gate, unless it is justified on the basis of an assessment of the risks related to internal security and illegal immigration. In order to ensure that, at the airports designated as border crossing points, persons are checked in accordance with the rules set out in Articles 6 to 13, Member States shall ensure that the airport authorities take the requisite measures to channel passenger traffic to facilities reserved for checks.

Member States shall ensure that the airport operator takes the necessary measures to prevent unauthorised persons entering and leaving the reserved areas, for example the transit area. Checks will normally not be carried out in the transit area, unless it is justified on the basis of an assessment of the risks related to internal security and illegal immigration; in particular checks in this area may be carried out on persons

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subject to an airport transit visa in order to check that they are in possession of such a visa.

2.1.4. Where, in cases of *force majeure* or imminent danger or on the instructions of the authorities, an aircraft on a flight from a third country has to land on a landing ground which is not a border crossing point, that aircraft may continue its flight only after authorisation from the border guards and from customs. The same shall apply where an aircraft on a flight from a third country lands without permission. In any event, Articles 6 to 13 shall apply to checks on persons on those aircraft.

2.2. *Procedures for checks in aerodromes*

2.2.1. It shall be ensured that persons are also checked, in accordance with Articles 6 to 13, in airports which do not hold the status of international airport under the relevant national law (aerodromes) but through which the routing of flights from or to third countries is authorised.

2.2.2. By way of derogation from point 2.1.1 it shall not be necessary to make appropriate arrangements in aerodromes to ensure that inflows of passengers from internal and other flights are physically separated, without prejudice to Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security ([1]). In addition, when the volume of traffic is low, the border guards need not be present at all times, provided that there is a guarantee that the necessary personnel can be deployed in good time.

2.2.3. When the presence of the border guards is not assured at all times in the aerodrome, the manager of the aerodrome shall give adequate notice to the border guards about the arrival and the departure of aircrafts on flights from or to third countries.

2.3. *Checks on persons on private flights*

2.3.1. In the case of private flights from or to third countries the captain shall transmit to the border guards of the Member State of destination and, where appropriate, of the Member State of first entry, prior to take-off, a general declaration comprising inter alia a flight plan in accordance with Annex 2 to the Convention on International Civil Aviation and information concerning the passengers' identity.

2.3.2. Where private flights coming from a third country and bound for a Member State make stop-overs in the territory of other Member States, the competent authorities of the Member State of entry shall carry out border checks and affix an entry stamp to the general declaration referred to in point 2.3.1.

2.3.3. Where uncertainty exists whether a flight is exclusively coming from, or solely bound for, the territories of the Member States without stop-over on the territory of a third country, the competent authorities shall carry out checks on persons in airports and aerodromes in accordance with points 2.1 to 2.2.

2.3.4. The arrangements for the entry and exit of gliders, micro-light aircraft, helicopters, small-scale aircraft capable of flying short distances only and airships shall be laid down by national law and, where applicable, by bilateral agreements.

3. **Sea borders**

3.1. *General checking procedures on maritime traffic*

3.1.1. Checks on ships shall be carried out at the port of arrival or departure, on board ship or in an area set aside for the purpose, located in the immediate vicinity of the vessel. However, in accordance with the agreements reached on the matter, checks may also be carried out during crossings or, upon the ship's arrival or departure, in the territory of a third country.

([1]) OJ L 355, 30.12.2002, p. 1. Regulation as amended by Regulation (EC) No 849/2004 (OJ L 158, 30.4.2004, p. 1).

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The purpose of checks is to ensure that both crew and passengers fulfil the conditions laid down in Article 5, without prejudice to Article 19(1)(c).

3.1.2. The ship's captain or, failing that, the individual or corporation who represents the shipowner in all matters relating to the shipowner's duties in fitting out the vessel (shipowner's agent), shall draw up a list, in duplicate, of the crew and of any passengers. At the latest upon arriving in the port he or she shall give the list(s) to the border guards. If, for reasons of force majeure, the list or lists cannot be sent to the border guards, a copy will be sent to the appropriate border post or shipping authority, which shall forward it without delay to the border guards.

3.1.3. One copy of the two lists duly signed by the border guard shall be returned to the ship's captain, who shall produce it on request when in port.

3.1.4. The ship's captain, or failing that, the shipowner's agent shall report to the competent authority promptly any changes to the composition of the crew or the number of passengers.

In addition, the captain shall notify the competent authorities promptly, and if possible even before the ship enters port, of the presence on board of stowaways. Stowaways will, however, remain under the responsibility of the ship's captain.

3.1.5. The ship's captain shall notify the border guards of the ship's departure in due time and in accordance with the rules in force in the port concerned; if he or she is unable to notify them, he or she shall advise the appropriate shipping authority. The second copy of the previously completed and signed list(s) shall be returned to border guards or shipping authorities.

3.2. *Specific check procedures for certain types of shipping*

Cruise ships

3.2.1. The cruise ship's captain or, failing that, the shipowner's agent shall transmit to the respective border guards the itinerary and the programme of the cruise, at least 24 hours before leaving the port of departure and before the arrival at each port in the territory of the Member States.

3.2.2. If the itinerary of a cruise ship comprises exclusively ports situated in the territory of the Member States, by way of derogation from Articles 4 and 7, no border checks shall be carried out and the cruise ship may dock at ports which are not border crossing points.

Nevertheless, on the basis of an assessment of the risks related to internal security and illegal immigration, checks may be carried out on the crew and passengers of those ships.

3.2.3. If the itinerary of a cruise ship comprises both ports situated in the territory of the Member States and ports situated in third countries, by way of derogation from Article 7, border checks shall be carried out as follows:

(a) where the cruise ship comes from a port situated in a third country and calls for the first time at a port situated in the territory of a Member State, crew and passengers shall be subject to entry checks on the basis of the nominal lists of crew and passengers, as referred to in point 3.2.4.

Passengers going ashore shall be subject to entry checks in accordance with Article 7 unless an assessment of the risks related to internal security and illegal immigration shows that there is no need to carry out such checks;

(b) where the cruise ship comes from a port situated in a third country and calls again at a port situated in the territory of a Member State, crew and passengers shall be subject to entry checks on the basis of the nominal lists of crew and passengers as referred to in point 3.2.4 to the extent that those lists have been modified since the cruise ship called at the previous port situated in the territory of a Member State.

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Passengers going ashore shall be subject to entry checks in accordance with Article 7 unless an assessment of the risks related to internal security and illegal immigration shows that there is no need to carry out such checks;

(c) where the cruise ship comes from a port situated in a Member State and calls at such a port, passengers going ashore shall be subject to entry checks in accordance with Article 7 if an assessment of the risks related to internal security and illegal immigration so requires;

(d) where a cruise ship departs from a port situated in a Member State to a port in a third country, crew and passengers shall be subject to exit checks on the basis of the nominal lists of crew and passengers.

If an assessment of the risks related to internal security and illegal immigration so requires, passengers going on board shall be subject to exit checks in accordance with Article 7;

(e) where a cruise ship departs from a port situated in a Member State to such a port, no exit checks shall be carried out.

Nevertheless, on the basis of an assessment of the risks related to internal security and illegal immigration, checks may be carried out on the crew and passengers of those ships.

3.2.4. The nominal lists of crew and passengers shall include:

(a) name and surname;

(b) date of birth;

(c) nationality;

(d) number and type of travel document and, where applicable, visa number.

The cruise ship's captain or, failing that, the shipowner's agent shall transmit to the respective border guards the nominal lists at least 24 hours before the arrival at each port in the territory of the Member States or, where the journey to this port lasts less than 24 hours, immediately after the boarding is completed in the previous port.

The nominal list shall be stamped at the first port of entry into the territory of the Member States and in all cases thereafter if the list is modified. The nominal list shall be taken into account in the assessment of the risks as referred to in point 3.2.3.

Pleasure boating

3.2.5. By way of derogation from Articles 4 and 7, persons on board a pleasure boat coming from or departing to a port situated in a Member State shall not be subject to border checks and may enter a port which is not a border crossing point.

However, according to the assessment of the risks of illegal immigration, and in particular where the coastline of a third country is located in the immediate vicinity of the territory of the Member State concerned, checks on those persons and/or a physical search of the pleasure boat shall be carried out.

3.2.6. By way of derogation from Article 4, a pleasure boat coming from a third country may, exceptionally, enter a port which is not a border crossing point. In that case, the persons on board shall notify the port authorities in order to be authorised to enter that port. The port authorities shall contact the authorities in the nearest port designated as a border crossing point in order to report the vessel's arrival. The declaration regarding passengers shall be made by lodging the list of persons on board with the port authorities. That list shall be made available to the border guards, at the latest upon arrival.

Likewise, if for reasons of *force majeure* the pleasure boat coming from a third country has to dock in a port other than a border crossing point, the port authorities shall contact the authorities in the nearest port designated as a border crossing point in order to report the vessel's presence.

3.2.7. During those checks, a document containing all the technical characteristics of the vessel and the names of the persons on board shall be handed in. A copy of that document shall be given to the authorities in the ports of entry and departure. As long as the vessel remains in the territorial

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waters of one of the Member States, a copy of that document shall be included amongst the ship's papers.

Coastal fishing

3.2.8. By way of derogation from Articles 4 and 7, the crews of coastal fisheries vessels which return every day or within 36 hours to the port of registration or to any other port situated in the territory of the Member States without docking in a port situated in the territory of a third country shall not be systematically checked. Nevertheless, the assessment of the risks of illegal immigration, in particular where the coastline of a third country is located in the immediate vicinity of the territory of the Member State concerned, shall be taken into account in order to determine the frequency of the checks to be carried out. According to those risks, checks on persons and/or a physical search of the vessel shall be carried out.

3.2.9. The crews of coastal fisheries vessels not registered in a port situated in the territory of a Member State shall be checked in accordance with the provisions relating to seamen.

The ship's captain shall notify the competent authorities of any alteration to the crew list and of the presence of any passengers.

Ferry connections

3.2.10. Checks shall be carried out on persons on board ferry connections with ports situated in third countries. The following rules shall apply:

(a) where possible, Member States shall provide separate lanes, in accordance with Article 9;

(b) checks on foot passengers shall be carried out individually;

(c) checks on vehicle occupants shall be carried out while they are at the vehicle;

(d) ferry passengers travelling by coach shall be considered as foot passengers. Those passengers shall alight from the coach for the checks;

(e) checks on drivers of heavy goods vehicles and any accompanying persons shall be conducted while the occupants are at the vehicle. Those checks will in principle be organised separately from checks on the other passengers;

(f) to ensure that checks are carried out quickly, there shall be an adequate number of gates;

(g) so as to detect illegal immigrants in particular, random searches shall be made on the means of transport used by the passengers, and where applicable on the loads and other goods stowed in the means of transport;

(h) ferry crew members shall be dealt with in the same way as commercial ship crew members.

4. **Inland waterways shipping**

4.1. 'Inland waterways shipping involving the crossing of an external border' covers the use, for business or pleasure purposes, of all types of boat and floating vessels on rivers, canals and lakes.

4.2. As regards boats used for business purposes, the captain and the persons employed on board who appear on the crew list and members of the families of those persons who live on board shall be regarded as crew members or equivalent.

4.3. The relevant provisions of points 3.1 to 3.2 shall apply *mutatis mutandis* to checks on inland waterways shipping.

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ANNEX VII

Special rules for certain categories of persons

1. **Heads of State**

By way of derogation from Article 5 and Articles 7 to 13, Heads of State and the members of their delegation, whose arrival and departure have been officially announced through diplomatic channels to the border guards, may not be subject to border checks.

2. **Pilots of aircraft and other crew members**

2.1. By way of derogation from Article 5 the holders of a pilot's licence or a crew member certificate as provided for in Annex 9 to the Civil Aviation Convention of 7 December 1944 may, in the course of their duties and on the basis of those documents:

(a) embark and disembark in the stop-over airport or the airport of arrival situated in the territory of a Member State;

(b) enter the territory of the municipality of the stop-over airport or the airport of arrival situated in the territory of a Member State;

(c) go, by any means of transport, to an airport situated in the territory of a Member State in order to embark on an aircraft departing from that same airport.

In all other cases, the requirements provided for by Article 5(1) shall be fulfilled.

2.2. Articles 6 to 13 shall apply to checks on aircraft crew members. Wherever possible, priority will be given to checks on aircraft crews. Specifically, they will be checked either before passengers or at special locations set aside for the purpose. By way of derogation from Article 7, crews known to staff responsible for border controls in the performance of their duties may be subject to random checks only.

3. **Seamen**

3.1. By way of derogation from Articles 4 and 7, Member States may authorise seamen holding a seafarer's identity document issued in accordance with the Geneva Convention of 19 June 2003 (No 185), the London Convention of 9 April 1965 and the relevant national law, to enter into the territory of the Member States by going ashore to stay in the area of the port where their ships call or in the adjacent municipalities without presenting themselves at a border crossing point, on condition that they appear on the crew list, which has previously been submitted for checking by the competent authorities, of the ship to which they belong.

However, according to the assessment of the risks of internal security and illegal immigration, seamen shall be subject to a check in accordance with Article 7 by the border guards before they go ashore.

If a seaman constitutes a threat to public policy, internal security or public health, he may be refused permission to go ashore.

3.2. Seamen who intend to stay outside the municipalities situated in the vicinity of ports shall comply with the conditions for entry to the territory of the Member States, as laid down in Article 5(1).

4. **Holders of diplomatic, official or service passports and members of international organisations**

4.1. In view of the special privileges or immunities they enjoy, the holders of diplomatic, official or service passports issued by third countries or their Governments recognised by the Member States, as well as the holders of documents issued by the international organisations listed in point 4.4 who are travelling in the course of their duties, may be given priority over other travellers at border crossing points even though they remain, where applicable, subject to the requirement for a visa.

By way of derogation from Article 5(1)(c), persons holding those documents shall not be required to prove that they have sufficient means of subsistence.

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4.2. If a person presenting himself or herself at the external border invokes privileges, immunities and exemptions, the border guard may require him or her to provide evidence of his or her status by producing the appropriate documents, in particular certificates issued by the accrediting State or a diplomatic passport or other means. If he or she has doubts, the border guard may, in case of urgent need, apply direct to the Ministry of Foreign Affairs.

4.3. Accredited members of diplomatic missions and of consular representations and their families may enter the territory of the Member States on presentation of the card referred to in Article 19(2) and of the document authorising them to cross the border. Moreover, by way of derogation from Article 13 border guards may not refuse the holders of diplomatic, official or service passports entry to the territory of the Member States without first consulting the appropriate national authorities. This shall also apply where an alert has been entered in the SIS for such persons.

4.4. The documents issued by the international organisations for the purposes specified in point 4.1 are in particular the following:

— United Nations *laissez-passer* issued to staff of the United Nations and subordinate agencies under the Convention on Privileges and Immunities of Specialised Agencies adopted by the United Nations General Assembly on 21 November 1947 in New York,

— European Community (EC) *laissez-passer*,

— European Atomic Energy Community (Euratom) *laissez-passer*,

— legitimacy certificate issued by the Secretary-General of the Council of Europe,

— documents issued pursuant to paragraph 2 of Article III of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Force (military ID cards accompanied by a travel order, travel warrant, or an individual or collective movement order) as well as documents issued in the framework of the Partnership for Peace.

5. **Cross-border workers**

5.1. The procedures for checking cross-border workers are governed by the general rules on border control, in particular Articles 7 and 13.

5.2. By way of derogation from Article 7, cross-border workers who are well known to the border guards owing to their frequent crossing of the border at the same border crossing point and who have not been revealed by an initial check to be the subject of an alert in the SIS or in a national data file shall be subject only to random checks to ensure that they hold a valid document authorising them to cross the border and fulfil the necessary entry conditions. Thorough checks shall be carried out on those persons from time to time, without warning and at irregular intervals.

5.3. The provisions of point 5.2 may be extended to other categories of regular cross-border commuters.

6. **Minors**

6.1. Border guards shall pay particular attention to minors, whether travelling accompanied or unaccompanied. Minors crossing an external border shall be subject to the same checks on entry and exit as adults, as provided for in this Regulation.

6.2. In the case of accompanied minors, the border guard shall check that the persons accompanying minors have parental care over them, especially where minors are accompanied by only one adult and there are serious grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental care over them. In the latter case, the border guard shall carry out a further investigation in order to detect any inconsistencies or contradictions in the information given.

6.3. In the case of minors travelling unaccompanied, border guards shall ensure, by means of thorough checks on travel documents and supporting documents, that the minors do not leave the territory against the wishes of the person(s) having parental care over them.

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ANNEX VIII

Name of State

Logo of State ……. (Name of Office)

_____

_____ (1)

APPROVAL OF THE EVIDENCE REGARDING THE RESPECT OF THE CONDITION OF THE DURATION OF A SHORT STAY IN CASES WHERE THE TRAVEL DOCUMENT DOES NOT BEAR AN ENTRY STAMP

On _____ at (time) _____ at (place) _____

We, the undersigning authority, _____ have before us:

Surname _____ First name _____

Date of birth _____ Place of birth _____ Sex: _____

Nationality _____ Resident in _____

Travel document _____ number _____

Issued in _____ on _____

Visa number _____ (if applicable) issued by _____

for a period of _____ days on the following grounds: _____

Having regard to the evidence relating to the duration of his/her stay on the territory of the Member States that he/she) has provided, he/she) is considered to have entered the territory of the Member State _____ on _____ at _____ at the border crossing point _____

Contact details of the undersigning authority:

Tel _____

Fax:_____

e-mail:_____

The person concerned will receive a copy of this document.

Person concerned	Officer responsible + stamp

(1) No logo is required for Norway and Iceland.

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COUNCIL REGULATION (EC) No 2007/2004

of 26 October 2004

establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

(OJ L 349, 25.11.2004, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007	L 199	30	31.7.2007
►**M2**	Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011	L 304	1	22.11.2011

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COUNCIL REGULATION (EC) No 2007/2004

of 26 October 2004

establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(2)(a) and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Whereas:

(1) Community policy in the field of the EU external borders aims at an integrated management ensuring a uniform and high level of control and surveillance, which is a necessary corollary to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice. To this end, the establishment of common rules on standards and procedures for the control of external borders is foreseen.

(2) The efficient implementation of the common rules calls for increased coordination of the operational cooperation between the Member States.

(3) Taking into account the experiences of the External Borders Practitioners' Common Unit, acting within the Council, a specialised expert body tasked with improving the coordination of operational cooperation between Member States in the field of external border management should therefore be established in the shape of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as the Agency).

(4) The responsibility for the control and surveillance of external borders lies with the Member States. The Agency should facilitate the application of existing and future Community measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures.

(5) Effective control and surveillance of external borders is a matter of the utmost importance to Member States regardless of their geographical position. Accordingly, there is a need for promoting solidarity between Member States in the field of external border management. The establishment of the Agency, assisting Member States with implementing the operational aspects of external border management, including return of third-country nationals illegally present in the Member States, constitutes an important step in this direction.

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[1] Opinion of 9 March 2004 (not yet published in the Official Journal).
[2] OJ C 108, 30.4.2004, p. 97.

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(6) Based on a common integrated risk analysis model, the Agency should carry out risk analyses in order to provide the Community and the Member States with adequate information to allow for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of external borders.

(7) The Agency should provide training at European level for national instructors of border guards and additional training and seminars related to control and surveillance at external borders and removal of third-country nationals illegally present in the Member States for officers of the competent national services. The Agency may organise training activities in cooperation with Member States on their territory.

(8) The Agency should follow up on the developments in scientific research relevant for its field and disseminate this information to the Commission and to the Member States.

(9) The Agency should manage lists of technical equipment provided by the Member States, thereby contributing to the 'pooling' of material resources.

(10) The Agency should also support Member States in circumstances requiring increased technical and operational assistance at external borders.

(11) In most Member States, the operational aspects of return of third-country nationals illegally present in the Member States fall within the competencies of the authorities responsible for controlling external borders. As there is a clear added value in performing these tasks at European level, the Agency should, subject to the Community return policy, accordingly provide the necessary assistance for organising joint return operations of Member States and identify best practices on the acquisition of travel documents and the removal of third-country nationals illegally present in the territories of the Member States.

(12) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency may cooperate with Europol, the competent authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty. The Agency should facilitate the operational cooperation between Member States and third countries in the framework of the external relations policy of the European Union.

(13) Building upon the experiences of the External Borders Practitioners' Common Unit and the operational and training centres specialised in the different aspects of control and surveillance of land, air and maritime borders respectively, which have been set up by Member States, the Agency may itself create specialised branches responsible for dealing with land, air and maritime borders.

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(14) The Agency should be independent as regards technical matters and have legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the implementing powers, which are conferred upon it by this Regulation.

(15) The Commission and the Member States should be represented within a Management Board in order to control effectively the functions of the Agency. The Board should, where possible, consist of the operational heads of the national services responsible for border guard management or their representatives. This Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency and appoint the Executive Director and his/her deputy.

(16) In order to guarantee the full autonomy and independence of the Agency, it should be granted an autonomous budget whose revenue comes essentially from a contribution from the Community. The Community budgetary procedure should be applicable as far as the Community contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.

(17) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [1] should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) [2].

(18) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [3] should apply to the Agency.

(19) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [4] applies to the processing of personal data by the Agency.

(20) The development of the policy and legislation on external border control and surveillance remains a responsibility of the EU institutions, in particular the Council. Close coordination between the Agency and these institutions should be guaranteed.

(21) Since the objectives of this Regulation, namely the need for creating an integrated management of operational cooperation at the external borders of the Member States of the European Union,

[1] OJ L 136, 31.5.1999, p. 1.
[2] OJ L 136, 31.5.1999, p. 15.
[3] OJ L 145, 31.5.2001, p. 43.
[4] OJ L 8, 12.1.2001, p. 1.

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cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 Regulation does not go beyond what is necessary in order to achieve those objectives.

(22) This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

(23) As regards Iceland and Norway, this Regulation constitutes a development of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC ([1]) on certain arrangements for the application of that Agreement. Consequently, delegations of the Republic of Iceland and the Kingdom of Norway should participate as members of the Management Board of the Agency, albeit with limited voting rights. In order to determine the further modalities allowing for the full participation of the Republic of Iceland and the Kingdom of Norway in the activities of the Agency, a further arrangement should be concluded between the Community and these States.

(24) 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 taking part in the adoption of this Regulation and is not bound by it, or subject to its application. Given that this Regulation builds upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law or not.

(25) This Regulation constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis ([2]). The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(26) This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis ([3]). Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

([1]) OJ L 176, 10.7.1999, p. 31.
([2]) OJ L 131, 1.6.2000, p. 43.
([3]) OJ L 64, 7.3.2002, p. 20.

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(27) The Agency should facilitate the organisation of operational actions in which the Member States may avail themselves of the expertise and facilities which Ireland and the United Kingdom may be willing to offer, in accordance with modalities to be decided on a case-by-case basis by the Management Board. To that end, representatives of Ireland and the United Kingdom should be invited to attend all the meetings of the Management Board in order to allow them to participate fully in the deliberations for the preparation of such operational actions.

(28) A controversy exists between the Kingdom of Spain and the United Kingdom on the demarcation of the borders of Gibraltar.

(29) The suspension of the applicability of this Regulation to the borders of Gibraltar does not imply any change in the respective positions of the States concerned,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER

Article 1

Establishment of the Agency

1. A European Agency for the Management of Operational Cooperation at the External Borders (the Agency) is hereby established with a view to improving the integrated management of the external borders of the Member States of the European Union.

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2. While considering that the responsibility for the control and surveillance of external borders lies with the Member States, the Agency, as a body of the Union as defined in Article 15 and in accordance with Article 19 of this Regulation, shall facilitate and render more effective the application of existing and future Union measures relating to the management of external borders, in particular the Schengen Borders Code established by Regulation (EC) No 562/2006 ([1]). It shall do so by ensuring the coordination of the actions of the Member States in the implementation of those measures, thereby contributing to an efficient, high and uniform level of control on persons and of surveillance of the external borders of the Member States.

The Agency shall fulfil its tasks in full compliance with the relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter of Fundamental Rights'); the relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ('the Geneva Convention'); obligations related to access to international protection, in particular the principle of *non-refoulement*; and fundamental rights, and taking into account the reports of the Consultative Forum referred to in Article 26a of this Regulation.

([1]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

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3. The Agency shall also provide the Commission and the Member States with the necessary technical support and expertise in the management of the external borders and promote solidarity between Member States, especially those facing specific and disproportionate pressures.

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Article 1a

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'external borders of the Member States' means the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply;

▼M2

1a. 'European Border Guard Teams' means for the purpose of Article 3, Article 3b, Article 3c, Article 8 and Article 17, teams to be deployed during joint operations and pilot projects; for the purpose of Articles 8a to 8g, teams to be deployed for rapid border interventions ('rapid interventions') within the meaning of Regulation (EC) No 863/2007 ([1]), and for the purpose of points (ea) and (g) of Article 2(1) and Article 5, teams to be deployed during joint operations, pilot projects and rapid interventions;

2. 'host Member State' means a Member State in which a joint operation, a pilot project or a rapid intervention takes place or from which it is launched;

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3. 'home Member State' means the Member State of which a member of the team or the guest officer is a border guard;

▼M2

4. 'members of the teams' means border guards of Member States serving with the European Border Guard Teams other than those of the host Member State;

5. 'requesting Member State' means a Member State whose competent authorities request the Agency to deploy teams for rapid interventions on its territory;

▼M1

6. 'guest officers' means the officers of border guard services of Member States other than the host Member State participating in joint operations and pilot projects.

([1]) Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams (OJ L 199, 31.7.2007, p. 30).

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CHAPTER II

TASKS

Article 2

Main tasks

1. The Agency shall perform the following tasks:

(a) coordinate operational cooperation between Member States in the field of management of external borders;

(b) assist Member States on training of national border guards, including the establishment of common training standards;

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(c) carry out risk analyses, including the assessment of the capacity of Member States to face threats and pressures at the external borders;

(d) participate in the development of research relevant for the control and surveillance of external borders;

(da) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, taking into account that some situations may involve humanitarian emergencies and rescue at sea;

(e) assist Member States in circumstances requiring increased technical and operational assistance at the external borders, especially those Member States facing specific and disproportionate pressures;

(ea) set up European Border Guard Teams that are to be deployed during joint operations, pilot projects and rapid interventions;

(f) provide Member States with the necessary support, including, upon request, coordination or organisation of joint return operations;

(g) deploy border guards from the European Border Guard Teams to Member States in joint operations, pilot projects or in rapid interventions in accordance with Regulation (EC) No 863/2007;

(h) develop and operate, in accordance with Regulation (EC) No 45/2001, information systems that enable swift and reliable exchanges of information regarding emerging risks at the external borders, including the Information and Coordination Network established by Decision 2005/267/EC [1];

(i) provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems.

[1] Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services (OJ L 83, 1.4.2005, p. 48).

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1a. In accordance with Union and international law, no person shall be disembarked in, or otherwise handed over to the authorities of, a country in contravention of the principle of *non-refoulement*, or from which there is a risk of expulsion or return to another country in contravention of that principle. The special needs of children, victims of trafficking, persons in need of medical assistance, persons in need of international protection and other vulnerable persons shall be addressed in accordance with Union and international law.

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2. Without prejudice to the competencies of the Agency, Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

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Member States shall report to the Agency on those operational matters at the external borders outside the framework of the Agency. The Executive Director of the Agency ('the Executive Director') shall inform the Management Board of the Agency ('the Management Board') on those matters on a regular basis and at least once a year.

Article 2a

Code of Conduct

The Agency shall draw up and further develop a Code of Conduct applicable to all operations coordinated by the Agency. The Code of Conduct shall lay down procedures intended to guarantee the principles of the rule of law and respect for fundamental rights with particular focus on unaccompanied minors and vulnerable persons, as well as on persons seeking international protection, applicable to all persons participating in the activities of the Agency.

The Agency shall develop the Code of Conduct in cooperation with the Consultative Forum referred to in Article 26a.

Article 3

Joint operations and pilot projects at the external borders

1. The Agency shall evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States, including the requests of Member States related to circumstances requiring increased technical and operational assistance, especially in cases of specific and disproportionate pressures.

The Agency may itself initiate and carry out joint operations and pilot projects in cooperation with the Member States concerned and in agreement with the host Member States.

It may also decide to put its technical equipment at the disposal of Member States participating in the joint operations or pilot projects.

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Joint operations and pilot projects should be preceded by a thorough risk analysis.

1a. The Agency may terminate, after informing the Member State concerned, joint operations and pilot projects if the conditions to conduct those joint operations or pilot projects are no longer fulfilled.

The Member States participating in a joint operation or pilot project may request the Agency to terminate that joint operation or pilot project.

The home Member State shall provide for appropriate disciplinary or other measures in accordance with its national law in case of violations of fundamental rights or international protection obligations in the course of a joint operation or pilot project.

The Executive Director shall suspend or terminate, in whole or in part, joint operations and pilot projects if he/she considers that such violations are of a serious nature or are likely to persist.

1b. The Agency shall constitute a pool of border guards called European Border Guard Teams in accordance with Article 3b, for possible deployment during joint operations and pilot projects referred to in paragraph 1. It shall decide on the deployment of human resources and technical equipment in accordance with Articles 3a and 7.

2. The Agency may operate through its specialised branches provided for in Article 16 for the practical organisation of joint operations and pilot projects.

3. The Agency shall evaluate the results of the joint operations and pilot projects and transmit the detailed evaluation reports within 60 days following the end of those operations and projects to the Management Board, together with the observations of the Fundamental Rights Officer referred to in Article 26a. The Agency shall make a comprehensive comparative analysis of those results with a view to enhancing the quality, coherence and effectiveness of future joint operations and pilot projects and include it in its general report provided for in point (b) of Article 20(2).

4. The Agency shall finance or co-finance the joint operations and pilot projects referred to in paragraph 1, with grants from its budget in accordance with the financial rules applicable to the Agency.

5. Paragraphs 1a and 4 shall apply also to rapid interventions.

Article 3a

Organisational aspects of joint operations and pilot projects

1. The Executive Director shall draw up an operational plan for the joint operations and pilot projects referred to in Article 3(1). The Executive Director and the host Member State, in consultation with the Member States participating in a joint operation or pilot project, shall agree on the operational plan detailing the organisational aspects in due time before the envisaged beginning of that joint operation or pilot project.

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The operational plan shall cover all aspects considered necessary for carrying out the joint operation or the pilot project, including the following:

(a) a description of the situation, with modus operandi and objectives of the deployment, including the operational aim;

(b) the foreseeable duration of the joint operation or pilot project;

(c) the geographical area where the joint operation or pilot project will take place;

(d) a description of the tasks and special instructions for the guest officers, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;

(e) the composition of the teams of guest officers, as well as the deployment of other relevant staff;

(f) command and control provisions, including the names and ranks of the host Member State's border guards responsible for cooperating with the guest officers and the Agency, in particular those of the border guards who are in command during the period of deployment, and the place of the guest officers in the chain of command;

(g) the technical equipment to be deployed during the joint operation or pilot project, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;

(h) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;

(i) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(3);

(j) regarding sea operations, specific information on the application of the relevant jurisdiction and legislation in the geographical area where the joint operation or pilot project takes place, including references to international and Union law regarding interception, rescue at sea and disembarkation;

(k) modalities of cooperation with third countries, other Union agencies and bodies or international organisations.

2. Any amendments to or adaptations of the operational plan shall require the agreement of the Executive Director and the host Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

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3. The Agency shall, as part of its coordinating tasks, ensure the operational implementation of all the organisational aspects, including the presence of a staff member of the Agency during the joint operations and pilot projects referred to in this Article.

Article 3b

Composition and deployment of European Border Guard Teams

1. On a proposal by the Executive Director, the Management Board shall decide by an absolute majority of its members with a right to vote on the profiles and the overall number of border guards to be made available for the European Border Guard Teams. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall numbers. Member States shall contribute to the European Border Guard Teams via a national pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.

2. The contribution by Member States as regards their border guards to specific joint operations and pilot projects for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements, Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such a request shall be made at least 45 days before the intended deployment. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.

3. The Agency shall also contribute to the European Border Guard Teams with competent border guards seconded by the Member States as national experts pursuant to Article 17(5). The contribution by Member States as regards the secondment of their border guards to the Agency for the following year shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States.

In accordance with those agreements, Member States shall make the border guards available for secondment, unless that would seriously affect the discharge of national tasks. In such situations Member States may recall their seconded border guards.

The maximum duration of such secondments shall not exceed six months in a 12-month period. The seconded border guards shall, for the purpose of this Regulation, be considered as guest officers and have the tasks and powers provided for in Article 10. The Member State having seconded the border guards in question shall be considered as the home Member State, as defined in point 3 of Article 1a, for the purpose of applying Articles 3c, 10 and 10b. Other staff employed by the Agency on a temporary basis who are not qualified to perform border control functions shall only be deployed during joint operations and pilot projects for coordination tasks.

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4. Members of the European Border Guard Teams shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures, and human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

5. In accordance with Article 8g, the Agency shall nominate a coordinating officer for each joint operation or pilot project where members of the European Border Guard Teams will be deployed.

The role of the coordinating officer shall be to foster cooperation and coordination amongst host and participating Member States.

6. The Agency shall meet the costs incurred by the Member States in making their border guards available pursuant to paragraph 1 of this Article for the European Border Guard Teams in accordance with Article 8h.

7. The Agency shall inform the European Parliament on an annual basis of the number of border guards that each Member State has committed to the European Border Guard Teams in accordance with this Article.

Article 3c

Instructions to the European Border Guard Teams

1. During deployment of European Border Guard Teams, the host Member State shall issue instructions to the teams in accordance with the operational plan referred to in Article 3a(1).

2. The Agency, via its coordinating officer as referred to in Article 3b(5), may communicate its views on the instructions referred to in paragraph 1 to the host Member State. If it does so, the host Member State shall take those views into consideration.

3. In accordance with Article 8g, the host Member State shall give the coordinating officer all necessary assistance, including full access to the European Border Guard Teams at all times throughout the deployment.

4. Members of the European Border Guard Teams shall, while performing their tasks and exercising their powers, remain subject to the disciplinary measures of their home Member State.

Article 4

Risk analysis

The Agency shall develop and apply a common integrated risk analysis model.

It shall prepare both general and tailored risk analyses to be submitted to the Council and the Commission.

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For the purpose of risk analysis, the Agency may assess, after prior consultation with the Member States concerned, their capacity to face upcoming challenges, including present and future threats and pressures at the external borders of the Member States, especially for those Member States facing specific and disproportionate pressures. To that end, the Agency may assess the equipment and the resources of the Member States regarding border control. The assessment shall be based on information given by the Member States concerned, and on the reports and results of joint operations, pilot projects, rapid interventions and other activities of the Agency. Those assessments are without prejudice to the Schengen evaluation mechanism.

The results of those assessments shall be presented to the Management Board.

For the purposes of this Article, Member States shall provide the Agency with all necessary information regarding the situation and possible threats at the external borders.

The Agency shall incorporate the results of a common integrated risk analysis model in its development of the common core curricula for the training of border guards referred to in Article 5.

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Article 5

Training

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The Agency shall provide border guards who are members of the European Border Guard Teams with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the annual work programme of the Agency.

The Agency shall also take the necessary initiatives to ensure that all border guards and other personnel of the Member States who participate in the European Border Guard Teams, as well as the staff of the Agency, have received, prior to their participation in operational activities organised by the Agency, training in relevant Union and international law, including fundamental rights and access to international protection and guidelines for the purpose of identifying persons seeking protection and directing them towards the appropriate facilities.

The Agency shall establish and further develop common core curricula for the training of border guards and provide training at European level for instructors of the national border guards of Member States, including with regard to fundamental rights, access to international protection and relevant maritime law.

The Agency shall draw up the common core curricula after consulting the Consultative Forum referred to in Article 26a.

Member States shall integrate the common core curricula in the training of their national border guards.

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The Agency shall also offer additional training courses and seminars on subjects related to the control and surveillance of the external borders and return of third country nationals for officers of the competent national services of Member States.

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The Agency may organise training activities in cooperation with Member States on their territory.

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The Agency shall establish an exchange programme enabling border guards participating in the European Border Guard Teams to acquire knowledge or specific know-how from experiences and good practices abroad by working with border guards in a Member State other than their own.

Article 6

Monitoring and contributing to research

The Agency shall proactively monitor and contribute to the developments in research relevant for the control and surveillance of the external borders and disseminate that information to the Commission and the Member States.

Article 7

Technical equipment

1. The Agency may acquire, itself or in co-ownership with a Member State, or lease technical equipment for external border control to be deployed during joint operations, pilot projects, rapid interventions, joint return operations or technical assistance projects in accordance with the financial rules applicable to the Agency. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the Management Board in accordance with Article 29(9). Where the Agency acquires or leases major technical equipment, such as open sea and coastal patrol vessels or vehicles, the following conditions shall apply:

(a) in case of acquisition and co-ownership, the Agency shall agree formally with one Member State that the latter will provide for the registration of the equipment in accordance with the applicable legislation of that Member State;

(b) in case of leasing, the equipment shall be registered in a Member State.

On the basis of a model agreement drawn up by the Agency, the Member State of registration and the Agency shall agree on modalities ensuring the periods of full availability of the co-owned assets for the Agency, as well as on the terms of use of the equipment.

The Member State of registration or the supplier of technical equipment shall provide the necessary experts and technical crew to operate the technical equipment in a legally sound and safe manner.

2. The Agency shall set up and keep centralised records of equipment in a technical equipment pool composed of equipment owned either by the Member States or by the Agency and equipment co-owned by the Member States and the Agency for external border control purposes. The technical equipment pool shall contain a

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minimum number per type of technical equipment as referred to in paragraph 5 of this Article. The equipment listed in the technical equipment pool shall be deployed during the activities referred to in Articles 3, 8a and 9.

3. Member States shall contribute to the technical equipment pool referred to in paragraph 2. The contribution by Member States to the pool and deployment of the technical equipment for specific operations shall be planned on the basis of annual bilateral negotiations and agreements between the Agency and Member States. In accordance with those agreements and to the extent that it forms part of the minimum number of technical equipment for a given year, Member States shall make their technical equipment available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. Such request shall be made at least 45 days before the intended deployment. The contributions to the technical equipment pool shall be reviewed annually.

4. The Agency shall manage the records of the technical equipment pool as follows:

(a) classification by type of equipment and by type of operation;

(b) classification by owner (Member State, Agency, other);

(c) overall numbers of required equipment;

(d) crew requirements if applicable;

(e) other information, such as registration details, transportation and maintenance requirements, national applicable export regimes, technical instructions, or other relevant information to handle the equipment correctly.

5. The Agency shall finance the deployment of the technical equipment which forms part of the minimum number of technical equipment provided by a given Member State for a given year. The deployment of technical equipment which does not form part of the minimum number of technical equipment shall be co-financed by the Agency up to a maximum of 100 % of the eligible expenses, taking into account the particular circumstances of the Member States deploying such technical equipment.

On a proposal of the Executive Director, the Management Board shall decide, in accordance with Article 24, on a yearly basis, on the rules relating to technical equipment, including the required overall minimum numbers per type of technical equipment, the conditions for deployment and reimbursement of costs. For budgetary purposes that decision should be taken by the Management Board by 31 March each year.

The Agency shall propose the minimum number of technical equipment in accordance with its needs, notably in order to be able to carry out joint operations, pilot projects, rapid interventions and joint return operations, in accordance with the its work programme for the year in question.

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If the minimum number of technical equipment proves to be insufficient to carry out the operational plan agreed for joint operations, pilot projects, rapid interventions or joint return operations, the Agency shall revise it on the basis of justified needs and of an agreement with the Member States.

6. The Agency shall report on the composition and the deployment of equipment which is part of the technical equipment pool to the Management Board on a monthly basis. Where the minimum number of technical equipment referred to in paragraph 5 is not reached, the Executive Director shall inform the Management Board without delay. The Management Board shall take a decision on the prioritisation of the deployment of the technical equipment urgently and take the appropriate steps to remedy the identified shortcomings. It shall inform the Commission of the identified shortcomings and the steps taken. The Commission shall subsequently inform the European Parliament and the Council thereof, communicating as well its own assessment.

7. The Agency shall inform the European Parliament on an annual basis of the number of technical equipment that each Member State has committed to the technical equipment pool in accordance with this Article.

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Article 8

Support to Member States in circumstances requiring increased technical and operational assistance at external borders

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1. Without prejudice to Article 78(3) of the Treaty on the Functioning of the European Union ('TFEU'), one or more Member States facing specific and disproportionate pressures and confronted with circumstances requiring increased technical and operational assistance when implementing their obligations with regard to control and surveillance of external borders may request the Agency for assistance. The Agency shall in accordance with Article 3 organise the appropriate technical and operational assistance for the requesting Member State(s).

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2. Under the circumstances referred to in paragraph 1, the Agency can:

(a) assist on matters of coordination between two or more Member States with a view to tackling the problems encountered at external borders;

(b) deploy its experts to support the competent national authorities of the Member State(s) involved for the appropriate duration;

▼M2

(c) deploy border guards from the European Border Guard Teams.

▼M2

3. The Agency may acquire technical equipment for checks and surveillance of external borders to be used by its experts and within the framework of rapid interventions for their duration.

Article 8a

Rapid interventions

At the request of a Member State faced with a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally, the Agency may deploy for a limited period one or more European Border Guard Teams ('team(s)') on the territory of the requesting Member State for the appropriate duration in accordance with Article 4 of Regulation (EC) No 863/2007.

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Article 8b

Composition of teams

1. In the event of a situation as described in Article 8a, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards from their national pool which they are able to make available within five days to be members of a team. Member States shall make the border guards available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

2. When determining the composition of a team for deployment, the Executive Director shall take into account the particular circumstances which the requesting Member State is facing. The team shall be composed in accordance with the operational plan referred to in Article 8e.

Article 8c

Training and exercises

The Agency shall provide border guards who are part of the Rapid Pool, as referred to in Article 4(2) of Regulation (EC) No 863/2007 with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the Agency's annual working programme.

Article 8d

Procedure for deciding on deployment of the teams

1. A request for deployment of the teams in accordance with Article 8a shall include a description of the situation, possible aims and envisaged needs for the deployment. If required, the Executive Director may send experts from the Agency to assess the situation at the external borders of the requesting Member State.

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2. The Executive Director shall immediately inform the Management Board of a Member State's request for deployment of the teams.

3. When deciding on the request of a Member State, the Executive Director shall take into account the findings of the Agency's risk analyses as well as any other relevant information provided by the requesting Member State or another Member State.

4. The Executive Director shall take a decision on the request for deployment of the teams as soon as possible and no later than five working days from the date of the receipt of the request. The Executive Director shall simultaneously notify the requesting Member State and the Management Board in writing of the decision. The decision shall state the main reasons on which it is based.

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5. If the Executive Director decides to deploy one or more teams, the Agency together with the requesting Member State shall draw up an operational plan in accordance with Article 8e immediately, and in any event no later than five working days from the date of the decision.

▼M1

6. As soon as the operational plan has been agreed, the Executive Director shall inform the Member States of the requested number and profiles of border guards which are to be deployed in the teams. This information shall be provided, in writing, to the national contact points designated under Article 8f and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.

7. If the Executive Director is absent or indisposed, the decisions related to the deployment of the teams shall be taken by the Deputy Executive Director.

8. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

9. Deployment of the teams shall take place no later than five working days after the date on which the operational plan is agreed between the Executive Director and the requesting Member State.

Article 8e

Operational plan

1. The Executive Director and the requesting Member State shall agree on an operational plan detailing the precise conditions for deployment of the teams. The operational plan shall include the following:

(a) description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;

(b) the foreseeable duration of deployment of the teams;

(c) the geographical area of responsibility in the requesting Member State where the teams will be deployed;

▼M1

(d) description of tasks and special instructions for members of the teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;

▼M2

(e) the composition of the teams, as well as the deployment of other relevant staff;

(f) command and control provisions, including the names and ranks of the border guards of the host Member State responsible for cooperating with the teams, in particular of those border guards who are in command of the teams during the period of deployment, and the place of the teams in the chain of command;

(g) the technical equipment to be deployed together with the teams, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;

(h) detailed provisions on immediate incident reporting by the Agency to the Management Board and to relevant national public authorities;

(i) a reporting and evaluation scheme containing benchmarks for the evaluation report and final date of submission of the final evaluation report in accordance with Article 3(3);

(j) regarding sea operations, specific information on the application of the relevant jurisdiction and legislation in the geographical area where the rapid intervention takes place, including references to international and Union law regarding interception, rescue at sea and disembarkation;

(k) modalities of cooperation with third countries, other Union agencies and bodies or international organisations.

▼M1

2. Any amendments to or adaptations of the operational plan shall require the agreement of both the Executive Director and the requesting Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

Article 8f

National contact point

Member States shall designate a national contact point for communication with the Agency on all matters pertaining to the teams. The national contact point shall be reachable at all times.

Article 8g

Coordinating Officer

1. The Executive Director shall appoint one or more experts from the staff of the Agency to be deployed as coordinating officer. The Executive Director shall notify the host Member State of the appointment.

▼M1

2. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the teams. In particular, the coordinating officer shall:

(a) act as an interface between the Agency and the host Member State;

(b) act as an interface between the Agency and the members of the teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;

(c) monitor the correct implementation of the operational plan;

(d) report to the Agency on all aspects of the deployment of the teams.

3. In accordance with Article 25(3)f, the Executive Director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

4. In discharging his duties, the coordinating officer shall take instructions only from the Agency.

Article 8h

Costs

▼M2

1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards for the purposes mentioned in Article 3(1b), Article 8a and Article 8c:

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(a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;

(b) costs related to vaccinations;

(c) costs related to special insurance needs;

(d) costs related to health care;

(e) daily subsistence allowances, including accommodation costs;

(f) costs related to the Agency's technical equipment.

2. Detailed rules concerning the payment of the daily subsistence allowance of members of the teams shall be established by the Management Board.

▼M2

Article 9

Return cooperation

1. Subject to the return policy of the Union, and in particular Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [1], and

[1] OJ L 348, 24.12.2008, p. 98.

▼M2

without entering into the merits of return decisions, the Agency shall provide the necessary assistance, and at the request of the participating Member States ensure the coordination or the organisation of joint return operations of Member States, including through the chartering of aircraft for the purpose of such operations. The Agency shall finance or co-finance the operations and projects referred to in this paragraph with grants from its budget in accordance with the financial rules applicable to the Agency. The Agency may also use financial means of the Union available in the field of return. The Agency shall ensure that in its grant agreements with Member States any financial support is conditional upon the full respect for the Charter of Fundamental Rights.

1a. The Agency shall develop a Code of Conduct for the return of illegally present third-country nationals which shall apply during all joint return operations coordinated by the Agency, describing common standardised procedures which should simplify the organisation of joint return operations and assure return in a humane manner and with full respect for fundamental rights, in particular the principles of human dignity, prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security and the rights to the protection of personal data and non-discrimination.

1b. The Code of Conduct shall in particular pay attention to the obligation set out in Article 8(6) of Directive 2008/115/EC to provide for an effective forced-return monitoring system and to the Fundamental Rights Strategy referred to in Article 26a(1) of this Regulation. The monitoring of joint return operations should be carried out on the basis of objective and transparent criteria and cover the whole joint return operation from the pre-departure phase until the hand-over of the returnees in the country of return.

1c. Member States shall regularly inform the Agency of their needs for assistance or coordination by the Agency. The Agency shall draw up a rolling operational plan to provide the requesting Member States with the necessary operational support, including technical equipment referred to in Article 7(1). The Management Board shall decide in accordance with Article 24 on a proposal of the Executive Director, on the content and modus operandi of the rolling operational plan.

2. The Agency shall cooperate with the competent authorities of the third countries referred to in Article 14 to identify best practices on the acquisition of travel documents and the return of illegally present third-country nationals.

▼M1

Article 10

Tasks and powers of guest officers

1. Guest officers shall have the capacity to perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) [1], and that are necessary for the realisation of the objectives of that Regulation.

[1] OJ L 105, 13.4.2006, p. 1.

▼M2

2. While performing their tasks and exercising their powers, guest officers shall comply with Union and international law, and shall observe fundamental rights and the national law of the host Member State.

▼M1

3. Guest officers may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State.

4. Guest officers shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union and the Agency on their uniforms, identifying them as participating in a joint operation or pilot project. For the purposes of identification vis-à-vis the national authorities of the host Member State and its citizens, guest officers shall at all times carry an accreditation document, as provided for in Article 10a, which they shall present on request.

5. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.

6. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.

7. By way of derogation from paragraph 6, service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of guest officers or of other persons, in accordance with the national law of the host Member State.

8. For the purpose of this Regulation, the host Member State may authorise guest officers to consult its national and European databases which are necessary for border checks and surveillance. The guest officers shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

▼M1

9. The consultation as referred to in paragraph 8 shall be carried out in accordance with Community law and the national law of the host Member State in the area of data protection.

10. Decisions to refuse entry in accordance with Article 13 of Regulation (EC) No 562/2006 shall be taken only by border guards of the host Member State.

Article 10a

Accreditation document

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the European Union to guest officers for the purpose of identifying them and as proof of the holder's rights to perform the tasks and exercise the powers as referred to in Article 10(1). The document shall include the following features of the guest officer:

(a) name and nationality;

(b) rank; and

(c) a recent digitised photograph.

2. The document shall be returned to the Agency at the end of the joint operation or pilot project.

Article 10b

Civil liability

1. Where guest officers are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.

2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.

3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.

4. Any dispute between Member States relating to the application of paragraphs 2 and 3 which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Communities in accordance with Article 239 of the Treaty.

5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs related to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or wilful misconduct.

▼M1

Article 10c

Criminal liability

During the deployment of a joint operation or a pilot project, guest officers shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

▼M2

Article 11

Information exchange systems

The Agency may take all necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and, where appropriate, the Union agencies referred to in Article 13. It shall develop and operate an information system capable of exchanging classified information with those actors, including personal data referred to in Articles 11a, 11b and 11c.

The Agency may take all necessary measures to facilitate the exchange of information relevant for its tasks with the United Kingdom and Ireland if it relates to the activities in which they participate in accordance with Article 12 and Article 20(5).

Article 11a

Data protection

Regulation (EC) No 45/2001 shall apply to the processing of personal data by the Agency.

The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor. Without prejudice to Articles 11b and 11c, the Agency may process personal data for administrative purposes.

Article 11b

Processing of personal data in the context of joint return operations

1. In performing its tasks of organising and coordinating the joint return operations of Member States referred to in Article 9, the Agency may process personal data of persons who are subject to such joint return operations.

2. The processing of such personal data shall respect the principles of necessity and proportionality. In particular, it shall be strictly limited to those personal data which are required for the purposes of the joint return operation.

3. The personal data shall be deleted as soon as the purpose for which they have been collected has been achieved and no later than 10 days after the end of the joint return operation.

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4. Where the personal data are not transferred to the carrier by a Member State, the Agency may transfer such data.

5. This Article shall be applied in accordance with the measures referred to in Article 11a.

Article 11c

Processing of personal data collected during joint operations, pilot projects and rapid interventions

1. Without prejudice to the competence of Member States to collect personal data in the context of joint operations, pilot projects and rapid interventions, and subject to the limitations set out in paragraphs 2 and 3, the Agency may further process personal data collected by the Member States during such operational activities and transmitted to the Agency in order to contribute to the security of the external borders of the Member States.

2. Such further processing of personal data by the Agency shall be limited to personal data regarding persons who are suspected, on reasonable grounds, by the competent authorities of the Member States of involvement in cross-border criminal activities, in facilitating illegal migration activities or in human trafficking activities as defined in points (a) and (b) of Article 1(1) of Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence ([1]).

3. Personal data referred to in paragraph 2 shall be further processed by the Agency only for the following purposes:

(a) the transmission, on a case-by-case basis, to Europol or other Union law enforcement agencies, subject to Article 13;

(b) the use for the preparation of risk analyses referred to in Article 4. In the result of the risk-analyses, data shall be depersonalised.

4. The personal data shall be deleted as soon as they have been transmitted to Europol or other Union agencies or used for the preparation of risk analyses referred to in Article 4. The term of storage shall in any event not exceed three months after the date of the collection of those data.

5. The processing of such personal data shall respect the principles of necessity and proportionality. The personal data shall not be used by the Agency for the purpose of investigations, which remain under the responsibility of the competent authorities of the Member States.

In particular, it shall be strictly limited to those personal data which are required for the purposes referred to in paragraph 3.

6. Without prejudice to Regulation (EC) No 1049/2001, onward transmission or other communication of such personal data processed by the Agency to third countries or other third parties shall be prohibited.

([1]) OJ L 328, 5.12.2002, p. 17.

▼M2

7. This Article shall be applied in accordance with the measures referred to in Article 11a.

Article 11d

Security rules on the protection of classified information and non-classified sensitive information

1. The Agency shall apply the Commission's rules on security as set out in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure [1]. Those rules shall apply, inter alia, to the exchange, processing and storage of classified information.

2. The Agency shall apply the security principles relating to the processing of non-classified sensitive information as set out in the Decision referred to in paragraph 1 of this Article and as implemented by the Commission. The Management Board shall establish measures for the application of those security principles.

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Article 12

Cooperation with Ireland and the United Kingdom

1. The Agency shall facilitate operational cooperation of the Member States with Ireland and the United Kingdom in matters covered by its activities and to the extent required for the fulfilment of its tasks set out in Article 2(1).

2. Support to be provided by the Agency pursuant to Article 2(1)(f) shall cover the organisation of joint return operations of Member States in which Ireland or the United Kingdom, or both, also participate.

3. The application of this Regulation to the borders of Gibraltar shall be suspended until the date on which an agreement is reached on the scope of the measures concerning the crossing by persons of the external borders of the Member States.

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Article 13

Cooperation with Union agencies and bodies and international organisations

The Agency may cooperate with Europol, the European Asylum Support Office, the European Union Agency for Fundamental Rights ('the Fundamental Rights Agency'), other Union agencies and bodies, and the international organisations competent in matters covered by this Regulation within the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the TFEU and the provisions on the competence of those bodies. In every case the Agency shall inform the European Parliament of any such arrangements.

[1] OJ L 317, 3.12.2001, p. 1.

▼M2

Onward transmission or other communication of personal data processed by the Agency to other Union agencies or bodies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor.

The Agency may also, with the agreement of the Member State(s) concerned, invite observers of Union agencies and bodies or international organisations to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of those activities, may contribute to the improvement of cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member State(s) concerned regarding the activities referred to in Articles 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). Those observers shall receive the appropriate training from the Agency prior to their participation.

Article 14

Facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to human rights.

The Agency and the Member States shall comply with norms and standards at least equivalent to those set by Union legislation also when cooperation with third countries takes place on the territory of those countries.

The establishment of cooperation with third countries shall serve to promote European border management standards, also covering respect for fundamental rights and human dignity.

2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation within the framework of working arrangements concluded with those authorities, in accordance with the relevant provisions of the TFEU. Those working arrangements shall be purely related to the management of operational cooperation.

3. The Agency may deploy its liaison officers, who should enjoy the highest possible protection to carry out their duties, in third countries. They shall form part of the local or regional cooperation networks of immigration liaison officers of the Member States set up pursuant to

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Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network ([1]). Liaison officers shall only be deployed to third countries in which border management practices comply with minimum human rights standards. Their deployment shall be approved by the Management Board. Within the framework of the external relations policy of the Union, priority for deployment should be given to those third countries, which on the basis of risk analysis constitute a country of origin or transit regarding illegal migration. On a reciprocal basis the Agency may receive liaison officers posted by those third countries also, for a limited period of time. The Management Board shall adopt, on a proposal of the Executive Director and in accordance with Article 24, the list of priorities on a yearly basis.

4. The tasks of the Agency's liaison officers shall include, in compliance with Union law and in accordance with fundamental rights, establishing and maintaining contacts with the competent authorities of the third country to which they are assigned with a view to contributing to the prevention of and fight against illegal immigration and the return of illegal migrants.

5. The Agency may benefit from Union funding in accordance with the provisions of the relevant instruments supporting the external relations policy of the Union. It may launch and finance technical assistance projects in third countries regarding matters covered by this Regulation.

6. The Agency may also, with the agreement of the Member State(s) concerned invite observers from third countries to participate in its activities referred to in Articles 3, 4 and 5, to the extent that their presence is in accordance with the objectives of those activities, may contribute to improving cooperation and the exchange of best practices, and does not affect the overall safety of those activities. The participation of those observers may take place only with the agreement of the Member State(s) concerned regarding the activities referred to in Articles 4 and 5 and only with the agreement of the host Member State regarding those referred to in Article 3. Detailed rules on the participation of observers shall be included in the operational plan referred to in Article 3a(1). Those observers shall receive the appropriate training from the Agency prior to their participation.

7. When concluding bilateral agreements with third countries as referred to in Article 2(2), Member States may include provisions concerning the role and competence of the Agency, in particular regarding the exercise of executive powers by members of the teams deployed by the Agency during the joint operations or pilot projects referred to in Article 3.

8. The activities referred to in paragraphs 2 and 3 of this Article shall be subject to receiving a prior opinion of the Commission, and the European Parliament shall be fully informed of those activities as soon as possible.

([1]) OJ L 64, 2.3.2004, p. 1.

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CHAPTER III

STRUCTURE

Article 15

Legal status and location

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The Agency shall be a body of the Union. It shall have legal personality.

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In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

The Agency shall be independent in relation to technical matters.

It shall be represented by its Executive Director.

The seat of the Agency shall be decided by unanimity of the Council.

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Article 15a

Headquarters Agreement

The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State in which the Agency has its seat and the facilities to be made available by that Member State, as well as the specific rules applicable to the Executive Director, the Deputy Executive Director, the members of the Management Board, the staff of the Agency and members of their families, in that Member State shall be laid down in a Headquarters Agreement between the Agency and the Member State in which the Agency has its seat. The Headquarters Agreement shall be concluded after obtaining the approval of the Management Board. The Member State in which the Agency has its seat should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

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Article 16

Specialised branches

The Management Board of the Agency shall evaluate the need for, and decide upon the setting up of, specialised branches in the Member States, subject to their consent, taking into account that due priority should be given to the operational and training centres already established and specialised in the different aspects of control and surveillance of the land, air and maritime borders respectively.

The specialised branches of the Agency shall develop best practices with regard to the particular types of external borders for which they are responsible. The Agency shall ensure the coherence and uniformity of such best practices.

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Each specialised branch shall submit a detailed annual report to the Executive Director of the Agency on its activities and shall provide any other type of information relevant for the coordination of operational cooperation.

Article 17

Staff

1. The Staff Regulations of officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the institutions of the European Communities for the purposes of applying those Regulations and Conditions shall apply to the Agency's staff.

2. The powers conferred on the appointing authority by the Staff Regulations, and by the Conditions of employment of other servants, shall be exercised by the Agency in respect of its own staff.

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3. For the purpose of implementing Article 3b(5) only a staff member of the Agency subject to the Staff Regulations of Officials of the European Union or to Title II of the Conditions of employment of other servants of the European Union may be designated as coordinating officer in accordance with Article 8g. For the purpose of implementing Article 3b(3), only national experts seconded by a Member State to the Agency may be designated for attachment to the European Border Guard Teams. The Agency shall designate those national experts who shall be attached to the European Border Guard Teams in accordance with that Article.

4. The Management Board shall adopt the necessary implementing measures in agreement with the Commission pursuant to Article 110 of the Staff Regulations of Officials of the European Union.

5. The Management Board may adopt provisions to allow national experts from Member States to be seconded to the Agency. Those provisions shall take into account the requirements of Article 3b(3), in particular the fact that they are considered as guest officers and have the tasks and powers provided for in Article 10. They shall include provisions on the conditions of deployment.

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Article 18

Privileges and immunities

The Protocol on the privileges and immunities of the European Communities shall apply to the Agency.

Article 19

Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Communities shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

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3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.

4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.

5. The personal liability of its servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of employment applicable to them.

Article 20

Powers of the Management Board

1. The Agency shall have a Management Board.

2. The Management Board shall:

(a) appoint the Executive Director on a proposal from the Commission in accordance with Article 26;

(b) before 31 March each year, adopt the general report of the Agency for the previous year and forward it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors. The general report shall be made public;

(c) before 30 September each year, and after receiving the opinion of the Commission, adopt, by a three-quarters majority of its members with a right to vote, the Agency's programme of work for the coming year and forward it to the European Parliament, the Council and the Commission; this programme of work shall be adopted according to the annual Community budgetary procedure and the Community legislative programme in relevant areas of the management of external borders;

(d) establish procedures for taking decisions related to the operational tasks of the Agency by the Executive Director;

(e) carry out its functions relating to the Agency's budget pursuant to Articles 28, 29(5), (9) and (11), Article 30(5) and Article 32;

(f) exercise disciplinary authority over the Executive Director and over the Deputy Director, in agreement with the Executive Director;

(g) establish its Rules of Procedure;

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(h) establish the organisational structure of the Agency and adopt the Agency's staff policy, in particular the multiannual staff policy plan. In accordance with the relevant provisions of the Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to

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in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ([1]) the multiannual staff policy plan shall be submitted to the Commission and the budgetary authority after receiving a favourable opinion of the Commission;

(i) adopt the Agency's multiannual plan aiming at outlining the future long term strategy regarding the activities of the Agency.

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3. Proposals for decisions on specific activities to be carried out at, or in the immediate vicinity of, the external border of any particular Member State shall require a vote in favour of their adoption by the Member of the Management Board representing that Member State.

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4. The Management Board may advise the Executive Director on any matter strictly related to the development of operational management of the external borders, including activities related to research provided for in Article 6.

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5. Should Ireland and/or the United Kingdom request to participate in the Agency's activities, the Management Board shall decide thereon.

The Management Board shall take its decision on a case-by-case basis by an absolute majority of its members with a right to vote. In its decision, the Management Board shall consider if the participation of Ireland and/or the United Kingdom contributes to the achievement of the activity in question. The decision shall set out the financial contribution of Ireland and/or the United Kingdom to the activity for which a request for participation has been made.

6. The Management Board shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

7. The Management Board may establish an Executive Bureau to assist it and the Executive Director with regard to the preparation of the decisions, programmes and activities to be adopted by the Management Board and when necessary, because of urgency, to take certain provisional decisions on behalf of the Management Board.

Article 21

Composition of the Management Board

1. Without prejudice to paragraph 3, the Management Board shall be composed of one representative of each Member State and two representatives of the Commission. To this effect, each Member State shall appoint a member of the Management Board as well as an alternate who will represent the member in his/her absence. The Commission shall appoint two members and their alternates. The duration of the terms of office shall be four years. ►M2 The terms of office shall be extendable. ◄

2. The Management Board members shall be appointed on the basis of their degree of high level relevant experience and expertise in the field of operational cooperation on border management.

([1]) OJ L 357, 31.12.2002, p. 72.

▼M2

3. Countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. They shall have one representative and one alternate each in the Management Board. Under the relevant provisions of their association agreements, arrangements have been developed that specify the nature and extent of, and the detailed rules for, the participation by those countries in the work of the Agency, including provisions on financial contributions and staff.

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Article 22

Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson and a Deputy Chairperson from among its members. The Deputy Chairperson shall ex-officio replace the Chairperson in the event of his/her being prevented from attending to his/her duties.

2. The term of office of the Chairperson and Deputy Chairperson shall expire when their respective membership of the Management Board ceases. Subject to this provision, the duration of the terms of office of the Chairperson or Deputy Chairperson shall be two years. These terms of office shall be extendable once.

Article 23

Meetings

1. Meetings of the Management Board shall be convened by its Chairperson.

2. The Executive Director of the Agency shall take part in the deliberations.

3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet at the instance of the Chairperson or at the request of at least one third of its members.

4. Ireland and the United Kingdom shall be invited to attend the meetings of the Management Board.

5. The Management Board may invite any other person whose opinion may be of interest to attend its meetings as an observer.

6. The members of the Management Board may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

7. The secretariat for the Management Board shall be provided by the Agency.

Article 24

Voting

1. Without prejudice to Article 20(2)(c) as well as 26(2) and (4), the Management Board shall take its decisions by an absolute majority of its members with a right to vote.

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2. Each member shall have one vote. The Executive Director of the Agency shall not vote. In the absence of a member, his/her alternate shall be entitled to exercise his/her right to vote.

3. The rules of procedure shall establish the more detailed voting arrangements, in particular, the conditions for a member to act on behalf of another member as well as any quorum requirements, where appropriate.

Article 25

Functions and powers of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his/her duties. Without prejudice to the respective competencies of the Commission, the Management Board and the Executive Bureau, the Executive Director shall neither seek nor take instructions from any government or from any other body.

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2. The European Parliament or the Council may invite the Executive Director to report on the carrying out of his/her tasks, in particular on the implementation and monitoring of the Fundamental Rights Strategy, the general report of the Agency for the previous year, the work programme for the following year and the Agency's multiannual plan referred to in point (i) of Article 20(2).

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3. The Executive Director shall have the following functions and powers:

(a) to prepare and implement the decisions and programmes and activities adopted by the Agency's Management Board within the limits specified by this Regulation, its implementing rules and any applicable law;

(b) to take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Agency in accordance with the provisions of this Regulation;

(c) to prepare each year a draft working programme and an activity report and submit them to the Management Board;

(d) to exercise in respect of the staff the powers laid down in Article 17(2);

(e) to draw up estimates of the revenues and expenditure of the Agency pursuant to Article 29, and implement the budget pursuant to Article 30;

(f) to delegate his/her powers to other members of the Agency's staff subject to rules to be adopted in accordance with the procedure referred to in Article 20(2)(g);

▼M2

(g) to ensure the implementation of the operational plans referred to in Articles 3a and 8e.

▼B

4. The Executive Director shall be accountable for his activities to the Management Board.

▼B

Article 26

Appointment of senior officials

1. The Commission shall propose candidates for the post of the Executive Director based on a list following publication of the post in the *Official Journal of the European Union* and other press or internet sites as appropriate.

2. The Executive Director of the Agency shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Executive Director shall lie with the Management Board, according to the same procedure.

3. The Executive Director shall be assisted by a Deputy Executive Director. If the Executive Director is absent or indisposed, the Deputy Executive Director shall take his/her place.

4. The Deputy Executive Director shall be appointed by the Management Board on the grounds of merit and documented administrative and management skills, as well as his/her relevant experience in the field of management of the external borders on the proposal of the Executive Director. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote.

Power to dismiss the Deputy Executive Director shall be with the Management Board, according to the same procedure.

5. The terms of the offices of the Executive Director and the Deputy Executive Director shall be five years. They may be extended by the Management Board once for another period of up to five years.

▼M2

Article 26a

Fundamental Rights Strategy

1. The Agency shall draw up and further develop and implement its Fundamental Rights Strategy. The Agency shall put in place an effective mechanism to monitor the respect for fundamental rights in all the activities of the Agency.

2. A Consultative Forum shall be established by the Agency to assist the Executive Director and the Management Board in fundamental rights matters. The Agency shall invite the European Asylum Support Office, the Fundamental Rights Agency, the United Nations High Commissioner for Refugees and other relevant organisations to participate in the Consultative Forum. On a proposal by the Executive Director, the Management Board shall decide on the composition and the working methods of the Consultative Forum and the modalities of the transmission of information to the Consultative Forum.

▼M2

The Consultative Forum shall be consulted on the further development and implementation of the Fundamental Rights Strategy, Code of Conduct and common core curricula.

The Consultative Forum shall prepare an annual report of its activities. That report shall be made publicly available.

3. A Fundamental Rights Officer shall be designated by the Management Board and shall have the necessary qualifications and experience in the field of fundamental rights. He/she shall be independent in the performance of his/her duties as a Fundamental Rights Officer and shall report directly to the Management Board and the Consultative Forum. He/she shall report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.

4. The Fundamental Rights Officer and the Consultative Forum shall have access to all information concerning respect for fundamental rights, in relation to all the activities of the Agency.

▼B

Article 27

Translation

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community ([1]) shall apply to the Agency.

2. Without prejudice to decisions taken on the basis of Article 290 of the Treaty, the general report and programme of work referred to in Article 20(2)(b) and (c), shall be produced in all official languages of the Community.

3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the bodies of the European Union.

Article 28

Transparency and communication

1. Six months after the entry into force of this Regulation, the Agency shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.

2. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 20(2)(b), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.

3. The Management Board shall lay down the practical arrangements for the application of paragraphs 1 and 2.

([1]) OJ 17, 6.10.1958, p. 385. Regulation as last amended by the 2003 Act of Accession.

▼B

4. Any natural or legal person shall be entitled to address himself/herself in writing to the Agency in any of the languages referred to in Article 314 of the Treaty. He/she shall have the right to receive an answer in the same language.

5. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

CHAPTER IV

FINANCIAL REQUIREMENTS

Article 29

Budget

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:

— a subsidy from the Community entered in the general budget of the European Union (Commission section),

— a contribution from the countries associated with the implementation, application and development of the Schengen acquis,

— fees for services provided,

— any voluntary contribution from the Member States.

2. The expenditure of the Agency shall include the staff, administrative, infrastructure and operational expenses.

3. The Executive Director shall draw up an estimate of the revenue and expenditure of the Agency for the following financial year and shall forward it to the Management Board together with an establishment plan.

4. Revenue and expenditure shall be in balance.

5. The Management Board shall adopt the draft estimate, including the provisional establishment plan accompanied by the preliminary work programme, and forward them by 31 March to the Commission and to the countries associated with the implementation, application and development of the Schengen acquis.

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft budget of the European Union.

7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

8. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.

The budgetary authority shall adopt the establishment plan for the Agency.

▼B

9. The Management Board adopts the Agency's budget. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

10. Any modification to the budget, including the establishment plan, shall follow the same procedure.

11. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof as well as the countries associated with the implementation, application and development of the Schengen acquis.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

Article 30

Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.

2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1] (hereafter referred to as the general Financial Regulation).

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Agency's final accounts.

[1] OJ L 248, 16.9.2002, p. 1.

▼B

6. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission, the Court of Auditors, the European Parliament and the Council as well as the countries associated with the implementation, application and development of the Schengen acquis.

7. The final accounts shall be published.

8. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9. Upon a recommendation from the Council, the European Parliament shall, before 30 April of the discharge year + 2, give a discharge to the Executive Director of the Agency in respect of the implementation of the budget for the discharge year.

Article 31

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999 shall apply without restriction.

2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.

3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.

Article 32

Financial provision

The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 ([1]) on the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation, unless specifically required for the Agency's operation and with the Commission's prior consent.

CHAPTER V

FINAL PROVISIONS

Article 33

Evaluation

1. Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

([1]) OJ L 357, 31.12.2002, p. 72.

▼B

2. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

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2a. The first evaluation following the entry into force of Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union [1] shall also analyse the needs for further increased coordination of the management of the external borders of the Member States, including the feasibility of the creation of a European system of border guards.

2b. The evaluation shall include a specific analysis on the way the Charter of Fundamental Rights was complied with in the application of this Regulation.

▼B

3. The Management Board shall receive the findings of the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which shall forward them, together with its own opinion as well as appropriate proposals, to the Council. An action plan with a timetable shall be included, if appropriate. Both the findings and the recommendations of the evaluation shall be made public.

Article 34

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

The Agency shall take up its responsibilities from 1 May 2005.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

[1] OJ L 304, 22.11.2011, p. 1.

B. Family Migration

1. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

COUNCIL DIRECTIVE 2003/86/EC
of 22 September 2003
on the right to family reunification

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) 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 European Economic and Social Committee [3],

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

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.

(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure fair treatment of third country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

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

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

(7) Member States should be able to apply this Directive also when the family enters together.

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.

[1] OJ C 116 E, 26.4.2000, p. 66, and OJ C 62 E, 27.2.2001, p. 99.
[2] OJ C 135, 7.5.2001, p. 174.
[3] OJ C 204, 18.7.2000, p. 40.
[4] OJ C 73, 26.3.2003, p. 16.

(11) The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.

(12) The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school.

(13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(14) Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.

(15) The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.

(16) Since the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle 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.

(17) In accordance with Articles 1 and 2 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 and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(18) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

Article 2

For the purposes of this Directive:

(a) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) 'refugee' means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) 'sponsor' means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) 'family reunification' means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(e) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals [1];

[1] OJ L 157, 15.6.2002, p. 1.

(f) 'unaccompanied minor' means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

Article 3

1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

(a) applying for recognition of refugee status whose application has not yet given rise to a final decision;

(b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to members of the family of a Union citizen.

4. This Directive is without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

CHAPTER II

Family members

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

(d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

6. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

CHAPTER III

Submission and examination of the application

Article 5

1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

CHAPTER IV

Requirements for the exercise of the right to family reunification

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 7

1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

Article 8

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

3. This Chapter is without prejudice to any rules granting refugee status to family members.

Article 10

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

CHAPTER VI

Entry and residence of family members

Article 13

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

3. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:

(a) access to education;

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.

3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

Article 15

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

CHAPTER VII

Penalties and redress

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

(a) where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

(b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

(c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Article 17

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Article 18

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

CHAPTER VIII

Final provisions

Article 19

Periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 3 October 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 21

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

Article 22

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

Done at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI

C. Student and Researcher Migration

1. *Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*

2. *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research*

COUNCIL DIRECTIVE 2004/114/EC

of 13 december 2004

on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular points (3)(a) and (4) of the first subparagraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament [1],

Having regard to the Opinion of the European Economic and Social Committee [2],

Having regard to the Opinion of the Committee of the Regions [3],

Whereas:

(1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and the protection of the rights of third-country nationals.

(2) The Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits.

(3) At its special meeting at Tampere on 15 and 16 October 1999, the European Council acknowledged the need for approximation of national legislation on the conditions for admission and residence of third-country nationals and asked the Council to rapidly adopt decisions on the basis of proposals by the Commission.

(4) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.

(5) The Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

(6) One of the objectives of Community action in the field of education is to promote Europe as a whole as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country nationals to the Community for the purpose of studies is a key factor in that strategy. The approximation of the Member States' national legislation on conditions of entry and residence is part of this.

(7) Migration for the purposes set out in this Directive, which is by definition temporary and does not depend on the labour-market situation in the host country, constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity among cultures.

(8) The term admission covers the entry and residence of third-country nationals for the purposes set out in this Directive.

(9) The new Community rules are based on definitions of student, trainee, educational establishment and volunteer already in use in Community law, in particular in the various Community programmes to promote the mobility of the relevant persons (Socrates, European Voluntary Service etc.).

(10) The duration and other conditions of preparatory courses for students covered by the present Directive should be determined by Member States in accordance with their national legislation.

(11) Third-country nationals who fall into the categories of unremunerated trainees and volunteers and who are considered, by virtue of their activities or the kind of compensation or remuneration received, as workers under national legislation are not covered by this Directive. The admission of third-country nationals who intend to carry out specialisation studies in the field of medicine should be determined by the Member States.

(12) Evidence of acceptance of a student by an establishment of higher education could include, among other possibilities, a letter or certificate confirming his/her enrolment.

(13) Fellowships may be taken into account in assessing the availability of sufficient resources.

[1] OJ C 68 E, 18.3.2004, p. 107.
[2] OJ C 133, 6.6.2003, p. 29.
[3] OJ C 244, 10.10.2003, p. 5.

(14) Admission for the purposes set out in this Directive may be refused on duly justified grounds. In particular, admission could be refused if a Member State considers, based on an assessment of the facts, that the third-country national concerned is a potential threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notions of public policy and public security also cover cases in which a third-country national belongs or has belonged to an association which supports terrorism, supports or has supported such an association, or has or has had extremist aspirations.

(15) In case of doubts concerning the grounds of the application of admission, Member States should be able to require all the evidence necessary to assess its coherence, in particular on the basis of the applicant's proposed studies, in order to fight against abuse and misuse of the procedure set out in this Directive.

(16) The mobility of students who are third-country nationals studying in several Member States must be facilitated, as must the admission of third-country nationals participating in Community programmes to promote mobility within and towards the Community for the purposes set out in this Directive.

(17) In order to allow initial entry into their territory, Member States should be able to issue in a timely manner a residence permit or, if they issue residence permits exclusively on their territory, a visa.

(18) In order to allow students who are third-country nationals to cover part of the cost of their studies, they should be given access to the labour market under the conditions set out in this Directive. The principle of access for students to the labour market under the conditions set out in this Directive should be a general rule; however, in exceptional circumstances Member States should be able to take into account the situation of their national labour markets.

(19) The notion of prior authorisation includes the granting of work permits to students who wish to exercise an economic activity.

(20) This Directive does not affect national legislation in the area of part-time work.

(21) Provision should be made for fast-track admission procedures for study purposes or for pupil exchange schemes operated by recognised organisations in the Member States.

(22) Each Member State should ensure that the fullest possible set of regularly updated information is made available to the general public, notably on the Internet, as regards the establishments defined in this Directive, courses of study to which third-country nationals may be admitted and the conditions and procedures for entry and residence in its territory for those purposes.

(23) This Directive should not in any circumstances affect the application of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals [1].

(24) Since the objective of this Directive, namely to determine the conditions of admission of third-country nationals for the purposes of study, pupil exchange, unremunerated training or voluntary service, cannot be sufficiently achieved by the Member States and can, by reason of its scale or effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 to achieve that objective.

(25) In accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(26) 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 taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

The purpose of this Directive is to determine:

(a) the conditions for admission of third-country nationals to the territory of the Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service;

(b) the rules concerning the procedures for admitting third-country nationals to the territory of the Member States for those purposes.

[1] OJ L 157, 15.6.2002, p. 1.

Article 2

Definitions

For the purposes of this Directive:

(a) 'third-country national' means any person who is not a citizen of the European Union within the meaning of Article 17(1) of the Treaty;

(b) 'student' means a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation;

(c) 'school pupil' means a third-country national admitted to the territory of a Member State to follow a recognised programme of secondary education in the context of an exchange scheme operated by an organisation recognised for that purpose by the Member State in accordance with its national legislation or administrative practice;

(d) 'unremunerated trainee' means a third-country national who has been admitted to the territory of a Member State for a training period without remuneration in accordance with its national legislation;

(e) 'establishment' means a public or private establishment recognised by the host Member State and/or whose courses of study are recognised in accordance with its national legislation or administrative practice for the purposes set out in this Directive;

(f) 'voluntary service scheme' means a programme of activities of practical solidarity, based on a State or a Community scheme, pursuing objectives of general interest;

(g) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third-country national to stay legally in its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of studies.

Member States may also decide to apply this Directive to third-country nationals who apply to be admitted for the purposes of pupil exchange, unremunerated training or voluntary service.

2. This Directive shall not apply to:

(a) third-country nationals residing in a Member State as asylum-seekers, or under subsidiary forms of protection, or under temporary protection schemes;

(b) third-country nationals whose expulsion has been suspended for reasons of fact or of law;

(c) third-country nationals who are family members of Union citizens who have exercised their right to free movement within the Community;

(d) third-country nationals who enjoy long-term resident status in a Member State in accordance with Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents [1] and exercise their right to reside in another Member State in order to study or receive vocational training;

(e) third-country nationals considered under the national legislation of the Member State concerned as workers or self-employed persons.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:

(a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries; or

(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

Principle

The admission of a third-country national under this Directive shall be subject to the verification of documentary evidence showing that he/she meets the conditions laid down in Article 6 and in whichever of Articles 7 to 11 applies to the relevant category.

[1] OJ L 16, 23.1.2004, p. 44.

Article 6

General conditions

1. A third-country national who applies to be admitted for the purposes set out in Articles 7 to 11 shall:

(a) present a valid travel document as determined by national legislation. Member States may require the period of validity of the travel document to cover at least the duration of the planned stay;

(b) if he/she is a minor under the national legislation of the host Member State, present a parental authorisation for the planned stay;

(c) have sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned;

(d) not be regarded as a threat to public policy, public security or public health;

(e) provide proof, if the Member State so requests, that he/she has paid the fee for processing the application on the basis of Article 20.

2. Member States shall facilitate the admission procedure for the third-country nationals covered by Articles 7 to 11 who participate in Community programmes enhancing mobility towards or within the Community.

Article 7

Specific conditions for students

1. In addition to the general conditions stipulated in Article 6, a third-country national who applies to be admitted for the purpose of study shall:

(a) have been accepted by an establishment of higher education to follow a course of study;

(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, study and return travel costs. Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;

(c) provide evidence, if the Member State so requires, of sufficient knowledge of the language of the course to be followed by him/her;

(d) provide evidence, if the Member State so requires, that he/she has paid the fees charged by the establishment.

2. Students who automatically qualify for sickness insurance in respect of all risks normally covered for the nationals of the Member State concerned as a result of enrolment at an establishment shall be presumed to meet the condition of Article 6(1)(c).

Article 8

Mobility of students

1. Without prejudice to Articles 12(2), 16 and 18(2), a third-country national who has already been admitted as a student and applies to follow in another Member State part of the studies already commenced, or to complement them with a related course of study in another Member State, shall be admitted by the latter Member State within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application, if he/she:

(a) meets the conditions laid down by Articles 6 and 7 in relation to that Member State; and

(b) has sent, with his/her application for admission, full documentary evidence of his/her academic record and evidence that the course he/she wishes to follow genuinely complements the one he/she has completed; and

(c) participates in a Community or bilateral exchange programme or has been admitted as a student in a Member State for no less than two years.

2. The requirements referred to in paragraph 1(c), shall not apply in the case where the student, in the framework of his/her programme of studies, is obliged to attend a part of his/her courses in an establishment of another Member State.

3. The competent authorities of the first Member State shall, at the request of the competent authorities of the second Member State, provide the appropriate information in relation to the stay of the student in the territory of the first Member State.

Article 9

Specific conditions for school pupils

1. Subject to Article 3, a third-country national who applies to be admitted in a pupil exchange scheme shall, in addition to the general conditions stipulated in Article 6:

(a) not be below the minimum age nor above the maximum age set by the Member State concerned;

(b) provide evidence of acceptance by a secondary education establishment;

(c) provides evidence of participation in a recognised pupil exchange scheme programme operated by an organisation recognised for that purpose by the Member State concerned in accordance with its national legislation or administrative practice;

(d) provides evidence that the pupil exchange organisation accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State concerned, in particular as regards subsistence, study, healthcare and return travel costs;

(e) be accommodated throughout his/her stay by a family meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange scheme in which he/she is participating.

2. Member States may confine the admission of school pupils participating in an exchange scheme to nationals of third countries which offer the same possibility for their own nationals.

Article 10

Specific conditions for unremunerated trainees

Subject to Article 3, a third-country national who applies to be admitted as an unremunerated trainee shall, in addition to the general conditions stipulated in Article 6:

(a) have signed a training agreement, approved if need be by the relevant authority in the Member State concerned in accordance with its national legislation or administrative practice, for an unremunerated placement with a public- or private-sector enterprise or vocational training establishment recognised by the Member State in accordance with its national legislation or administrative practice;

(b) provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, training and return travel costs. The Member States shall make public the minimum monthly resources required for the purpose of this provision, without prejudice to individual examination of each case;

(c) receive, if the Member State so requires, basic language training so as to acquire the knowledge needed for the purposes of the placement.

Article 11

Specific conditions for volunteers

Subject to Article 3, a third-country national who applies to be admitted to a voluntary service scheme shall, in addition to the general conditions stipulated in Article 6:

(a) not be below the minimum age nor above the maximum age set by the Member State concerned;

(b) produce an agreement with the organisation responsible in the Member State concerned for the voluntary service scheme in which he/she is participating, giving a description of tasks, the conditions in which he/she is supervised in the performance of those tasks, his/her working hours, the resources available to cover his travel, subsistence, accommodation costs and pocket money throughout his/her stay and, if appropriate, the training he will receive to help him/her perform his/her service;

(c) provide evidence that the organisation responsible for the voluntary service scheme in which he/she is participating has subscribed a third-party insurance policy and accepts full responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence, healthcare and return travel costs;

(d) and, if the host Member State specifically requires it, receive a basic introduction to the language, history and political and social structures of that Member State.

CHAPTER III

RESIDENCE PERMITS

Article 12

Residence permit issued to students

1. A residence permit shall be issued to the student for a period of at least one year and renewable if the holder continues to meet the conditions of Articles 6 and 7. Where the duration of the course of study is less than one year, the permit shall be valid for the duration of the course.

2. Without prejudice to Article 16, renewal of a residence permit may be refused or the permit may be withdrawn if the holder:

(a) does not respect the limits imposed on access to economic activities under Article 17;

(b) does not make acceptable progress in his/her studies in accordance with national legislation or administrative practice.

Article 13

Residence permit issued to school pupils

A residence permit issued to school pupils shall be issued for a period of no more than one year.

Article 14

Residence permit issued to unremunerated trainees

The period of validity of a residence permit issued to unremunerated trainees shall correspond to the duration of the placement or shall be for a maximum of one year. In exceptional cases, it may be renewed, once only and exclusively for such time as is needed to acquire a vocational qualification recognised by a Member State in accordance with its national legislation or administrative practice, provided the holder still meets the conditions laid down in Articles 6 and 10.

Article 15

Residence permit issued to volunteers

A residence permit issued to volunteers shall be issued for a period of no more than one year. In exceptional cases, if the duration of the relevant programme is longer than one year, the duration of the validity of the residence permit may correspond to the period concerned.

Article 16

Withdrawal or non-renewal of residence permits

1. Member States may withdraw or refuse to renew a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in Article 6 and in whichever of Articles 7 to 11 applies to the relevant category.

2. Member States may withdraw or refuse to renew a residence permit on grounds of public policy, public security or public health.

CHAPTER IV

TREATMENT OF THE THIRD-COUNTRY NATIONALS CONCERNED

Article 17

Economic activities by students

1. Outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity. The situation of the labour market in the host Member State may be taken into account.

Where necessary, Member States shall grant students and/or employers prior authorisation in accordance with national legislation.

2. Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 10 hours per week, or the equivalent in days or months per year.

3. Access to economic activities for the first year of residence may be restricted by the host Member State.

4. Member States may require students to report, in advance or otherwise, to an authority designated by the Member State concerned, that they are engaging in an economic activity. Their employers may also be subject to a reporting obligation, in advance or otherwise.

CHAPTER V

PROCEDURE AND TRANSPARENCY

Article 18

Procedural guarantees and transparency

1. A decision on an application to obtain or renew a residence permit shall be adopted, and the applicant shall be notified of it, within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application.

2. If the information supplied in support of the application is inadequate, processing of the application may be suspended and the competent authorities shall inform the applicant of any further information they need.

3. Any decision rejecting an application for a residence permit shall be notified to the third-country national concerned in accordance with the notification procedures provided for under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.

4. Where an application is rejected or a residence permit issued in accordance with this Directive is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.

Article 19

Fast-track procedure for issuing residence permits or visas to students and school pupils

An agreement on the establishment of a fast-track admission procedure allowing residence permits or visas to be issued in the name of the third-country national concerned may be concluded between the authority of a Member State with responsibility for the entry and residence of students or school pupils who are third-country nationals and an establishment of higher education or an organisation operating pupil exchange schemes which has been recognised for this purpose by the Member State concerned in accordance with its national legislation or administrative practice.

Article 20

Fees

Member States may require applicants to pay fees for the processing of applications in accordance with this Directive.

CHAPTER VI

FINAL PROVISIONS

Article 21

Reporting

Periodically, and for the first time by 12 January 2010, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose amendments if appropriate.

Article 22

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 January 2007. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 23

Transitional provision

By way of derogation from the provisions set out in Chapter III and for a period of up to two years after the date set out in Article 22, Member States are not obliged to issue permits in accordance with this Directive in the form of a residence permit.

Article 24

Time limits

Without prejudice to the second subparagraph of Article 4(2) of Directive 2003/109/EC, Member States shall not be obliged to take into account the time during which the student, exchange pupil, unremunerated trainee or volunteer has resided as such in their territory for the purpose of granting further rights under national law to the third-country nationals concerned.

Article 25

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 26

Addressees

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

Done at Brussels, 13 December 2004.

For the Council

The President

B. R. BOT

COUNCIL DIRECTIVE 2005/71/EC

of 12 October 2005

on a specific procedure for admitting third-country nationals for the purposes of scientific research

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) and (4) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3]

Whereas:

(1) With a view to consolidating and giving structure to European research policy, the Commission considered it necessary in January 2000 to establish the European Research Area as the lynchpin of the Community's future action in this field.

(2) Endorsing the European Research Area, the Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world by 2010.

(3) The globalisation of the economy calls for greater mobility of researchers, something which was recognised by the sixth framework programme of the European Community [4], when it opened up its programmes further to researchers from outside the European Union.

(4) The number of researchers which the Community will need by 2010 to meet the target set by the Barcelona European Council in March 2002 of 3 % of GDP invested in research is estimated at 700 000. This target is to be met through a series of interlocking measures, such as making scientific careers more attractive to young people, promoting women's involvement in scientific research, extending the opportunities for training and mobility in research, improving career prospects for researchers in the Community and opening up the Community to third-country nationals who might be admitted for the purposes of research.

(5) This Directive is intended to contribute to achieving these goals by fostering the admission and mobility for research purposes of third-country nationals for stays of more than three months, in order to make the Community more attractive to researchers from around the world and to boost its position as an international centre for research.

(6) Implementation of this Directive should not encourage a brain drain from emerging or developing countries. Back-up measures to support researchers' reintegration into their countries of origin as well as the movement of researchers should be taken in partnership with the countries of origin with a view to establishing a comprehensive migration policy.

(7) For the achievement of the objectives of the Lisbon process it is also important to foster the mobility within the Union of researchers who are EU citizens, and in particular researchers from the Member States which acceded in 2004, for the purpose of carrying out scientific research.

(8) Given the openness imposed by changes in the world economy and the likely requirements to meet the 3 % of GDP target for investment in research, third-country researchers potentially eligible under this Directive should be defined broadly in accordance with their qualifications and the research project which they intend to carry out.

(9) As the effort to be made to achieve the said 3 % target largely concerns the private sector, which must therefore recruit more researchers in the years to come, the research organisations potentially eligible under this Directive belong to both the public and private sectors.

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[1] Opinion of 12 April 2005 (not yet published in the Official Journal).

[2] OJ C 120, 20.5.2005, p. 60.

[3] OJ C 71, 22.3.2005, p. 6.

[4] Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) (OJ L 232, 29.8.2002, p. 1). Decision amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

(10) Each Member State should ensure that the most comprehensive information possible, regularly kept up to date, is made publicly available, via the Internet in particular, on the research organisations, approved under this Directive, with which researchers could conclude a hosting agreement, and on the conditions and procedures for entry and residence on its territory for the purposes of carrying out research, as adopted under this Directive.

(11) It is appropriate to facilitate the admission of researchers by establishing an admission procedure which does not depend on their legal relationship with the host research organisation and by no longer requiring a work permit in addition to a residence permit. Member States could apply similar rules for third-country nationals requesting admission for the purposes of teaching in a higher education establishment in accordance with national legislation or administrative practice, in the context of a research project.

(12) At the same time, the traditional avenues of admission (such as employment and traineeship) should be maintained, especially for doctoral students carrying out research as students, who should be excluded from the scope of this Directive and are covered by Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service [1].

(13) The specific procedure for researchers is based on collaboration between the research organisations and the immigration authorities in the Member States: it gives the former a key role in the admission procedure with a view to facilitating and speeding up the entry and residence of third-country researchers in the Community while preserving Member States' prerogatives with respect to immigration policing.

(14) Research organisations approved in advance by the Member States should be able to sign a hosting agreement with a third-country national for the purposes of carrying out a research project. Member States will issue a residence permit on the basis of the hosting agreement if the conditions for entry and residence are met.

(15) In order to make the Community more attractive to third-country researchers, they should be granted, during their stay, equal social and economic rights with nationals of the host Member State in a number of areas and the possibility to teach in higher education establishments.

(16) This Directive adds a very important improvement in the field of social security as the non-discrimination principle also applies directly to persons coming to a Member State directly from a third country. Nevertheless, this Directive should not confer more rights than those already provided in existing Community legislation in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive furthermore should not grant rights in relation to situations which lie outside the scope of Community legislation like for example family members residing in a third country.

(17) It is important to foster the mobility of third-country nationals admitted for the purposes of carrying out scientific research as a means of developing and consolidating contacts and networks between partners and establishing the role of the European Research Area at world level. Researchers should be able to exercise mobility under the conditions established by this Directive. The conditions for exercising mobility under this Directive should not affect the rules currently governing recognition of the validity of the travel documents.

(18) Special attention should be paid to the facilitation and support of the preservation of the unity of family members of the researchers, according to the Council Recommendation of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community [2].

(19) In order to preserve family unity and to enable mobility, family members should be able to join the researcher in another Member State under the conditions determined by the national law of such Member State, including its obligations arising from bilateral or multilateral agreements.

(20) Holders of residence permits should be in principle allowed to submit an application for admission while remaining on the territory of the Member State concerned.

(21) Member States should have the right to charge applicants for the processing of applications for residence permits.

[1] OJ L 375, 23.12.2004, p. 12.

[2] See page 26 of this Official Journal.

(22) This Directive should not affect in any circumstances the application of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals ([1]).

(23) The objectives of this Directive, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence applicable to third-country nationals for stays of more than three months in the Member States for the purposes of conducting a research project under a hosting agreement with a research organisation, cannot be sufficiently achieved by the Member States, especially as regards ensuring mobility between Member States, and can therefore be better achieved by the Community. The Community is therefore entitled to take measures in accordance with the subsidiarity principle laid down in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that article, this Directive does not go beyond what is necessary to achieve those objectives.

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

(25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(26) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.

(27) 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 the Treaty establishing the European Community, Ireland has given notice by letter of 1 July 2004 of its wish to participate in the adoption and application of this Directive.

(28) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not participating in the adoption of this Directive and is not bound by it or subject to its application.

(29) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

This Directive lays down the conditions for the admission of third-country researchers to the Member States for more than three months for the purposes of carrying out a research project under hosting agreements with research organisations.

Article 2

Definitions

For the purposes of this Directive:

(a) 'third-country national' means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty;

(b) 'research' means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications;

(c) 'research organisation' means any public or private organisations which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice;

(d) 'researcher' means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required;

([1]) OJ L 157, 15.6.2002, p. 1.

(e) 'residence permit' means any authorisation bearing the term 'researcher' issued by the authorities of a Member State allowing a third-country national to stay legally on its territory, in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of carrying out a research project.

2. This Directive shall not apply to:

(a) third-country nationals staying in a Member State as applicants for international protection or under temporary protection schemes;

(b) third-country nationals applying to reside in a Member State as students within the meaning of Directive 2004/114/EC in order to carry out research leading to a doctoral degree;

(c) third-country nationals whose expulsion has been suspended for reasons of fact or law;

(d) researchers seconded by a research organisation to another research organisation in another Member State.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:

(a) bilateral or multilateral agreements concluded between the Community or between the Community and its Member States on the one hand and one or more third countries on the other;

(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies.

CHAPTER II

RESEARCH ORGANISATIONS

Article 5

Approval

1. Any research organisation wishing to host a researcher under the admission procedure laid down in this Directive shall first be approved for that purpose by the Member State concerned.

2. The approval of the research organisations shall be in accordance with procedures set out in the national law or administrative practice of the Member States. Applications for approval by both public and private organisations shall be made in accordance with those procedures and be based on their statutory tasks or corporate purposes as appropriate and on proof that they conduct research.

The approval granted to a research organisation shall be for a minimum period of five years. In exceptional cases, Member States may grant approval for a shorter period.

3. Member States may require, in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned, the said organisation is responsible for reimbursing the costs related to his/her stay and return incurred by public funds. The financial responsibility of the research organisation shall end at the latest six months after the termination of the hosting agreement.

4. Member States may provide that, within two months of the date of expiry of the hosting agreement concerned, the approved organisation shall provide the competent authorities designated for the purpose by the Member States with confirmation that the work has been carried out for each of the research projects in respect of which a hosting agreement has been signed pursuant to Article 6.

5. The competent authorities in each Member State shall publish and update regularly lists of the research organisations approved for the purposes of this Directive.

6. A Member State may, among other measures, refuse to renew or decide to withdraw the approval of a research organisation which no longer meets the conditions laid down in paragraphs 2, 3 and 4 or in cases where the approval has been fraudulently acquired or where a research organisation has signed a hosting agreement with a third-country national fraudulently or negligently. Where approval has been refused or withdrawn, the organisation concerned may be banned from reapplying for approval up to five years from the date of publication of the decision on withdrawal or non-renewal.

7. Member States may determine in their national legislation the consequences of the withdrawal of the approval or refusal to renew the approval for the existing hosting agreements, concluded in accordance with Article 6, as well as the consequences for the residence permits of the researchers concerned.

Article 6

Hosting agreement

1. A research organisation wishing to host a researcher shall sign a hosting agreement with the latter whereby the researcher undertakes to complete the research project and the organisation undertakes to host the researcher for that purpose without prejudice to Article 7.

2. Research organisations may sign hosting agreements only if the following conditions are met:

(a) the research project has been accepted by the relevant authorities in the organisation, after examination of:

  (i) the purpose and duration of the research, and the availability of the necessary financial resources for it to be carried out;

  (ii) the researcher's qualifications in the light of the research objectives, as evidenced by a certified copy of his/her qualification in accordance with Article 2 (d);

(b) during his/her stay the researcher has sufficient monthly resources to meet his/her expenses and return travel costs in accordance with the minimum amount published for the purpose by the Member State, without having recourse to the Member State's social assistance system;

(c) during his/her stay the researcher has sickness insurance for all the risks normally covered for nationals of the Member State concerned;

(d) the hosting agreement specifies the legal relationship and working conditions of the researchers.

3. Once the hosting agreement is signed, the research organisation may be required, in accordance with national legislation, to provide the researcher with an individual statement that for costs within the meaning of Article 5(3) financial responsibility has been assumed.

4. The hosting agreement shall automatically lapse when the researcher is not admitted or when the legal relationship between the researcher and the research organisation is terminated.

5. Research organisations shall promptly inform the authority designated for the purpose by the Member States of any occurrence likely to prevent implementation of the hosting agreement.

CHAPTER III

ADMISSION OF RESEARCHERS

Article 7

Conditions for admission

1. A third-country national who applies to be admitted for the purposes set out in this Directive shall:

(a) present a valid travel document, as determined by national law. Member States may require the period of the validity of the travel document to cover at least the duration of the residence permit;

(b) present a hosting agreement signed with a research organisation in accordance with Article 6(2);

(c) where appropriate, present a statement of financial responsibility issued by the research organisation in accordance with Article 6(3); and

(d) not be considered to pose a threat to public policy, public security or public health.

Member States shall check that all the conditions referred to in points (a), (b), (c) and (d) are met.

2. Member States may also check the terms upon which the hosting agreement has been based and concluded.

3. Once the checks referred to in paragraphs 1 and 2 have been positively concluded, researchers shall be admitted on the territory of the Member States to carry out the hosting agreement.

Article 8

Duration of residence permit

Member States shall issue a residence permit for a period of at least one year and shall renew it if the conditions laid down in Articles 6 and 7 are still met. If the research project is scheduled to last less than one year, the residence permit shall be issued for the duration of the project.

Article 9

Family members

1. When a Member State decides to grant a residence permit to the family members of a researcher, the duration of validity of their residence permit shall be the same as that of the residence permit issued to the researcher insofar as the period of validity of their travel documents allows it. In duly justified cases, the duration of the residence permit of the family member of the researcher may be shortened.

2. The issue of the residence permit to the family members of the researcher admitted to a Member State shall not be made dependent on the requirement of a minimum period of residence of the researcher.

Article 10

Withdrawal or non-renewal of the residence permit

1. Member States may withdraw or refuse to renew a residence permit issued on the basis of this Directive when it has been fraudulently acquired or wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence provided by Articles 6 and 7 or is residing for purposes other that that for which he was authorised to reside.

2. Member States may withdraw or refuse to renew a residence permit for reasons of public policy, public security or public health.

CHAPTER IV

RESEARCHERS' RIGHTS

Article 11

Teaching

1. Researchers admitted under this Directive may teach in accordance with national legislation.

2. Member States may set a maximum number of hours or of days for the activity of teaching.

Article 12

Equal treatment

Holders of a residence permit shall be entitled to equal treatment with nationals as regards:

(a) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

(b) working conditions, including pay and dismissal;

(c) branches of social security as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community [1]. The special provisions in the Annex to Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality [2] shall apply accordingly;

(d) tax benefits;

(e) access to goods and services and the supply of goods and services made available to the public.

Article 13

Mobility between Member States

1. A third-country national who has been admitted as a researcher under this Directive shall be allowed to carry out part of his/her research in another Member State under the conditions as set out in this Article.

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[1] OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 1).

[2] OJ L 124, 20.5.2003, p. 1.

2. If the researcher stays in another Member State for a period of up to three months, the research may be carried out on the basis of the hosting agreement concluded in the first Member State, provided that he has sufficient resources in the other Member State and is not considered as a threat to public policy, public security or public health in the second Member State.

3. If the researcher stays in another Member State for more than three months, Member States may require a new hosting agreement to carry out the research in that Member State. At all events, the conditions set out in Articles 6 and 7 shall be met in relation to the Member State concerned.

4. Where the relevant legislation provides for the requirement of a visa or a residence permit, for exercising mobility, such a visa or permit shall be granted in a timely manner within a period that does not hamper the pursuit of the research, whilst leaving the competent authorities sufficient time to process the applications.

5. Member States shall not require the researcher to leave their territory in order to submit applications for the visas or residence permits.

CHAPTER V

PROCEDURE AND TRANSPARENCY

Article 14

Applications for admission

1. Member States shall determine whether applications for residence permits are to be made by the researcher or by the research organisation concerned.

2. The application shall be considered and examined when the third-country national concerned is residing outside the territory of the Member States to which he/she wishes to be admitted.

3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.

4. The Member State concerned shall grant the third-country national who has submitted an application and who meets the conditions of Articles 6 and 7 every facility to obtain the requisite visas.

Article 15

Procedural safeguards

1. The competent authorities of the Member States shall adopt a decision on the complete application as soon as possible and, where appropriate, provide for accelerated procedures.

2. If the information supplied in support of the application is inadequate, the consideration of the application may be suspended and the competent authorities shall inform the applicant of any further information they need.

3. Any decision rejecting an application for a residence permit shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.

4. Where an application is rejected, or a residence permit, issued in accordance with this Directive, is withdrawn, the person concerned shall have the right to mount a legal challenge before the authorities of the Member State concerned.

CHAPTER VI

FINAL PROVISIONS

Article 16

Reports

Periodically, and for the first time no later than three years after the entry into force of this Directive, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.

Article 17

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 October 2007.

When 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. The methods of making such reference shall be laid down by Member States.

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

Article 18

Transitional provision

By way of derogation from the provisions set out in Chapter III, Member States shall not be obliged to issue permits in accordance with this Directive in the form of a residence permit for a period of up to two years, after the date referred to in Article 17(1).

Article 19

Common Travel Area

Nothing in this Directive shall affect the right of Ireland to maintain the Common Travel Area arrangements referred to in the Protocol, annexed by the Treaty of Amsterdam to the Treaty on European Union and the Treaty establishing the European Community, on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and Ireland.

Article 20

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 21

Addressees

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

Done at Luxembourg, 12 October 2005.

For the Council

The President

C. CLARKE

D. Labour Migration

1. *Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment*

2. *Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State*

DIRECTIVES

COUNCIL DIRECTIVE 2009/50/EC

of 25 May 2009

on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular points (3)(a) and (4) of the first subparagraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

After consulting the European Economic and Social Committee [2],

After consulting the Committee of the Regions [3],

Whereas:

(1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.

(2) The Treaty provides that the Council is to adopt measures on immigration policy relating to conditions of entry and residence, standards on procedures for the issue by Member States of long-term visas and residence permits, and measures defining the rights and conditions under which nationals of third-countries who are legally resident in a Member State may reside in other Member States.

(3) The Lisbon European Council in March 2000 set the Community the objective of becoming the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010. Measures to attract and retain highly qualified third-country workers as part of an approach based on the needs of Member States should be seen in the broader context established by the Lisbon Strategy and by the Commission Communication of 11 December 2007 on the integrated guidelines for growth and jobs.

(4) The Hague Programme, adopted by the European Council on 4 and 5 November 2004, recognised that legal migration will play an important role in enhancing the knowledge-based economy in Europe, advancing economic development, and thus contributing to the implementation of the Lisbon Strategy. The European Council invited the Commission to present a policy plan on legal migration, including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market.

(5) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007, among which to develop well-managed legal immigration policies, fully respecting national competences, to assist Member States in meeting existing and future labour needs.

(6) To achieve the objectives of the Lisbon Strategy it is also important to foster the mobility within the Union of highly qualified workers who are Union citizens, in particular those from the Member States which acceded in 2004 and 2007. In implementing this Directive, Member States are bound to respect the principle of Community preference as expressed, in particular, in the relevant provisions of the Acts of Accession of 2003 and 2005.

(7) This Directive is intended to contribute to achieving these goals and addressing labour shortages by fostering the admission and mobility — for the purposes of highly qualified employment — of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth. To reach these goals, it is necessary to facilitate the admission of highly qualified workers and their families by establishing a fast-track admission procedure and by granting them equal social and

[1] Opinion of 20 November 2008 (not yet published in the Official Journal).
[2] Opinion of 9 July 2008 (not yet published in the Official Journal).
[3] Opinion of 18 June 2008 (not yet published in the Official Journal).

economic rights as nationals of the host Member State in a number of areas. It is also necessary to take into account the priorities, labour market needs and reception capacities of the Member States. This Directive should be without prejudice to the competence of the Member States to maintain or to introduce new national residence permits for any purpose of employment. The third-country nationals concerned should have the possibility to apply for an EU Blue Card or for a national residence permit. Moreover, this Directive should not affect the possibility for an EU Blue Card holder to enjoy additional rights and benefits which may be provided by national law, and which are compatible with this Directive.

(8) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals entering their territory for the purposes of highly qualified employment. This should include also third-country nationals who seek to remain on the territory of a Member State in order to exercise a paid economic activity and who are legally resident in that Member State under other schemes, such as students having just completed their studies or researchers having been admitted pursuant to Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service [1] and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research [2] respectively, and who do not enjoy consolidated access to the labour market of the Member State under Community or national law. Moreover, regarding volumes of admission, Member States retain the possibility not to grant residence permits for employment in general or for certain professions, economic sectors or regions.

(9) For the purpose of this Directive, in order to evaluate if the third-country national concerned possesses higher education qualifications, reference may be made to ISCED (International Standard Classification of Education) 1997 levels 5a and 6.

(10) This Directive should provide for a flexible demand-driven entry system, based on objective criteria, such as a minimum salary threshold comparable with the salary levels in the Member States, and on professional qualifications. The definition of a common minimum denominator for the salary threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the Community. The salary threshold determines a minimum level while Member States may define a higher salary threshold. Member States should fix their threshold in accordance with the situation and organisation of their respective labour markets and their general immigration policies. Derogation from the main scheme in terms of the salary threshold may be laid down for specific professions where it is considered by the Member State concerned that there is a particular lack of available workforce and where such professions are part of the major group 1 and 2 of the ISCO (International Standard Classification of Occupation) classification.

(11) This Directive aims only at defining the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment within the EU Blue Card system, including the eligibility criteria related to a salary threshold. The sole purpose of this salary threshold is to help to determine, taking into account a statistical observation published by the Commission (Eurostat) or by the Member States concerned, the scope of the EU Blue Card established by each Member State on the basis of common rules. It does not aim to determine salaries and therefore does not derogate from the rules or practices at Member State level or from collective agreements, and cannot be used to constitute any harmonisation in this field. This Directive fully respects the competences of Member States, particularly on employment, labour and social matters.

(12) Once a Member State has decided to admit a third-country national fulfilling the relevant criteria, the third-country national who applied for an EU Blue Card should receive the specific residence permit provided for by this Directive, which should grant progressive access to the labour market and residence and mobility rights to him and his family. The deadline for examining the application for an EU Blue Card should not include the time required for the recognition of professional qualifications or the time required for issuing a visa, if required. This Directive is without prejudice to national procedures on the recognition of diplomas. The designation of the competent authorities under this Directive is without prejudice to the role and responsibilities of other national authorities and, where applicable, the social partners, with regard to the examination of, and the decision on, the application.

(13) The format of the EU Blue Card should be in accordance with Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals [3], thus enabling the Member States to refer to the information, in particular, under which conditions the person is permitted to work.

[1] OJ L 375, 23.12.2004, p. 12.
[2] OJ L 289, 3.11.2005, p. 15.
[3] OJ L 157, 15.6.2002, p. 1.

(14) Third-country nationals who are in possession of a valid travel document and an EU Blue Card issued by a Member State applying the Schengen *acquis* in full, should be allowed to enter into and move freely within the territory of another Member State applying the Schengen *acquis* in full, for a period of up to three months, in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ([1]) and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

(15) The occupational and geographical mobility of third-country highly qualified workers should be recognised as a primary mechanism for improving labour market efficiency, preventing skill shortages and offsetting regional imbalances. In order to respect the principle of Community preference and to avoid possible abuses of the system, the occupational mobility of a third-country highly qualified worker should be limited for the first two years of legal employment in a Member State.

(16) This Directive fully respects equal treatment between nationals of the Member States and EU Blue Card holders in relation to pay, when they are in comparable situations.

(17) Equal treatment of EU Blue Card holders does not cover measures in the field of vocational training which are covered under social assistance schemes.

(18) EU Blue Card holders should enjoy equal treatment as regards social security. Branches of social security are defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ([2]). Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third-countries who are not already covered by those provisions solely on the ground of their nationality ([3]) extends the provisions of Regulation (EEC) No 1408/71 to third-country nationals who are legally residing in the Community and who are in a cross-border situation. The provisions on equal treatment as regards social security in this Directive also apply directly to persons entering into the territory of a Member State directly from a third-country, provided that the person concerned is legally residing as holder of a valid EU Blue Card, including during the period of temporary unemployment, and he fulfils the conditions, set out under national law, for being eligible for the social security benefits concerned.

Nevertheless, this Directive should not confer to the EU Blue Card holder more rights than those already provided in existing Community law in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive, furthermore, should not grant rights in relation to situations which lie outside the scope of Community law such as, for example, the situation of family members residing in a third country.

(19) Professional qualifications acquired by a third-country national in another Member State should be recognised in the same way as those of Union citizens. Qualifications acquired in a third country should be taken into account in conformity with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ([4]).

(20) The geographical mobility within the Community should be controlled and demand-driven during the first period of legal stay of the highly qualified third-country worker. Derogations from Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ([5]) should be provided for in order not to penalise geographically mobile highly qualified third-country workers who have not yet acquired the EC long-term resident status referred to in that Directive, and in order to encourage geographical and circular migration.

(21) The mobility of highly qualified third-country workers between the Community and their countries of origin should be fostered and sustained. Derogations from Directive 2003/109/EC should be provided for in order to extend the period of absence from the territory of the Community without interrupting the period of legal and continuous residence necessary to be eligible for EC long-term resident status. Longer periods of absence than those provided for in Directive 2003/109/EC should also be allowed after highly qualified third-country workers have acquired EC long-term resident status to encourage their circular migration.

([1]) OJ L 105, 13.4.2006, p. 1.
([2]) OJ L 149, 5.7.1971, p. 2.
([3]) OJ L 124, 20.5.2003, p. 1.
([4]) OJ L 255, 30.9.2005, p. 22.
([5]) OJ L 16, 23.1.2004, p. 44.

(22) In implementing this Directive, Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel. Ethical recruitment policies and principles applicable to public and private sector employers should be developed in key sectors, for example the health sector, as underlined in the Council and Member States' conclusions of 14 May 2007 on the European Programme for Action to tackle the critical shortage of health workers in developing countries (2007 to 2013) and the education sector, as appropriate. These should be strengthened by the development and application of mechanisms, guidelines and other tools to facilitate, as appropriate, circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries in order to turn 'brain drain' into 'brain gain'.

(23) Favourable conditions for family reunification and for access to work for spouses should be a fundamental element of this Directive which aims to attract highly qualified third-country workers. Specific derogations to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [1] should be provided for in order to reach this aim. The derogation included in Article 15(3) of this Directive does not preclude Member States from maintaining or introducing integration conditions and measures, including language learning, for the members of the family of an EU Blue Card holder.

(24) Specific reporting provisions should be provided for to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of 'brain drain' in developing countries and in order to avoid 'brain waste'. The relevant data should be transmitted annually by the Member States to the Commission in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection [2].

(25) Since the objectives of this Directive, namely the introduction of a special admission procedure and the adoption of conditions of entry and residence for more than three months applicable to third-country nationals in the Member States for the purposes of highly qualified employment and their family members, cannot be sufficiently achieved by the Member States, especially as regards ensuring their mobility between Member States, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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.

(26) This Directive respects the fundamental rights and observes the principles recognised in particular in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

(27) In accordance with paragraph 34 of the Interinstitutional agreement of the European Parliament, the Council and the Commission on better law-making [3], Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures, and make them public.

(28) In accordance with Articles 1 and 2 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 and without prejudice to Article 4 of the said Protocol these Member States are not taking part in the adoption of this Directive and are not bound by or subject to its application.

(29) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

The purpose of this Directive is to determine:

(a) the conditions of entry and residence for more than three months in the territory of the Member States of third-country nationals for the purpose of highly qualified employment as EU Blue Card holders, and of their family members;

(b) the conditions for entry and residence of third-country nationals and of their family members under point (a) in Member States other than the first Member State.

[1] OJ L 251, 3.10.2003, p. 12.
[2] OJ L 199, 31.7.2007, p. 23.
[3] OJ C 321, 31.12.2003, p. 1.

Article 2

Definitions

For the purposes of this Directive:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) 'highly qualified employment' means the employment of a person who:

— in the Member State concerned, is protected as an employee under national employment law and/or in accordance with national practice, irrespective of the legal relationship, for the purpose of exercising genuine and effective work for, or under the direction of, someone else,

— is paid, and,

— has the required adequate and specific competence, as proven by higher professional qualifications,

(c) 'EU Blue Card' means the authorisation bearing the term 'EU Blue Card' entitling its holder to reside and work in the territory of a Member State under the terms of this Directive;

(d) 'first Member State' means the Member State which first grants a third-country national an 'EU Blue Card';

(e) 'second Member State' means any Member State other than the first Member State;

(f) 'family members' means third-country nationals as defined in Article 4(1) of Directive 2003/86/EC;

(g) 'higher professional qualifications' means qualifications attested by evidence of higher education qualifications or, by way of derogation, when provided for by national law, attested by at least five years of professional experience of a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;

(h) 'higher education qualification' means any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme, namely a set of courses provided by an educational establishment recognised as a higher education institution by the State in which it is situated. For the purposes of this Directive, a higher education qualification shall be taken into account, on condition that the studies needed to acquire it lasted at least three years;

(i) 'professional experience' means the actual and lawful pursuit of the profession concerned;

(j) 'regulated profession' means a regulated profession as defined in Article 3(1)(a) of Directive 2005/36/EC.

Article 3

Scope

1. This Directive shall apply to third-country nationals who apply to be admitted to the territory of a Member State for the purpose of highly qualified employment under the terms of this Directive.

2. This Directive shall not apply to third-country nationals:

(a) who are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

(b) who are beneficiaries of international protection under Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [1] or have applied for international protection under that Directive and whose application has not yet given rise to a final decision;

(c) who are beneficiaries of protection in accordance with national law, international obligations or practice of the Member State or have applied for protection in accordance with national law, international obligations or practice of the Member State and whose application has not given rise to a final decision;

(d) who apply to reside in a Member State as researchers, within the meaning of Directive 2005/71/EC, in order to carry out a research project;

(e) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the Community in conformity with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2];

(f) who enjoy EC long-term resident status in a Member State in accordance with Directive 2003/109/EC and exercise their right to reside in another Member State in order to carry out an economic activity in an employed or self-employed capacity;

[1] OJ L 304, 30.9.2004, p. 12.
[2] OJ L 158, 30.4.2004, p. 77, as corrected by OJ L 229, 29.6.2004, p. 35.

(g) who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons;

(h) who have been admitted to the territory of a Member State as seasonal workers;

(i) whose expulsion has been suspended for reasons of fact or law;

(j) who are covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1] as long as they are posted on the territory of the Member State concerned.

In addition, this Directive shall not apply to third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States and those third countries enjoy rights of free movement equivalent to those of Union citizens.

3. This Directive shall be without prejudice to any agreement between the Community and/or its Member States and one or more third countries, that lists the professions which should not fall under this Directive in order to assure ethical recruitment, in sectors suffering from a lack of personnel, by protecting human resources in the developing countries which are signatories to these agreements.

4. This Directive shall be without prejudice to the right of the Member States to issue residence permits other than an EU Blue Card for any purpose of employment. Such residence permits shall not confer the right of residence in the other Member States as provided for in this Directive.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:

(a) Community law, including bilateral or multilateral agreements concluded between the Community or between the Community and its Member States and one or more third countries;

(b) bilateral or multilateral agreements concluded between one or more Member States and one or more third countries.

2. This Directive shall not affect the right of Member States to adopt or retain more favourable provisions for persons to whom it applies in respect of the following provisions of this Directive:

(a) Article 5(3) in application of Article 18;

(b) Articles 11, 12(1), second sentence, 12(2), 13, 14, 15 and 16(4).

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

Criteria for admission

1. Without prejudice to Article 10(1), a third-country national who applies for an EU Blue Card under the terms of this Directive shall:

(a) present a valid work contract or, as provided for in national law, a binding job offer for highly qualified employment, of at least one year in the Member State concerned;

(b) present a document attesting fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer as provided for in national law;

(c) for unregulated professions, present the documents attesting the relevant higher professional qualifications in the occupation or sector specified in the work contract or in the binding job offer as provided for in national law;

(d) present a valid travel document, as determined by national law, an application for a visa or a visa, if required, and evidence of a valid residence permit or of a national long-term visa, if appropriate. Member States may require the period of validity of the travel document to cover at least the initial duration of the residence permit;

(e) present evidence of having or, if provided for by national law, having applied for a sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or resulting from, the work contract;

(f) not be considered to pose a threat to public policy, public security or public health.

[1] OJ L 18, 21.1.1997, p. 1.

2. Member States may require the applicant to provide his address in the territory of the Member State concerned.

3. In addition to the conditions laid down in paragraph 1, the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to a relevant salary threshold defined and published for that purpose by the Member States, which shall be at least 1,5 times the average gross annual salary in the Member State concerned.

4. When implementing paragraph 3, Member States may require that all conditions in the applicable laws, collective agreements or practices in the relevant occupational branches for highly qualified employment are met.

5. By way of derogation to paragraph 3, and for employment in professions which are in particular need of third-country national workers and which belong to the major groups 1 and 2 of ISCO, the salary threshold may be at least 1,2 times the average gross annual salary in the Member State concerned. In this case, the Member State concerned shall communicate each year to the Commission the list of the professions for which a derogation has been decided.

6. This Article shall be without prejudice to the applicable collective agreements or practices in the relevant occupational branches for highly qualified employment.

Article 6

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volume of admission of third-country nationals entering its territory for the purposes of highly qualified employment.

CHAPTER III

EU BLUE CARD, PROCEDURE AND TRANSPARENCY

Article 7

EU Blue Card

1. A third-country national who has applied and fulfils the requirements set out in Article 5 and for whom the competent authorities have taken a positive decision in accordance with Article 8 shall be issued with an EU Blue Card.

The Member State concerned shall grant the third-country national every facility to obtain the requisite visas.

2. Member States shall set a standard period of validity of the EU Blue Card, which shall be comprised between one and four years. If the work contract covers a period less than this period, the EU Blue Card shall be issued or renewed for the duration of the work contract plus three months.

3. The EU Blue Card shall be issued by the competent authorities of the Member State using the uniform format as laid down in Regulation (EC) No 1030/2002. In accordance with point (a) 7,5-9 of the Annex to that Regulation, Member States shall indicate on the EU Blue Card the conditions for access to the labour market as set out in Article 12(1) of this Directive. Under the heading 'type of permit' in the residence permit, Member States shall enter 'EU Blue Card'.

4. During the period of its validity, the EU Blue Card shall entitle its holder to:

(a) enter, re-enter and stay in the territory of the Member State issuing the EU Blue Card;

(b) the rights recognised in this Directive.

Article 8

Grounds for refusal

1. Member States shall reject an application for a EU Blue Card whenever the applicant does not meet the conditions set out in Article 5 or whenever the documents presented have been fraudulently acquired, or falsified or tampered with.

2. Before taking the decision on an application for an EU Blue Card, and when considering renewals or authorisations pursuant to Article 12(1) and (2) during the first two years of legal employment as an EU Blue Card holder, Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy.

Member States may verify whether the concerned vacancy could not be filled by national or Community workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Community or national law, or by EC long-term residents wishing to move to that Member State for highly qualified employment in accordance with Chapter III of Directive 2003/109/EC.

3. An application for an EU Blue Card may also be considered as inadmissible on the grounds of Article 6.

4. Member States may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin.

5. Member States may reject an application for an EU Blue Card if the employer has been sanctioned in conformity with national law for undeclared work and/or illegal employment.

Article 9

Withdrawal or non-renewal of the EU Blue Card

1. Member States shall withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:

(a) when it has been fraudulently acquired, or has been falsified or tampered with;

(b) wherever it appears that the holder did not meet or no longer meets the conditions for entry and residence laid down in this Directive or is residing for purposes other than that for which the holder was authorised to reside;

(c) when the holder has not respected the limitations set out in Articles 12(1) and (2) and 13.

2. The lack of communication pursuant to Article 12(2) second subparagraph and 13(4) shall not be considered to be a sufficient reason for withdrawing or not renewing the EU Blue Card if the holder can prove that the communication did not reach the competent authorities for a reason independent of the holder's will.

3. Member States may withdraw or refuse to renew an EU Blue Card issued on the basis of this Directive in the following cases:

(a) for reasons of public policy, public security or public health;

(b) wherever the EU Blue Card holder does not have sufficient resources to maintain himself and, where applicable, the members of his family, without having recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members of the person concerned. Such evaluation shall not take place during the period of unemployment referred to in Article 13;

(c) if the person concerned has not communicated his address;

(d) when the EU Blue Card holder applies for social assistance, provided that the appropriate written information has been provided to him in advance by the Member State concerned.

Article 10

Applications for admission

1. Member States shall determine whether applications for an EU Blue Card are to be made by the third-country national and/or by his employer.

2. The application shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he wishes to be admitted or when he is already residing in that Member State as holder of a valid residence permit or national long-stay visa.

3. By way of derogation from paragraph 2, a Member State may accept, in accordance with its national law, an application submitted when the third-country national concerned is not in possession of a valid residence permit but is legally present in its territory.

4. By way of derogation from paragraph 2, a Member State may provide that an application can only be submitted from outside its territory, provided that such limitations, either for all the third-country nationals or for specific categories of third-country nationals, are already set out in the existing national law at the time of the adoption of this Directive.

Article 11

Procedural safeguards

1. The competent authorities of the Member States shall adopt a decision on the complete application for an EU Blue Card and notify the applicant in writing, in accordance with the notification procedures laid down in the national law of the Member State concerned, as soon as possible and at the latest within 90 days of the application being lodged.

National law of the relevant Member State shall determine any consequence of a decision not having been taken by the end of the period provided for in the first subparagraph.

2. Where the information or documents supplied in support of the application are inadequate, the competent authorities shall notify the applicant of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the authorities have received the additional information or documents required. If additional information or documents have not been provided within the deadline, the application may be rejected.

3. Any decision rejecting an application for an EU Blue Card, a decision not to renew or to withdraw an EU Blue Card, shall be notified in writing to the third-country national concerned and, where relevant, to his employer in accordance with the notification procedures under the relevant national law and shall be open to legal challenge in the Member State concerned, in accordance with national law. The notification shall specify the reasons for the decision, the possible redress procedures available and the time limit for taking action.

CHAPTER IV

RIGHTS

Article 12

Labour market access

1. For the first two years of legal employment in the Member State concerned as an EU Blue Card holder, access to the labour market for the person concerned shall be restricted to the exercise of paid employment activities which meet the conditions for admission set out in Article 5. After these first two years, Member States may grant the persons concerned equal treatment with nationals as regards access to highly qualified employment.

2. For the first two years of legal employment in the Member State concerned as an EU Blue Card holder, changes in employer shall be subject to the prior authorisation in writing of the competent authorities of the Member State of residence, in accordance with national procedures and within the time limits set out in Article 11(1). Modifications that affect the conditions for admission shall be subject to prior communication or, if provided for by national law, prior authorisation.

After these first two years, where the Member State concerned does not make use of the possibility provided for in paragraph 1 regarding equal treatment, the person concerned shall, in accordance with national procedures, communicate changes that affect the conditions of Article 5 to the competent authorities of the Member State of residence.

3. Member States may retain restrictions on access to employment, provided such employment activities entail occasional involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State and where, in accordance with existing national or Community law, these activities are reserved to nationals.

4. Member States may retain restrictions on access to employment activities, in cases where, in accordance with existing national or Community law, these activities are reserved to nationals, Union citizens or EEA citizens.

5. This Article shall be applied without prejudice to the principle of Community preference as expressed in the relevant provisions of the Acts of Accession of 2003 and 2005, in particular with respect to the rights of nationals of the Member States concerned to access the labour market.

Article 13

Temporary unemployment

1. Unemployment in itself shall not constitute a reason for withdrawing an EU Blue Card, unless the period of unemployment exceeds three consecutive months, or it occurs more than once during the period of validity of an EU Blue Card.

2. During the period referred to in paragraph 1, the EU Blue Card holder shall be allowed to seek and take up employment under the conditions set out in Article 12.

3. Member States shall allow the EU Blue Card holder to remain on their territory until the necessary authorisation pursuant to Article 12(2) has been granted or denied. The communication under Article 12(2) shall automatically end the period of unemployment.

4. The EU Blue Card holder shall communicate the beginning of the period of unemployment to the competent authorities of the Member State of residence, in accordance with the relevant national procedures.

Article 14

Equal treatment

1. EU Blue Card holders shall enjoy equal treatment with nationals of the Member State issuing the Blue Card, as regards:

(a) working conditions, including pay and dismissal, as well as health and safety requirements at the workplace;

(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(c) education and vocational training;

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

(e) provisions in national law regarding the branches of social security as defined in Regulation (EEC) No 1408/71. The special provisions in the Annex to Regulation (EC) No 859/2003 shall apply accordingly;

(f) without prejudice to existing bilateral agreements, payment of income-related acquired statutory pensions in respect of old age, at the rate applied by virtue of the law of the debtor Member State(s) when moving to a third country;

(g) access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing, as well as information and counselling services afforded by employment offices;

(h) free access to the entire territory of the Member State concerned, within the limits provided for by national law.

2. With respect to paragraph 1(c) and (g) the Member State concerned may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training, and procedures for obtaining housing.

With respect to paragraph 1(c):

(a) access to university and post-secondary education may be subject to specific prerequisites in accordance with national law;

(b) the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the EU Blue Card holder, or that of the family member for whom benefits are claimed, lies within its territory.

Paragraph 1(g) shall be without prejudice to the freedom of contract in accordance with Community and national law.

3. The right to equal treatment as laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the EU Blue Card in accordance with Article 9.

4. When the EU Blue Card holder moves to a second Member State in accordance with Article 18 and a positive decision on the issuing of an EU Blue Card has not yet been taken, Member States may limit equal treatment in the areas listed in paragraph 1, with the exception of 1(b) and (d). If, during this period, Member States allow the applicant to work, equal treatment with nationals of the second Member State in all areas of paragraph 1 shall be granted.

Article 15

Family members

1. Directive 2003/86/EC shall apply with the derogations laid down in this Article.

2. By way of derogation from Articles 3(1) and 8 of Directive 2003/86/EC, family reunification shall not be made dependent on the requirement of the EU Blue Card holder having reasonable prospects of obtaining the right of permanent residence and having a minimum period of residence.

3. By way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification.

4. By way of derogation from the first subparagraph of Article 5(4) of Directive 2003/86/EC, residence permits for family members shall be granted, where the conditions for family reunification are fulfilled, at the latest within six months from the date on which the application was lodged.

5. By way of derogation from Article 13(2) and (3) of Directive 2003/86/EC, the duration of validity of the residence permits of family members shall be the same as that of the residence permits issued to the EU Blue Card holder insofar as the period of validity of their travel documents allows it.

6. By way of derogation from the second sentence of Article 14(2) of Directive 2003/86/EC, Member States shall not apply any time limit in respect of access to the labour market.

This paragraph is applicable from 19 December 2011.

7. By way of derogation to Article 15(1) of Directive 2003/86/EC, for the purposes of calculation of the five years of residence required for the acquisition of an autonomous residence permit, residence in different Member States may be cumulated.

8. If Member States have recourse to the option provided for in paragraph 7, the provisions set out in Article 16 of this Directive in respect of accumulation of periods of residence in different Member States by the EU Blue Card holder shall apply *mutatis mutandis*.

Article 16

EC long-term resident status for EU Blue Card holders

1. Directive 2003/109/EC shall apply with the derogations laid down in this Article.

2. By way of derogation from Article 4(1) of Directive 2003/109/EC, the EU Blue Card holder having made use of the possibility provided for in Article 18 of this Directive is allowed to cumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence, if the following conditions are met:

(a) five years of legal and continuous residence within the territory of the Community as an EU Blue Card holder; and

(b) legal and continuous residence for two years immediately prior to the submission of the relevant application as an EU Blue Card holder within the territory of the Member State where the application for the long-term resident's EC residence permit is lodged.

3. For the purpose of calculating the period of legal and continuous residence in the Community and by way of derogation from the first subparagraph of Article 4(3) of Directive 2003/109/EC, periods of absence from the territory of the Community shall not interrupt the period referred to in paragraph 2(a) of this Article if they are shorter than 12 consecutive months and do not exceed in total 18 months within the period referred to in paragraph 2(a) of this Article. This paragraph shall apply also in cases where the EU Blue Card holder has not made use of the possibility provided for in Article 18.

4. By way of derogation from Article 9(1)(c) of Directive 2003/109/EC, Member States shall extend to 24 consecutive months the period of absence from the territory of the Community which is allowed to an EC long-term resident holder of a long-term residence permit with the remark referred to in Article 17(2) of this Directive and of his family members having been granted the EC long-term resident status.

5. The derogations to Directive 2003/109/EC set out in paragraphs 3 and 4 of this Article may be restricted to cases where the third-country national concerned can present evidence that he has been absent from the territory of the Community to exercise an economic activity in an employed or self-employed capacity, or to perform a voluntary service, or to study in his own country of origin.

6. Article 14(1)(f) and 15 shall continue to apply for holders of a long-term residence permit with the remark referred to in Article 17(2), where applicable, after the EU Blue Card holder has become an EC long-term resident.

Article 17

Long-term residence permit

1. EU Blue Card holders who fulfil the conditions set out in Article 16 of this Directive for the acquisition of the EC long-term resident status shall be issued with a residence permit in accordance with Article 1(2)(a) of Regulation (EC) No 1030/2002.

2. In the residence permit referred to in paragraph 1 of this Article under the heading 'remarks', Member States shall enter 'Former EU Blue Card holder'.

CHAPTER V

RESIDENCE IN OTHER MEMBER STATES

Article 18

Conditions

1. After eighteen months of legal residence in the first Member State as an EU Blue Card holder, the person concerned and his family members may move to a Member State other than the first Member State for the purpose of highly qualified employment under the conditions set out in this Article.

2. As soon as possible and no later than one month after entering the territory of the second Member State, the EU Blue Card holder and/or his employer shall present an application for an EU Blue Card to the competent authority of that Member State and present all the documents proving the fulfilment of the conditions set out in Article 5 for the second Member State. The second Member State may decide, in accordance with national law, not to allow the applicant to work until the positive decision on the application has been taken by its competent authority.

3. The application may also be presented to the competent authorities of the second Member State while the EU Blue Card holder is still residing in the territory of the first Member State.

4. In accordance with the procedures set out in Article 11, the second Member State shall process the application and inform in writing the applicant and the first Member State of its decision to either:

(a) issue an EU Blue Card and allow the applicant to reside on its territory for highly qualified employment where the conditions set in this Article are fulfilled and under the conditions set out in Articles 7 to 14; or

(b) refuse to issue an EU Blue Card and oblige the applicant and his family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory where the conditions set out in this Article are not fulfilled. The first Member State shall immediately readmit without formalities the EU Blue Card holder and his family members. This shall also apply if the EU Blue Card issued by the first Member State has expired or has been withdrawn during the examination of the application. Article 13 shall apply after readmission.

5. If the EU Blue Card issued by the first Member State expires during the procedure, Member States may issue, if required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.

6. The applicant and/or his employer may be held responsible for the costs related to the return and readmission of the EU Blue Card holder and his family members, including costs incurred by public funds, where applicable, pursuant to paragraph 4(b).

7. In application of this Article, Member States may continue to apply volumes of admission as referred to in Article 6.

8. From the second time that an EU Blue Card holder, and where applicable, his family members, makes use of the possibility to move to another Member State under the terms of this Chapter, 'first Member State' shall be understood as the Member States from where the person concerned moves and 'second Member State' as the Member State to which he is applying to reside.

Article 19

Residence in the second Member State for family members

1. When the EU Blue Card holder moves to a second Member State in accordance with Article 18 and when the family was already constituted in the first Member State, the members of his family shall be authorised to accompany or join him.

2. No later than one month after entering the territory of the second Member State, the family members concerned or the EU Blue card holder, in accordance with national law, shall submit an application for a residence permit as a family member to the competent authorities of that Member State.

In cases where the residence permit of the family members issued by the first Member State expires during the procedure or no longer entitles the holder to reside legally on the territory of the second Member State, Member States shall allow the person to stay in their territory, if necessary by issuing national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on their territory with the EU Blue Card holder until a decision on the application has been taken by the competent authorities of the second Member State.

3. The second Member State may require the family members concerned to present with their application for a residence permit:

(a) their residence permit in the first Member State and a valid travel document, or their certified copies, as well as a visa, if required;

(b) evidence that they have resided as members of the family of the EU Blue Card holder in the first Member State;

(c) evidence that they have a sickness insurance covering all risks in the second Member State, or that the EU Blue Card holder has such insurance for them.

4. The second Member State may require the EU Blue Card holder to provide evidence that the holder:

(a) has an accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in the Member State concerned;

(b) has stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

5. Derogations contained in Article 15 shall continue to apply *mutatis mutandis*.

6. Where the family was not already constituted in the first Member State, Article 15 shall apply.

CHAPTER VI

FINAL PROVISIONS

Article 20

Implementing measures

1. Member States shall communicate to the Commission and the other Member States if legislative or regulatory measures are enacted in respect of Articles 6, 8(2) and 18(6).

Those Member States which make use of the provisions of Article 8(4) shall communicate to the Commission and to the other Member States a duly justified decision indicating the countries and sectors concerned.

2. Annually, and for the first time no later than 19 June 2013, Member States shall, in accordance with Regulation (EC) No 862/2007, communicate to the Commission statistics on the volumes of third-country nationals who have been granted an EU Blue Card and, as far as possible, volumes of third-country nationals whose EU Blue Card has been renewed or withdrawn, during the previous calendar year, indicating their nationality and, as far as possible, their occupation. Statistics on admitted family members shall be communicated in the same manner, except as regards information on their occupation. In relation to EU Blue Card holders and members of their families admitted in accordance with Articles 18, 19 and 20, the information provided shall, in addition, specify, as far as possible, the Member State of previous residence.

3. For the purpose of the implementation of Article 5(3) and, where appropriate, 5(5), reference shall be made to Commission (Eurostat) data and, where appropriate, national data.

Article 21

Reports

Every three years, and for the first time no later than 19 June 2014, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States, in particular the assessment of the impact of Articles 3(4), 5 and 18, and shall propose any amendments that are necessary.

The Commission shall notably assess the relevance of the salary threshold defined in Article 5 and of the derogations provided for in that Article, taking into account, inter alia, the diversity of the economical, sectorial and geographical situations within the Member States.

Article 22

Contact points

1. Member States shall appoint contact points which shall be responsible for receiving and transmitting the information referred to in Articles 16, 18 and 20.

2. Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in paragraph 1.

Article 23

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 19 June 2011. They shall forthwith inform the Commission thereof.

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

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

Article 24

Entry into force

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

Article 25

Addressees

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

Done at Brussels, 25 May 2009.

For the Council

The President

J. ŠEBESTA

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2011/98/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a) and (b) of Article 79(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) For the gradual establishment of an area of freedom, security and justice, the Treaty on the Functioning of the European Union (TFEU) provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national law governing the conditions for admission and residence of third-country nationals. In this context, it stated in particular that the European Union should ensure fair treatment of third-country nationals who are legally residing in the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of citizens of the Union. The European Council accordingly asked the Council to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere was reaffirmed by the Stockholm Programme, which was adopted by the European Council at its meeting of 10 and 11 December 2009.

(3) Provisions for a single application procedure leading to a combined title encompassing both residence and work permits within a single administrative act will contribute to simplifying and harmonising the rules currently applicable in Member States. Such procedural simplification has already been introduced by several Member States and has made for a more efficient procedure both for the migrants and for their employers, and has allowed easier controls of the legality of their residence and employment.

(4) In order to allow initial entry into their territory, Member States should be able to issue a single permit or, if they issue single permits only after entry, a visa. Member States should issue such single permits or visas in a timely manner.

(5) A set of rules governing the procedure for examination of the application for a single permit should be laid down. That procedure should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(6) The provisions of this Directive should be without prejudice to the competence of the Member States to regulate the admission, including the volumes of admission, of third-country nationals for the purpose of work.

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[1] OJ C 27, 3.2.2009, p. 114.
[2] OJ C 257, 9.10.2008, p. 20.
[3] Position of the European Parliament of 24 March 2011 (not yet published in the Official Journal) and position of the Council at first reading of 24 November 2011 (not yet published in the Official Journal). Position of the European Parliament of 13 December 2011 (not yet published in the Official Journal).

(7) Posted third-country nationals should not be covered by this Directive. This should not prevent third-country nationals who are legally residing and working in a Member State and posted to another Member State from continuing to enjoy equal treatment with respect to nationals of the Member State of origin for the duration of their posting, in respect of those terms and conditions of employment which are not affected by the application of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([1]).

(8) Third-country nationals who have acquired long-term resident status in accordance with Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents ([2]) should not be covered by this Directive given their more privileged status and their specific type of residence permit 'long-term resident-EU'.

(9) Third-country nationals who have been admitted to the territory of a Member State to work on a seasonal basis should not be covered by this Directive given their temporary status.

(10) The obligation on the Member States to determine whether the application is to be made by a third-country national or by his or her employer should be without prejudice to any arrangements requiring both to be involved in the procedure. The Member States should decide whether the application for a single permit is to be made in the Member State of destination or from a third country. In cases where the third-country national is not allowed to make an application from a third country, Member States should ensure that the application may be made by the employer in the Member State of destination.

(11) The provisions of this Directive on the single application procedure and on the single permit should not concern uniform or long-stay visas.

(12) The designation of the competent authority under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, with regard to the examination of, and the decision on, the application.

(13) The deadline for adopting a decision on the application should not include the time required for the recognition of professional qualifications or the time required for issuing a visa. This Directive should be without prejudice to national procedures on the recognition of diplomas.

(14) The single permit should be drawn up in accordance with Council Regulation (EC) No 1030/2002, of 13 June 2002 laying down a uniform format for residence permits for third-country nationals ([3]), enabling Member States to enter further information, in particular as to whether or not the person is permitted to work. A Member State should indicate, inter alia, for the purpose of better control of migration, not only on the single permit but also on all the issued residence permits, the information relating to the permission to work, irrespective of the type of the permit or the residence title on the basis of which the third-country national has been admitted to the territory and has been given access to the labour market of that Member State.

(15) The provisions of this Directive on residence permits for purposes other than work should apply only to the format of such permits and should be without prejudice to Union or national rules on admission procedures and on procedures for issuing such permits.

(16) The provisions of this Directive on the single permit and on the residence permit issued for purposes other than work should not prevent Member States from issuing an additional paper document in order to be able to give more precise information on the employment relationship for which the format of the residence permit leaves insufficient space. Such a document can serve to prevent the exploitation of third-country nationals and combat illegal employment but should be optional for Member States and should not serve as a substitute for a work permit thereby compromising the concept of the single permit. Technical possibilities offered by Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto can also be used to store such information in an electronic format.

(17) The conditions and criteria on the basis of which an application to issue, amend or renew a single permit can be rejected, or on the basis of which the single permit can be withdrawn, should be objective and should be laid down in national law including the obligation to respect the principle of Union preference as expressed in particular in the relevant provisions of the 2003 and 2005 Acts of Accession. Rejection and withdrawal decisions should be duly reasoned.

(18) Third-country nationals who are in possession of a valid travel document and a single permit issued by a Member State applying the Schengen *acquis* in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen *acquis* in full, for a period up to three months in any six-month period in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community

([1]) OJ L 18, 21.1.1997, p. 1.
([2]) OJ L 16, 23.1.2004, p. 44.
([3]) OJ L 157, 15.6.2002, p. 1.

Code on the rules governing the movement of persons across borders (Schengen Borders Code) [1] and Article 21 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders [2] (Schengen Convention).

(19) In the absence of horizontal Union legislation, the rights of third-country nationals vary, depending on the Member State in which they work and on their nationality. With a view to developing further a coherent immigration policy and narrowing the rights gap between citizens of the Union and third-country nationals legally working in a Member State and complementing the existing immigration *acquis*, a set of rights should be laid down in order, in particular, to specify the fields in which equal treatment between a Member State's own nationals and such third-country nationals who are not yet long-term residents is provided. Such provisions are intended to establish a minimum level playing field within the Union, to recognise that such third-country nationals contribute to the Union economy through their work and tax payments and to serve as a safeguard to reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter. A third–country worker in this Directive should be defined, without prejudice to the interpretation of the concept of employment relationship in other provisions of Union law, as a third-country national who has been admitted to the territory of a Member State, who is legally residing and who is allowed, in the context of a paid relationship, to work there in accordance with national law or practice.

(20) All third-country nationals who are legally residing and working in Member States should enjoy at least a common set of rights based on equal treatment with the nationals of their respective host Member State, irrespective of the initial purpose of or basis for admission. The right to equal treatment in the fields specified by this Directive should be granted not only to those third-country nationals who have been admitted to a Member State to work but also to those who have been admitted for other purposes and have been given access to the labour market of that Member State in accordance with other provisions of Union or national law, including family members of a third-country worker who are admitted to the Member State in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [3]; third-country nationals who are admitted to the territory of a Member State in accordance with Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service [4]; and researchers admitted in accordance with Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research [5].

(21) The right to equal treatment in specified fields should be strictly linked to the third-country national's legal residence and the access given to the labour market in a Member State, which are enshrined in the single permit encompassing the authorisation to reside and work and in residence permits issued for other purposes containing information on the permission to work.

(22) Working conditions as referred to in this Directive should cover at least pay and dismissal, health and safety at the workplace, working time and leave taking into account collective agreements in force.

(23) A Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of citizens of the Union and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [6]. The right to equal treatment accorded to third-country workers as regards recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures should be without prejudice to the competence of Member States to admit such third-country workers to their labour market.

(24) Third-country workers should enjoy equal treatment as regards social security. Branches of social security are defined in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [7]. The provisions on equal treatment concerning social security in this Directive should also apply to workers admitted to a Member State directly from a third country. Nevertheless, this Directive should not confer on third-country workers more rights than those already provided in existing Union law in the field of social security for third-country nationals who are in cross-border situations. This Directive, furthermore, should not grant rights in relation to situations which lie outside the scope of Union law, such as in relation to family members residing in a third country. This Directive should grant rights only in relation to family members who join third-country workers to reside in a Member State on the basis of family reunification or family members who already reside legally in that Member State.

[1] OJ L 105, 13.4.2006, p. 1.
[2] OJ L 239, 22.9.2000, p. 19.
[3] OJ L 251, 3.10.2003, p. 12.
[4] OJ L 375, 23.12.2004, p. 12.
[5] OJ L 289, 3.11.2005, p. 15.
[6] OJ L 255, 30.9.2005, p. 22.
[7] OJ L 166, 30.4.2004, p. 1.

(25) Member States should ensure at least equal treatment of third-country nationals who are in employment or who, after a minimum period of employment, are registered as unemployed. Any restrictions to the equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred pursuant to Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality ([1]).

(26) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.

(27) Equal treatment of third-country workers should not apply to measures in the field of vocational training which are financed under social assistance schemes.

(28) This Directive should be applied without prejudice to more favourable provisions contained in Union law and applicable international instruments.

(29) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation in particular in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ([2]) and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([3]).

(30) Since the objectives of this Directive, namely laying down a single application procedure for issuing a single permit for third-country nationals to work in the territory of a Member State and a common set of rights for third-country workers legally residing in a Member State, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). 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.

(31) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union in accordance with Article 6(1) of the TEU.

(32) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(33) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(34) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive lays down:

(a) a single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status; and

(b) a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

2. This Directive is without prejudice to the Member States' powers concerning the admission of third-country nationals to their labour markets.

([1]) OJ L 344, 29.12.2010, p. 1.
([2]) OJ L 180, 19.7.2000, p. 22.
([3]) OJ L 303, 2.12.2000, p. 16.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

(a) 'third-country national' means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;

(b) 'third-country worker' means a third-country national who has been admitted to the territory of a Member State and who is legally residing and is allowed to work in the context of a paid relationship in that Member State in accordance with national law or practice;

(c) 'single permit' means a residence permit issued by the authorities of a Member State allowing a third-country national to reside legally in its territory for the purpose of work;

(d) 'single application procedure' means any procedure leading, on the basis of a single application made by a third-country national, or by his or her employer, for the authorisation of residence and work in the territory of a Member State, to a decision ruling on that application for the single permit.

Article 3

Scope

1. This Directive shall apply to:

(a) third-country nationals who apply to reside in a Member State for the purpose of work;

(b) third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002; and

(c) third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law.

2. This Directive shall not apply to third-country nationals:

(a) who are family members of citizens of the Union who have exercised, or are exercising, their right to free movement within the Union in accordance with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [1];

(b) who, together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under agreements either between the Union and the Member States or between the Union and third countries;

(c) who are posted for as long as they are posted;

(d) who have applied for admission or have been admitted to the territory of a Member State to work as intra-corporate transferees;

(e) who have applied for admission or have been admitted to the territory of a Member State as seasonal workers or au pairs;

(f) who are authorised to reside in a Member State on the basis of temporary protection, or who have applied for authorisation to reside there on that basis and are awaiting a decision on their status;

(g) who are beneficiaries of international protection under Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2] or who have applied for international protection under that Directive and whose application has not been the subject of a final decision;

(h) who are beneficiaries of protection in accordance with national law, international obligations or the practice of a Member State or have applied for protection in accordance with national law, international obligations or the practice of a Member State and whose application has not been the subject of a final decision;

(i) who are long-term residents in accordance with Directive 2003/109/EC;

(j) whose removal has been suspended on the basis of fact or law;

(k) who have applied for admission or who have been admitted to the territory of a Member State as self-employed workers;

(l) who have applied for admission or have been admitted as seafarers for employment or work in any capacity on board of a ship registered in or sailing under the flag of a Member State.

3. Member States may decide that Chapter II does not apply to third-country nationals who have been either authorised to work in the territory of a Member State for a period not exceeding six months or who have been admitted to a Member State for the purpose of study.

[1] OJ L 158, 30.4.2004, p. 77.

[2] OJ L 304, 30.9.2004, p. 12.

4. Chapter II shall not apply to third-country nationals who are allowed to work on the basis of a visa.

CHAPTER II

SINGLE APPLICATION PROCEDURE AND SINGLE PERMIT

Article 4

Single application procedure

1. An application to issue, amend or renew a single permit shall be submitted by way of a single application procedure. Member States shall determine whether applications for a single permit are to be made by the third-country national or by the third-country national's employer. Member States may also decide to allow an application from either of the two. If the application is to be submitted by the third-country national, Member States shall allow the application to be introduced from a third country or, if provided for by national law, in the territory of the Member State in which the third-country national is legally present.

2. Member States shall examine an application made under paragraph 1 and shall adopt a decision to issue, amend or renew the single permit if the applicant fulfils the requirements specified by Union or national law. A decision to issue, amend or renew the single permit shall constitute a single administrative act combining a residence permit and a work permit.

3. The single application procedure shall be without prejudice to the visa procedure which may be required for initial entry.

4. Member States shall issue a single permit, where the conditions provided for are met, to third-country nationals who apply for admission and to third-country nationals already admitted who apply to renew or modify their residence permit after the entry into force of the national implementing provisions.

Article 5

Competent authority

1. Member States shall designate the authority competent to receive the application and to issue the single permit.

2. The competent authority shall adopt a decision on the complete application as soon as possible and in any event within four months of the date on which the application was lodged.

The time limit referred to in the first subparagraph may be extended in exceptional circumstances, linked to the complexity of the examination of the application.

Where no decision is taken within the time limit provided for in this paragraph, any consequences shall be determined by national law.

3. The competent authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant national law.

4. If the information or documents in support of the application are incomplete according to the criteria specified in national law, the competent authority shall notify the applicant in writing of the additional information or documents required, setting a reasonable deadline to provide them. The time limit referred to in paragraph 2 shall be suspended until the competent authority or other relevant authorities have received the additional information required. If the additional information or documents is not provided within the deadline set, the competent authority may reject the application.

Article 6

Single permit

1. Member States shall issue a single permit using the uniform format as laid down in Regulation (EC) No 1030/2002 and shall indicate the information relating to the permission to work in accordance with point (a)7.5-9 of the Annex thereto.

Member States may indicate additional information related to the employment relationship of the third-country national (such as the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and in point (a)16 of the Annex thereto.

2. When issuing the single permit Member States shall not issue additional permits as proof of authorisation to access the labour market.

Article 7

Residence permits issued for purposes other than work

1. When issuing residence permits in accordance with Regulation (EC) No 1030/2002 Member States shall indicate the information relating to the permission to work irrespective of the type of the permit.

Member States may indicate additional information related to the employment relationship of the third-country national (such as the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format as referred to in Article 4 of Regulation (EC) No 1030/2002 and point (a)16 of the Annex thereto.

2. When issuing residence permits in accordance with Regulation (EC) No 1030/2002, Member States shall not issue additional permits as proof of authorisation to access the labour market.

Article 8

Procedural guarantees

1. Reasons shall be given in the written notification of a decision rejecting an application to issue, amend or renew a single permit, or a decision withdrawing a single permit on the basis of criteria provided for by Union or national law.

2. A decision rejecting the application to issue, amend or renew or withdrawing a single permit shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification referred to in paragraph 1 shall specify the court or administrative authority where the person concerned may lodge an appeal and the time limit therefor.

3. An application may be considered as inadmissible on the grounds of volume of admission of third-country nationals coming for employment and, on that basis, need not to be processed.

Article 9

Access to information

Member States shall provide, upon request, adequate information to the third-country national and the future employer on the documents required to make a complete application.

Article 10

Fees

Member States may require applicants to pay fees, where appropriate, for handling applications in accordance with this Directive. The level of such fees shall be proportionate and may be based on the services actually provided for the processing of applications and the issuance of permits.

Article 11

Rights on the basis of the single permit

Where a single permit has been issued in accordance with national law, it shall authorise, during its period of validity, its holder at least to:

(a) enter and reside in the territory of the Member State issuing the single permit, provided that the holder meets all admission requirements in accordance with national law;

(b) have free access to the entire territory of the Member State issuing the single permit within the limits provided for by national law;

(c) exercise the specific employment activity authorised under the single permit in accordance with national law;

(d) be informed about the holder's own rights linked to the permit conferred by this Directive and/or by national law.

CHAPTER III

RIGHT TO EQUAL TREATMENT

Article 12

Right to equal treatment

1. Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:

(a) working conditions, including pay and dismissal as well as health and safety at the workplace;

(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(c) education and vocational training;

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

(e) branches of social security, as defined in Regulation (EC) No 883/2004;

(f) tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;

(g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law;

(h) advice services afforded by employment offices.

2. Member States may restrict equal treatment:

(a) under point (c) of paragraph 1 by:

(i) limiting its application to those third-country workers who are in employment or who have been employed and who are registered as unemployed;

(ii) excluding those third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC;

(iii) excluding study and maintenance grants and loans or other grants and loans;

(iv) laying down specific prerequisites including language proficiency and the payment of tuition fees, in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the specific employment activity;

(b) by limiting the rights conferred on third-country workers under point (e) of paragraph 1, but shall not restrict such rights for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed.

In addition, Member States may decide that point (e) of paragraph 1 with regard to family benefits shall not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study, or to third-country nationals who are allowed to work on the basis of a visa.

(c) under point (f) of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the third-country worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

(d) under point (g) of paragraph 1 by:

(i) limiting its application to those third-country workers who are in employment;

(ii) restricting access to housing;

3. The right to equal treatment laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the residence permit issued under this Directive, the residence permit issued for purposes other than work, or any other authorisation to work in a Member State.

4. Third-country workers moving to a third country, or their survivors who reside in a third country and who derive rights from those workers, shall receive, in relation to old age, invalidity and death, statutory pensions based on those workers' previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country.

CHAPTER IV

FINAL PROVISIONS

Article 13

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:

(a) Union law, including bilateral and multilateral agreements between the Union, or the Union and its Member States, on the one hand and one or more third countries on the other; and

(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.

Article 14

Information to the general public

Each Member State shall make available to the general public a regularly updated set of information concerning the conditions of third-country nationals' admission to and residence in its territory in order to work there.

Article 15

Reporting

1. Periodically, and for the first time by 25 December 2016, the Commission shall present a report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose amendments it deems necessary.

2. Annually, and for the first time by 25 December 2014, Member States shall communicate to the Commission statistics on the volumes of third-country nationals who have been granted a single permit during the previous calendar year, in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection [1].

Article 16

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 December 2013. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

[1] OJ L 199, 31.7.2007, p. 23.

Article 17

Entry into force

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

Article 18

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 13 December 2011.

For the European Parliament	*For the Council*
The President	*The President*
J. BUZEK	M. SZPUNAR

E. Long Term Residents

1. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

►B

COUNCIL DIRECTIVE 2003/109/EC

of 25 November 2003

concerning the status of third-country nationals who are long-term residents

(OJ L 16, 23.1.2004, p. 44)

Amended by:

		Official Journal		
		No	page	date
►M1	Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011	L 132	1	19.5.2011

▼B

COUNCIL DIRECTIVE 2003/109/EC

of 25 November 2003

concerning the status of third-country nationals who are long-term residents

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) and (4) 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 European Economic and Social Committee [3],

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

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.

(3) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the Charter of Fundamental Rights of the European Union.

(4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.

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

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[1] OJ C 240 E, 28.8.2001, p. 79.
[2] OJ C 284 E, 21.11.2002, p. 102.
[3] OJ C 36, 8.2.2002, p. 59.
[4] OJ C 19, 22.1.2002, p. 18.

▼B

(6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.

(7) To acquire long-term resident status, third-country nationals should prove that they have adequate resources and sickness insurance, to avoid becoming a burden for the Member State. Member States, when making an assessment of the possession of stable and regular resources may take into account factors such as contributions to the pension system and fulfilment of tax obligations.

(8) Moreover, third-country nationals who wish to acquire and maintain long-term resident status should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime.

(9) Economic considerations should not be a ground for refusing to grant long-term resident status and shall not be considered as interfering with the relevant conditions.

(10) A set of rules governing the procedures for the examination of application for long-term resident status should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as being transparent and fair, in order to offer appropriate legal certainty to those concerned. They should not constitute a means of hindering the exercise of the right of residence.

(11) The acquisition of long-term resident status should be certified by residence permits enabling those concerned to prove their legal status easily and immediately. Such residence permits should also satisfy high-level technical standards, notably as regards protection against falsification and counterfeiting, in order to avoid abuses in the Member State in which the status is acquired and in Member States in which the right of residence is exercised.

(12) In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.

(13) With regard to social assistance, the possibility of limiting the benefits for long-term residents to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care. The modalities for granting such benefits should be determined by national law.

▼B

(14) The Member States should remain subject to the obligation to afford access for minors to the educational system under conditions similar to those laid down for their nationals.

(15) The notion of study grants in the field of vocational training does not cover measures which are financed under social assistance schemes. Moreover, access to study grants may be dependent on the fact that the person who applies for such grants fulfils on his/her own the conditions for acquiring long-term resident status. As regards the issuing of study grants, Member States may take into account the fact that Union citizens may benefit from this same advantage in the country of origin.

(16) Long-term residents should enjoy reinforced protection against expulsion. This protection is based on the criteria determined by the decisions of the European Court of Human Rights. In order to ensure protection against expulsion Member States should provide for effective legal redress.

(17) Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States. Certain Member States issue permits with a permanent or unlimited validity on conditions that are more favourable than those provided for by this Directive. The possibility of applying more favourable national provisions is not excluded by the Treaty. However, for the purposes of this Directive, it should be provided that permits issued on more favourable terms do not confer the right to reside in other Member States.

(18) Establishing the conditions subject to which the right to reside in another Member State may be acquired by third-country nationals who are long-term residents should contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured. It could also constitute a major factor of mobility, notably on the Union's employment market.

(19) Provision should be made that the right of residence in another Member State may be exercised in order to work in an employed or self-employed capacity, to study or even to settle without exercising any form of economic activity.

(20) Family members should also be able to settle in another Member State with a long-term resident in order to preserve family unity and to avoid hindering the exercise of the long-term resident's right of residence. With regard to the family members who may be authorised to accompany or to join the long-term residents, Member States should pay special attention to the situation of disabled adult children and of first-degree relatives in the direct ascending line who are dependent on them.

(21) The Member State in which a long-term resident intends to exercise his/her right of residence should be able to check that the person concerned meets the conditions for residing in its territory. It should also be able to check that the person concerned does not constitute a threat to public policy, public security or public health.

▼B

(22) To avoid rendering the right of residence nugatory, long-term residents should enjoy in the second Member State the same treatment, under the conditions defined by this Directive, they enjoy in the Member State in which they acquired the status. The granting of benefits under social assistance is without prejudice to the possibility for the Member States to withdraw the residence permit if the person concerned no longer fulfils the requirements set by this Directive.

(23) Third-country nationals should be granted the possibility of acquiring long-term resident status in the Member State where they have moved and have decided to settle under comparable conditions to those required for its acquisition in the first Member State.

(24) Since the objectives of the proposed action, namely the determination of terms for granting and withdrawing long-term resident status and the rights pertaining thereto and terms for the exercise of rights of residence by long-term residents in other Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle 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 to achieve those objectives.

(25) In accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(26) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive determines:

(a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and

▼B

(b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.

Article 2

Definitions

For the purposes of this Directive:

(a) ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) ‘long-term resident’ means any third-country national who has long-term resident status as provided for under Articles 4 to 7;

(c) ‘first Member State’ means the Member State which for the first time granted long-term resident status to a third-country national;

(d) ‘second Member State’ means any Member State other than the one which for the first time granted long-term resident status to a third-country national and in which that long-term resident exercises the right of residence;

(e) ‘family members’ means the third-country nationals who reside in the Member State concerned in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ([1]);

▼M1

(f) ‘international protection’ means international protection as defined in Article 2(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ([2]);

▼B

(g) ‘long-term resident's EC residence permit’ means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status.

Article 3

Scope

1. This Directive applies to third-country nationals residing legally in the territory of a Member State.

2. This Directive does not apply to third-country nationals who:

(a) reside in order to pursue studies or vocational training;

([1]) OJ L 251, 3.10.2003, p. 12.
([2]) OJ L 304, 30.9.2004, p. 12.

▼B

(b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

▼M1

(c) are authorised to reside in a Member State on the basis of a form of protection other than international protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

(d) have applied for international protection and whose application has not yet given rise to a final decision;

▼B

(e) reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited;

(f) enjoy a legal status governed by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character of 1975.

3. This Directive shall apply without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

(b) bilateral agreements already concluded between a Member State and a third country before the date of entry into force of this Directive;

▼M1

(c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987, the European Convention on the Legal Status of Migrant Workers of 24 November 1977, paragraph 11 of the Schedule to the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967, and the European Agreement on Transfer of Responsibility for Refugees of 16 October 1980.

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CHAPTER II
LONG-TERM RESIDENT STATUS IN A MEMBER STATE

Article 4

Duration of residence

1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

▼M1

1a. Member States shall not grant long-term resident status on the basis of international protection in the event of the revocation of, ending of or refusal to renew international protection as laid down in Articles 14(3) and 19(3) of Directive 2004/83/EC.

▼B

2. Periods of residence for the reasons referred to in Article 3(2)(e) and (f) shall not be taken into account for the purposes of calculating the period referred to in paragraph 1.

Regarding the cases covered in Article 3(2)(a), where the third-country national concerned has acquired a title of residence which will enable him/her to be granted long-term resident status, only half of the periods of residence for study purposes or vocational training may be taken into account in the calculation of the period referred to in paragraph 1.

▼M1

Regarding persons to whom international protection has been granted, at least half of the period between the date of the lodging of the application for international protection on the basis of which that international protection was granted and the date of the grant of the residence permit referred to in Article 24 of Directive 2004/83/EC, or the whole of that period if it exceeds 18 months, shall be taken into account in the calculation of the period referred to in paragraph 1.

▼B

3. Periods of absence from the territory of the Member State concerned shall not interrupt the period referred to in paragraph 1 and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed in total 10 months within the period referred to in paragraph 1.

In cases of specific or exceptional reasons of a temporary nature and in accordance with their national law, Member States may accept that a longer period of absence than that which is referred to in the first subparagraph shall not interrupt the period referred to in paragraph 1. In such cases Member States shall not take into account the relevant period of absence in the calculation of the period referred to in paragraph 1.

By way of derogation from the second subparagraph, Member States may take into account in the calculation of the total period referred to in paragraph 1 periods of absence relating to secondment for employment purposes, including the provision of cross-border services.

Article 5

Conditions for acquiring long-term resident status

1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

(a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;

▼B

(b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.

Article 6

Public policy and public security

1. Member States may refuse to grant long-term resident status on grounds of public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having proper regard to the duration of residence and to the existence of links with the country of residence.

2. The refusal referred to in paragraph 1 shall not be founded on economic considerations.

Article 7

Acquisition of long-term resident status

1. To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he/she resides. The application shall be accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 4 and 5 as well as, if required, by a valid travel document or its certified copy.

The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.

2. The competent national authorities shall give the applicant written notification of the decision as soon as possible and in any event no later than six months from the date on which the application was lodged. Any such decision shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

In addition, the person concerned shall be informed about his/her rights and obligations under this Directive.

Any consequences of no decision being taken by the end of the period provided for in this provision shall be determined by national legislation of the relevant Member State.

3. If the conditions provided for by Articles 4 and 5 are met, and the person does not represent a threat within the meaning of Article 6, the Member State concerned shall grant the third-country national concerned long-term resident status.

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Article 8

Long-term resident's EC residence permit

1. The status as long-term resident shall be permanent, subject to Article 9.

2. Member States shall issue a long-term resident's EC residence permit to long-term residents. The permit shall be valid at least for five years; it shall, upon application if required, be automatically renewable on expiry.

3. A long-term resident's EC residence permit may be issued in the form of a sticker or of a separate document. It shall be issued in accordance with the rules and standard model as set out in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals ([1]). Under the heading 'type of permit', the Member States shall enter 'long-term resident — EC'.

▼M1

4. Where a Member State issues a long-term resident's EU residence permit to a third-country national to whom it granted international protection, it shall enter the following remark in that long-term resident's EU residence permit, under the heading 'Remarks': 'International protection granted by [name of the Member State] on [date]'.

5. Where a long-term resident's EU residence permit is issued by a second Member State to a third-country national who already has a long-term resident's EU residence permit issued by another Member State which contains the remark referred to in paragraph 4, the second Member State shall enter the same remark in the long-term resident's EU residence permit.

Before the second Member State enters the remark referred to in paragraph 4, it shall request the Member State mentioned in that remark to provide information as to whether the long-term resident is still a beneficiary of international protection. The Member State mentioned in the remark shall reply no later than 1 month after receiving the request for information. Where international protection has been withdrawn by a final decision, the second Member State shall not enter that remark.

6. Where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the long-term resident was transferred to the second Member State after the long-term resident's EU residence permit referred to in paragraph 5 was issued, the second Member State shall amend accordingly the remark referred to in paragraph 4 no later than 3 months after the transfer.

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Article 9

Withdrawal or loss of status

1. Long-term residents shall no longer be entitled to maintain long-term resident status in the following cases:

(a) detection of fraudulent acquisition of long-term resident status;

([1]) OJ L 157, 15.6.2002, p. 1.

▼B

(b) adoption of an expulsion measure under the conditions provided for in Article 12;

(c) in the event of absence from the territory of the Community for a period of 12 consecutive months.

2. By way of derogation from paragraph 1(c), Member States may provide that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of status.

3. Member States may provide that the long-term resident shall no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy, in consideration of the seriousness of the offences he/she committed, but such threat is not a reason for expulsion within the meaning of Article 12.

▼M1

3a. Member States may withdraw the long-term resident status in the event of the revocation of, ending of or refusal to renew international protection as laid down in Articles 14(3) and 19(3) of Directive 2004/83/EC if the long-term resident status was obtained on the basis of international protection.

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4. The long-term resident who has resided in another Member State in accordance with Chapter III shall no longer be entitled to maintain his/her long-term resident status acquired in the first Member State when such a status is granted in another Member State pursuant to Article 23.

In any case after six years of absence from the territory of the Member State that granted long-term resident status the person concerned shall no longer be entitled to maintain his/her long term resident status in the said Member State.

By way of derogation from the second subparagraph the Member State concerned may provide that for specific reasons the long-term resident shall maintain his/her status in the said Member State in case of absences for a period exceeding six years.

5. With regard to the cases referred to in paragraph 1(c) and in paragraph 4, Member States who have granted the status shall provide for a facilitated procedure for the re-acquisition of long-term resident status.

The said procedure shall apply in particular to the cases of persons that have resided in a second Member State on grounds of pursuit of studies.

The conditions and the procedure for the re-acquisition of long-term resident status shall be determined by national law.

6. The expiry of a long-term resident's EC residence permit shall in no case entail withdrawal or loss of long-term resident status.

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7. Where the withdrawal or loss of long-term resident status does not lead to removal, the Member State shall authorise the person concerned to remain in its territory if he/she fulfils the conditions provided for in its national legislation and/or if he/she does not constitute a threat to public policy or public security.

Article 10

Procedural guarantees

1. Reasons shall be given for any decision rejecting an application for long-term resident status or withdrawing that status. Any such decision shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the redress procedures available and the time within which he/she may act.

2. Where an application for long-term resident status is rejected or that status is withdrawn or lost or the residence permit is not renewed, the person concerned shall have the right to mount a legal challenge in the Member State concerned.

Article 11

Equal treatment

1. Long-term residents shall enjoy equal treatment with nationals as regards:

(a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;

(b) education and vocational training, including study grants in accordance with national law;

(c) recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures;

(d) social security, social assistance and social protection as defined by national law;

(e) tax benefits;

(f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;

(g) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(h) free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security.

▼B

2. With respect to the provisions of paragraph 1, points (b), (d), (e), (f) and (g), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned.

3. Member States may restrict equal treatment with nationals in the following cases:

(a) Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens;

(b) Member States may require proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites.

4. Member States may limit equal treatment in respect of social assistance and social protection to core benefits.

▼M1

4a. As far as the Member State which granted international protection is concerned, paragraphs 3 and 4 shall be without prejudice to Directive 2004/83/EC.

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5. Member States may decide to grant access to additional benefits in the areas referred to in paragraph 1.

Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1.

Article 12

Protection against expulsion

1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

(a) the duration of residence in their territory;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

▼B

(d) links with the country of residence or the absence of links with the country of origin.

▼M1

3a. Where a Member State decides to expel a long-term resident whose long-term resident's EU residence permit contains the remark referred to in Article 8(4), it shall request the Member State mentioned in that remark to confirm whether the person concerned is still a beneficiary of international protection in that Member State. The Member State mentioned in the remark shall reply no later than 1 month after receiving the request for information.

3b. If the long-term resident is still a beneficiary of international protection in the Member State mentioned in the remark, that person shall be expelled to that Member State, which shall, without prejudice to the applicable Union or national law and to the principle of family unity, immediately readmit, without formalities, that beneficiary and his/her family members.

3c. By way of derogation from paragraph 3b, the Member State which adopted the expulsion decision shall retain the right to remove, in accordance with its international obligations, the long-term resident to a country other than the Member State which granted international protection where that person fulfils the conditions specified in Article 21(2) of Directive 2004/83/EC.

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4. Where an expulsion decision has been adopted, a judicial redress procedure shall be available to the long-term resident in the Member State concerned.

5. Legal aid shall be given to long-term residents lacking adequate resources, on the same terms as apply to nationals of the State where they reside.

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6. This Article shall be without prejudice to Article 21(1) of Directive 2004/83/EC.

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Article 13

More favourable national provisions

Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter III of this Directive.

CHAPTER III

RESIDENCE IN THE OTHER MEMBER STATES

Article 14

Principle

1. A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.

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2. A long-term resident may reside in a second Member State on the following grounds:

(a) exercise of an economic activity in an employed or self-employed capacity;

(b) pursuit of studies or vocational training;

(c) other purposes.

3. In cases of an economic activity in an employed or self-employed capacity referred to in paragraph 2(a), Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for, respectively, filling a vacancy, or for exercising such activities.

For reasons of labour market policy, Member States may give preference to Union citizens, to third-country nationals, when provided for by Community legislation, as well as to third-country nationals who reside legally and receive unemployment benefits in the Member State concerned.

4. By way of derogation from the provisions of paragraph 1, Member States may limit the total number of persons entitled to be granted right of residence, provided that such limitations are already set out for the admission of third-country nationals in the existing legislation at the time of the adoption of this Directive.

5. This chapter does not concern the residence of long-term residents in the territory of the Member States:

(a) as employed workers posted by a service provider for the purposes of cross-border provision of services;

(b) as providers of cross-border services.

Member States may decide, in accordance with national law, the conditions under which long-term residents who wish to move to a second Member State with a view to exercising an economic activity as seasonal workers may reside in that Member State. Cross-border workers may also be subject to specific provisions of national law.

6. This Chapter is without prejudice to the relevant Community legislation on social security with regard to third-country nationals.

Article 15

Conditions for residence in a second Member State

1. As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit.

Member States may accept that the long-term resident submits the application for a residence permit to the competent authorities of the second Member State while still residing in the territory of the first Member State.

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2. Member States may require the persons concerned to provide evidence that they have:

(a) stable and regular resources which are sufficient to maintain themselves and the members of their families, without recourse to the social assistance of the Member State concerned. For each of the categories referred to in Article 14(2), Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions;

(b) sickness insurance covering all risks in the second Member State normally covered for its own nationals in the Member State concerned.

3. Member States may require third-country nationals to comply with integration measures, in accordance with national law.

This condition shall not apply where the third-country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 5(2).

Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses.

4. The application shall be accompanied by documentary evidence, to be determined by national law, that the persons concerned meets the relevant conditions, as well as by their long-term resident permit and a valid travel document or their certified copies.

The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.

In particular:

(a) in case of exercise of an economic activity the second Member State may require the persons concerned to provide evidence:

(i) if they are in an employed capacity, that they have an employment contract, a statement by the employer that they are hired or a proposal for an employment contract, under the conditions provided for by national legislation. Member States shall determine which of the said forms of evidence is required;

(ii) if they are in a self-employed capacity, that they have the appropriate funds which are needed, in accordance with national law, to exercise an economic activity in such capacity, presenting the necessary documents and permits;

(b) in case of study or vocational training the second Member State may require the persons concerned to provide evidence of enrolment in an accredited establishment in order to pursue studies or vocational training.

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Article 16

Family members

1. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, who fulfil the conditions referred to in Article 4(1) of Directive 2003/86/EC shall be authorised to accompany or to join the long-term resident.

2. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, other than those referred to in Article 4(1) of Directive 2003/86/EC may be authorised to accompany or to join the long-term resident.

3. With respect to the submission of the application for a residence permit, the provisions of Article 15(1) apply.

4. The second Member State may require the family members concerned to present with their application for a residence permit:

(a) their long-term resident's EC residence permit or residence permit and a valid travel document or their certified copies;

(b) evidence that they have resided as members of the family of the long-term resident in the first Member State;

(c) evidence that they have stable and regular resources which are sufficient to maintain themselves without recourse to the social assistance of the Member State concerned or that the long-term resident has such resources and insurance for them, as well as sickness insurance covering all risks in the second Member State. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions.

5. Where the family was not already constituted in the first Member State, Directive 2003/86/EC shall apply.

Article 17

Public policy and public security

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security committed by the long-term resident or his/her family member(s), or the danger that emanates from the person concerned.

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2. The decision referred to in paragraph 1 shall not be based on economic considerations.

Article 18

Public health

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public health.

2. The only diseases that may justify a refusal to allow entry or the right of residence in the territory of the second Member State shall be the diseases as defined by the relevant applicable instruments of the World Health Organisation's and such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to nationals in the host country. Member States shall not introduce new more restrictive provisions or practices.

3. Diseases contracted after the first residence permit was issued in the second Member State shall not justify a refusal to renew the permit or expulsion from the territory.

4. A Member State may require a medical examination, for persons to whom this Directive applies, in order to certify that they do not suffer from any of the diseases referred to in paragraph 2. Such medical examinations, which may be free of charge, shall not be performed on a systematic basis.

Article 19

Examination of applications and issue of a residence permit

1. The competent national authorities shall process applications within four months from the date that these have been lodged.

If an application is not accompanied by the documentary evidence listed in Articles 15 and 16, or in exceptional circumstances linked with the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended for a period not exceeding three months. In such cases the competent national authorities shall inform the applicant thereof.

2. If the conditions provided for in Articles 14, 15 and 16 are met, then, subject to the provisions relating to public policy, public security and public health in Articles 17 and 18, the second Member State shall issue the long-term resident with a renewable residence permit. This residence permit shall, upon application, if required, be renewable on expiry. The second Member State shall inform the first Member State of its decision.

3. The second Member State shall issue members of the long-term resident's family with renewable residence permits valid for the same period as the permit issued to the long-term resident.

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Article 19a

Amendments of long-term resident's EU residence permits

1. Where a long-term resident's EU residence permit contains the remark referred to in Article 8(4), and where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the long-term resident is transferred to a second Member State before that Member State issues the long-term resident's EU residence permit referred to in Article 8(5), the second Member State shall ask the Member State which has issued the long-term resident's EU residence permit to amend that remark accordingly.

2. Where a long-term resident is granted international protection in the second Member State before that Member State issued the long-term resident's EU residence permit referred to in Article 8(5), that Member State shall ask the Member State which has issued the long-term resident's EU residence permit to amend it in order to enter the remark referred to in Article 8(4).

3. Following the request referred to in paragraphs 1 and 2, the Member State which has issued the long-term resident's EU residence permit shall issue the amended long-term resident's EU residence permit no later than 3 months after receiving the request from the second Member State.

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Article 20

Procedural guarantees

1. Reasons shall be given for any decision rejecting an application for a residence permit. It shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.

Any consequences of no decision being taken by the end of the period referred to in Article 19(1) shall be determined by the national legislation of the relevant Member State.

2. Where an application for a residence permit is rejected, or the permit is not renewed or is withdrawn, the person concerned shall have the right to mount a legal challenge in the Member State concerned.

Article 21

Treatment granted in the second Member State

1. As soon as they have received the residence permit provided for by Article 19 in the second Member State, long-term residents shall in that Member State enjoy equal treatment in the areas and under the conditions referred to in Article 11.

2. Long-term residents shall have access to the labour market in accordance with the provisions of paragraph 1.

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Member States may provide that the persons referred to in Article 14(2)(a) shall have restricted access to employed activities different than those for which they have been granted their residence permit under the conditions set by national legislation for a period not exceeding 12 months.

Member States may decide in accordance with national law the conditions under which the persons referred to in Article 14(2)(b) or (c) may have access to an employed or self-employed activity.

3. As soon as they have received the residence permit provided for by Article 19 in the second Member State, members of the family of the long-term resident shall in that Member State enjoy the rights listed in Article 14 of Directive 2003/86/EC.

Article 22

Withdrawal of residence permit and obligation to readmit

1. Until the third-country national has obtained long-term resident status, the second Member State may decide to refuse to renew or to withdraw the resident permit and to oblige the person concerned and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory in the following cases:

(a) on grounds of public policy or public security as defined in Article 17;

(b) where the conditions provided for in Articles 14, 15 and 16 are no longer met;

(c) where the third-country national is not lawfully residing in the Member State concerned.

2. If the second Member State adopts one of the measures referred to in paragraph 1, the first Member State shall immediately readmit without formalities the long-term resident and his/her family members. The second Member State shall notify the first Member State of its decision.

3. Until the third-country national has obtained long-term resident status and without prejudice to the obligation to readmit referred to in paragraph 2, the second Member State may adopt a decision to remove the third-country national from the territory of the Union, in accordance with and under the guarantees of Article 12, on serious grounds of public policy or public security.

In such cases, when adopting the said decision the second Member State shall consult the first Member State.

When the second Member State adopts a decision to remove the third-country national concerned, it shall take all the appropriate measures to effectively implement it. In such cases the second Member State shall provide to the first Member State appropriate information with respect to the implementation of the removal decision.

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3a. Unless, in the meantime, the international protection has been withdrawn or the person falls within one of the categories specified in Article 21(2) of Directive 2004/83/EC, paragraph 3 of this Article shall not apply to third-country nationals whose long-term resident's EU residence permit issued by the first Member State contains the remark referred to in Article 8(4) of this Directive.

This paragraph shall be without prejudice to Article 21(1) of Directive 2004/83/EC.

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4. Removal decisions may not be accompanied by a permanent ban on residence in the cases referred to in paragraph 1(b) and (c).

5. The obligation to readmit referred to in paragraph 2 shall be without prejudice to the possibility of the long-term resident and his/her family members moving to a third Member State.

Article 23

Acquisition of long-term resident status in the second Member State

1. Upon application, the second Member State shall grant long-term residents the status provided for by Article 7, subject to the provisions of Articles 3, 4, 5 and 6. The second Member State shall notify its decision to the first Member State.

2. The procedure laid down in Article 7 shall apply to the presentation and examination of applications for long-term resident status in the second Member State. Article 8 shall apply for the issuance of the residence permit. Where the application is rejected, the procedural guarantees provided for by Article 10 shall apply.

CHAPTER IV

FINAL PROVISIONS

Article 24

Report and rendez-vous clause

Periodically, and for the first time no later than 23 January 2011, the Commission shall report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose such amendments as may be necessary. These proposals for amendments shall be made by way of priority in relation to Articles 4, 5, 9, 11 and to Chapter III.

Article 25

Contact points

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Member States shall appoint contact points who will be responsible for receiving and transmitting the information and documentation referred to in Articles 8, 12, 19, 19a, 22 and 23.

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Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in the first paragraph.

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Article 26

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 January 2006 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 Community.

IV. Forced Migration

A. Asylum

1. *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*

2. *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*

3. *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*

4. *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*

5. *Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office*

B. Temporary Protection

1. *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*

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COUNCIL REGULATION (EC) No 343/2003

of 18 February 2003

establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

(OJ L 50, 25.2.2003, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Regulation (EC) No 1103/2008 of the European Parliament and of the Council of 22 October 2008	L 304	80	14.11.2008

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COUNCIL REGULATION (EC) No 343/2003

of 18 February 2003

establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

THE COUNCIL OF THE EUROPEAN UNION,

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

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 European Economic and Social Committee ([3]),

Whereas:

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. In this respect, and without affecting the responsibility criteria laid down in this Regulation, Member States, all respecting the principle of non-refoulement, are considered as safe countries for third-country nationals.

(3) The Tampere conclusions also stated that this system should include, in the short term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(4) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications.

(5) As regards the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities ([4]), signed in Dublin on 15 June 1990 (hereinafter

([1]) OJ C 304 E, 30.10.2001, p. 192.
([2]) Opinion of 9 April 2002 (not yet published in the Official Journal).
([3]) OJ C 125, 27.5.2002, p. 28.
([4]) OJ C 254, 19.8.1997, p. 1.

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referred to as the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.

(6) Family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application.

(7) The processing together of the asylum applications of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent. Member States should be able to derogate from the responsibility criteria, so as to make it possible to bring family members together where this is necessary on humanitarian grounds.

(8) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community policies regarding the conditions of entry and stay of third country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

(9) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communications between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.

(10) Continuity between the system for determining the Member State responsible established by the Dublin Convention and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention ([1]).

(11) The operation of the Eurodac system, as established by Regulation (EC) No 2725/2000 and in particular the implementation of Articles 4 and 8 contained therein should facilitate the implementation of this Regulation.

(12) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

(13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([2]).

(14) The application of the Regulation should be evaluated at regular intervals.

(15) The Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union ([3]). In particular, it seeks to ensure full observance of the right to asylum guaranteed by Article 18.

([1]) OJ L 316, 15.12.2000, p. 1.
([2]) OJ L 184, 17.7.1999, p. 23.
([3]) OJ C 364, 18.12.2000, p. 1.

▼B

(16) Since the objective of the proposed measure, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, cannot be sufficiently achieved by the Member States and, given the scale and effects, can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(17) 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 and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation.

(18) 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 does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.

(19) The Dublin Convention remains in force and continues to apply between Denmark and the Member States that are bound by this Regulation until such time an agreement allowing Denmark's participation in the Regulation has been concluded,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER AND DEFINITIONS

Article 1

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national.

Article 2

For the purposes of this Regulation:

(a) ‘third-country national’ means anyone who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;

(b) ‘Geneva Convention’ means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(c) ‘application for asylum’ means the application made by a third-country national 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 explicitly requests another kind of protection that can be applied for separately;

(d) ‘applicant’ or ‘asylum seeker’ means a third country national who has made an application for asylum in respect of which a final decision has not yet been taken;

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(e) ‘examination of an asylum application’ means any examination of, or decision or ruling concerning, an application for asylum by the competent authorities in accordance with national law except for procedures for determining the Member State responsible in accordance with this Regulation;

(f) ‘withdrawal of the asylum application’ means the actions by which the applicant for asylum terminates the procedures initiated by the submission of his application for asylum, in accordance with national law, either explicitly or tacitly;

(g) ‘refugee’ means any third-country national qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;

(h) ‘unaccompanied minor’ means unmarried 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 includes minors who are left unaccompanied after they have entered the territory of the Member States;

(i) ‘family members’ means insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States:

(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 couples 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;

(iii) the father, mother or guardian when the applicant or refugee is a minor and unmarried;

(j) ‘residence document’ means any authorisation issued by the authorities of a Member State authorising a third-country national to stay in its territory, including the documents substantiating the authorisation to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the responsible Member State as established in this Regulation or during examination of an application for asylum or an application for a residence permit;

(k) ‘visa’ means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

(i) ‘long-stay visa’ means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;

(ii) ‘short-stay visa’ means the authorisation or decision of a Member State required for entry for an intended stay in that State or in several Member States for a period whose total duration does not exceed three months;

(iii) ‘transit visa’ means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;

(iv) ‘airport transit visa’ means the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport,

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without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight.

CHAPTER II

GENERAL PRINCIPLES

Article 3

1. Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant.

3. Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention.

4. The asylum seeker shall be informed in writing in a language that he or she may reasonably be expected to understand regarding the application of this Regulation, its time limits and its effects.

Article 4

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.

2. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point (i), shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for asylum of that parent or guardian, even if the minor is not individually an asylum seeker. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for asylum was lodged.

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The applicant shall be informed in writing of this transfer and of the date on which it took place.

5. An asylum seeker who is present in another Member State and there lodges an application for asylum after withdrawing his application during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Article 20, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum.

This obligation shall cease, if the asylum seeker has in the meantime left the territories of the Member States for a period of at least three months or has obtained a residence document from a Member State.

CHAPTER III

HIERARCHY OF CRITERIA

Article 5

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State.

Article 6

Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor.

In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.

Article 7

Where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.

Article 8

If the asylum seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.

Article 9

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum.

2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, unless the visa was issued

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when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision.

3. Where the asylum seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

(b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;

(c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

Where the asylum seeker is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application is lodged shall be responsible.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that a fraud was committed after the document or visa had been issued.

Article 10

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), including the data referred to in Chapter III of Regulation (EC) No 2725/2000, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum. This responsibility shall cease 12 months after the date on which the irregular border crossing took place.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), that the asylum seeker — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — at the time of lodging the application has been previously living for a continuous period of at least five months in a Member State, that Member State shall be responsible for examining the application for asylum.

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If the applicant has been living for periods of time of at least five months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application.

Article 11

1. If a third-country national enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for asylum.

2. The principle set out in paragraph 1 does not apply, if the third-country national lodges his or her application for asylum in another Member State, in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter Member State shall be responsible for examining the application for asylum.

Article 12

Where the application for asylum is made in an international transit area of an airport of a Member State by a third-country national, that Member State shall be responsible for examining the application.

Article 13

Where no Member State responsible for examining the application for asylum can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for asylum was lodged shall be responsible for examining it.

Article 14

Where several members of a family submit applications for asylum in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to them being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for asylum of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

CHAPTER IV

HUMANITARIAN CLAUSE

Article 15

1. Any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case that Member State shall, at the request of another Member

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State, examine the application for asylum of the person concerned. The persons concerned must consent.

2. In cases in which the person concerned is dependent on the assistance of the other on account of pregnancy or a new-born child, serious illness, severe handicap or old age, Member States shall normally keep or bring together the asylum seeker with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin.

3. If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor.

4. Where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.

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5. The conditions and procedures for implementing this Article, including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(3).

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CHAPTER V

TAKING CHARGE AND TAKING BACK

Article 16

1. The Member State responsible for examining an application for asylum under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 17 to 19, of an asylum seeker who has lodged an application in a different Member State;

(b) complete the examination of the application for asylum;

(c) take back, under the conditions laid down in Article 20, an applicant whose application is under examination and who is in the territory of another Member State without permission;

(d) take back, under the conditions laid down in Article 20, an applicant who has withdrawn the application under examination and made an application in another Member State;

(e) take back, under the conditions laid down in Article 20, a third-country national whose application it has rejected and who is in the territory of another Member State without permission.

2. Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.

3. The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.

4. The obligations specified in paragraph 1(d) and (e) shall likewise cease once the Member State responsible for examining the application has adopted and actually implemented, following the withdrawal or

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rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.

Article 17

1. Where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. This period shall be at least one week.

3. In both cases, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 18(3) and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 27(2).

Article 18

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.

2. In the procedure for determining the Member State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence shall be used.

3. In accordance with the procedure referred to in Article 27(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

(a) Proof:

   (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.

   (ii) The Member States shall provide the Committee provided for in Article 27 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.

(b) Circumstantial evidence:

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(i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them.

(ii) Their evidentiary value, in relation to the responsibility for examining the application for asylum shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article 17(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time limit requested, but in any case within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the provisions for proper arrangements for arrival.

Article 19

1. Where the requested Member State accepts that it should take charge of an applicant, the Member State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.

3. The transfer of the applicant from the Member State in which the application for asylum was lodged to the Member State responsible shall be carried out in accordance with the national law of the first Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken or of the decision on an appeal or review where there is a suspensive effect.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 27(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

4. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a

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maximum of one year if the transfer could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

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5. The Commission may adopt supplementary rules on carrying out transfers. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(3).

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Article 20

1. An asylum seeker shall be taken back in accordance with Article 4(5) and Article 16(1)(c), (d) and (e) as follows:

(a) the request for the applicant to be taken back must contain information enabling the requested Member State to check that it is responsible;

(b) the Member State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it as quickly as possible and under no circumstances exceeding a period of one month from the referral. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks;

(c) where the requested Member State does not communicate its decision within the one month period or the two weeks period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;

(d) a Member State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;

(e) the requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a laissez passer of the design adopted in accordance with the procedure referred to in Article 27(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

2. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

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3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 27(2).

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4. The Commission may adopt supplementary rules on carrying out transfers. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(3).

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CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 21

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:

(a) the determination of the Member State responsible for examining the application for asylum;

(b) examining the application for asylum;

(c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

(a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

(b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

(c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000;

(d) places of residence and routes travelled;

(e) residence documents or visas issued by a Member State;

(f) the place where the application was lodged;

(g) the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for asylum, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the Member State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for asylum.

4. Any request for information shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means asylum seekers enter the territories of the Member States, or on what specific and verifiable part of

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the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.

5. The requested Member State shall be obliged to reply within six weeks.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission, which shall inform the other Member States thereof.

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

(a) the determination of the Member State responsible for examining the application for asylum;

(b) examining the application for asylum;

(c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

9. The asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1], in particular because it is incomplete or inaccurate, he is entitled to have it corrected, erased or blocked.

The authority correcting, erasing or blocking the data shall inform, as appropriate, the Member State transmitting or receiving the information.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.

12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State should take appropriate measures to ensure compliance with this Article through effective checks.

Article 22

1. Member States shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Regulation and shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers.

[1] OJ L 281, 23.11.1995, p. 31.

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2. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 27(2).

Article 23

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

(a) exchanges of liaison officers;

(b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back asylum seekers;

2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall verify that the arrangements referred to in paragraph 1(b) do not infringe this Regulation.

CHAPTER VII

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 24

1. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (Dublin Convention).

2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, where an application has been lodged after the date mentioned in the second paragraph of Article 29, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article 10(2).

3. Where, in Regulation (EC) No 2725/2000 reference is made to the Dublin Convention, such reference shall be taken to be a reference made to this Regulation.

Article 25

1. Any period of time prescribed in this Regulation shall be calculated as follows:

(a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

(b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

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(c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

2. Requests and replies shall be sent using any method that provides proof of receipt.

Article 26

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 27

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

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3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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Article 28

At the latest three years after the date mentioned in the first paragraph of Article 29, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

Having submitted that report, the Commission shall report to the European Parliament and the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 24(5) of Regulation (EC) No 2725/2000.

Article 29

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply to asylum applications lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the application was made. The Member State responsible for the examination of an asylum application submitted before that date shall be determined in accordance with the criteria set out in the Dublin Convention.

This Regulation shall be binding in its entirety and directly applicable in the Member States in conformity with the Treaty establishing the European Community.

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.

(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.

(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.

(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.

[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.

(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;

(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:

(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;

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

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

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

(h) '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;

(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;

(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.

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 thereof [1] 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.

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.

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.

[1] OJ L 212, 7.8.2001, p. 12.

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.

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

2. Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for 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.

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

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

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

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.

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.

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

Families

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

Article 9

Medical screening

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

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.

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

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

2. Access to the education system shall not be postponed for more than three months from the date the application for 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.

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.

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

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

Article 12

Vocational training

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

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

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.

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;

(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 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 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 reinstallation 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 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.

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.

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 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.

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.

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.

Done at Brussels, 27 January 2003.

For the Council

The President

G. PAPANDREOU

COUNCIL DIRECTIVE 2004/83/EC

of 29 April 2004

on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular points 1(c), 2(a) and 3(a) 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 European 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) The European Council at its special meeting in Tampere on 15 and 16 October 1999 agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951 (Geneva Convention), as supplemented by the New York Protocol of 31 January 1967 (Protocol), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

(3) The Geneva Convention and Protocol provide the cornerstone of the international legal regime for the protection of refugees.

(4) The Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.

(5) The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.

(6) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States.

(7) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movements of applicants for asylum between Member States, where such movement is purely caused by differences in legal frameworks.

(8) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person who otherwise needs international protection.

(9) Those third country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of this Directive.

(10) 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 the right to asylum of applicants for asylum and their accompanying family members.

(11) 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.

[1] OJ C 51 E, 26.2.2002, p. 325.
[2] OJ C 300 E, 11.12.2003, p. 25.
[3] OJ C 221, 17.9.2002, p. 43.
[4] OJ C 278, 14.11.2002, p. 44.

(12) The 'best interests of the child' should be a primary consideration of Member States when implementing this Directive.

(13) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty Establishing the European Community.

(14) The recognition of refugee status is a declaratory act.

(15) Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.

(16) Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

(17) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

(18) In particular, it is necessary to introduce common concepts of protection needs arising *sur place;* sources of harm and protection; internal protection; and persecution, including the reasons for persecution.

(19) Protection can be provided not only by the State but also by parties or organisations, including international organisations, meeting the conditions of this Directive, which control a region or a larger area within the territory of the State.

(20) It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.

(21) It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'.

(22) Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that 'acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations' and that 'knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations'.

(23) As referred to in Article 14, 'status' can also include refugee status.

(24) Minimum standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.

(25) It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.

(26) Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.

(27) Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.

(28) The notion of national security and public order also covers cases in which a third country national belongs to an association which supports international terrorism or supports such an association.

(29) While the benefits provided to family members of beneficiaries of subsidiary protection status do not necessarily have to be the same as those provided to the qualifying beneficiary, they need to be fair in comparison to those enjoyed by beneficiaries of subsidiary protection status.

(30) Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit.

(31) This Directive does not apply to financial benefits from the Member States which are granted to promote education and training.

(32) The practical difficulties encountered by beneficiaries of refugee or subsidiary protection status concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualification should be taken into account.

(33) Especially to avoid social hardship, it is appropriate, for beneficiaries of refugee or subsidiary protection status, to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence.

(34) With regard to social assistance and health care, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting the benefits for beneficiaries of subsidiary protection status to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy and parental assistance, in so far as they are granted to nationals according to the legislation of the Member State concerned.

(35) Access to health care, including both physical and mental health care, should be ensured to beneficiaries of refugee or subsidiary protection status.

(36) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding non-refoulement, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.

(37) Since the objectives of the proposed Directive, namely to establish minimum standards for the granting of international protection to third country nationals and stateless persons by Member States and the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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.

(38) 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 has notified, by letter of 28 January 2002, its wish to take part in the adoption and application of this Directive.

(39) 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, Ireland has notified, by letter of 13 February 2002, its wish to take part in the adoption and application of this Directive.

(40) 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 taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE,

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Article 2

Definitions

For the purposes of this Directive:

(a) 'international protection' means the refugee and subsidiary protection status as defined in (d) and (f);

(b) 'Geneva Convention' means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;

(c) 'refugee' means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(d) 'refugee status' means the recognition by a Member State of a third country national or a stateless person as a refugee;

(e) 'person eligible for subsidiary protection' means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(f) 'subsidiary protection status' means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

(g) 'application for international protection' means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

(h) 'family members' means, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of refugee or subsidiary protection status who are present in the same Member State in relation to the application for international protection:

— the spouse of the beneficiary of refugee or subsidiary protection status 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,

— the minor children of the couple referred to in the first indent or of the beneficiary of refugee or subsidiary protection status, 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;

(i) 'unaccompanied minors' means third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;

(j) 'residence permit' means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's legislation, allowing a third country national or stateless person to reside on its territory;

(k) 'country of origin' means the country or countries of nationality or, for stateless persons, of former habitual residence.

Article 3

More favourable standards

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

CHAPTER II

ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Article 4

Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established.

Article 5

International protection needs arising *sur place*

1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin.

Article 6

Actors of persecution or serious harm

Actors of persecution or serious harm include:

(a) the State;

(b) parties or organisations controlling the State or a substantial part of the territory of the State;

(c) non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

Article 7

Actors of protection

1. Protection can be provided by:

(a) the State; or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.

2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.

Article 8

Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:

(a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, *inter alia,* take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature.

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

Article 10

Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:

(a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) a group shall be considered to form a particular social group where in particular:

— members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

— that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

(e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Article 11

Cessation

1. A third country national or a stateless person shall cease to be a refugee, if he or she:

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or

(b) having lost his or her nationality, has voluntarily reacquired it; or

(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;

(f) being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Article 12

Exclusion

1. A third country national or a stateless person is excluded from being a refugee, if:

(a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive;

(b) he or she is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.

2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

CHAPTER IV

REFUGEE STATUS

Article 13

Granting of refugee status

Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.

Article 14

Revocation of, ending of or refusal to renew refugee status

1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

3. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(a) he or she should have been or is excluded from being a refugee in accordance with Article 12;

(b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;

(b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

CHAPTER V

QUALIFICATION FOR SUBSIDIARY PROTECTION

Article 15

Serious harm

Serious harm consists of:

(a) death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 16

Cessation

1. A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

2. In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

Article 17

Exclusion

1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious crime;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

(d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

3. Member States may exclude a third country national or a stateless person from being eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of paragraph 1, which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

CHAPTER VI

SUBSIDIARY PROTECTION STATUS

Article 18

Granting of subsidiary protection status

Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

Article 19

Revocation of, ending of or refusal to renew subsidiary protection status

1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.

2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).

3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:

(a) he or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

(b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.

4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

CHAPTER VII

CONTENT OF INTERNATIONAL PROTECTION

Article 20

General rules

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.

2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.

3. When implementing this Chapter, 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.

4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.

5. The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

6. Within the limits set out by the Geneva Convention, Member States may reduce the benefits of this Chapter, granted to a refugee whose refugee status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a refugee.

7. Within the limits set out by international obligations of Member States, Member States may reduce the benefits of this Chapter, granted to a person eligible for subsidiary protection, whose subsidiary protection status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a person eligible for subsidiary protection.

Article 21

Protection from refoulement

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:

(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

(b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

Article 22

Information

Member States shall provide persons recognised as being in need of international protection, as soon as possible after the respective protection status has been granted, with access to information, in a language likely to be understood by them, on the rights and obligations relating to that status.

Article 23

Maintaining family unity

1. Member States shall ensure that family unity can be maintained.

2. Member States shall ensure that family members of the beneficiary of refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim the benefits referred to in Articles 24 to 34, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member.

In so far as the family members of beneficiaries of subsidiary protection status are concerned, Member States may define the conditions applicable to such benefits.

In these cases, Member States shall ensure that any benefits provided guarantee an adequate standard of living.

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from refugee or subsidiary protection status pursuant to Chapters III and V.

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred therein for reasons of national security or public order.

5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time.

Article 24

Residence permits

1. As soon as possible after their status has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least three years and renewable unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).

Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than three years and renewable.

2. As soon as possible after the status has been granted, Member States shall issue to beneficiaries of subsidiary protection status a residence permit which must be valid for at least one year and renewable, unless compelling reasons of national security or public order otherwise require.

Article 25

Travel document

1. Member States shall issue to beneficiaries of refugee status travel documents in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.

2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.

Article 26

Access to employment

1. Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after the refugee status has been granted.

2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to beneficiaries of refugee status, under equivalent conditions as nationals.

3. Member States shall authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service immediately after the subsidiary protection status has been granted. The situation of the labour market in the Member States may be taken into account, including for possible prioritisation of access to employment for a limited period of time to be determined in accordance with national law. Member States shall ensure that the beneficiary of subsidiary protection status has access to a post for which the beneficiary has received an offer in accordance with national rules on prioritisation in the labour market.

4. Member States shall ensure that beneficiaries of subsidiary protection status have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under conditions to be decided by the Member States.

5. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

Article 27

Access to education

1. Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status, under the same conditions as nationals.

2. Member States shall allow adults granted refugee or subsidiary protection status access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident.

3. Member States shall ensure equal treatment between beneficiaries of refugee or subsidiary protection status and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

Article 28

Social welfare

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status receive, in the Member State that has granted such statuses, the necessary social assistance, as provided to nationals of that Member State.

2. By exception to the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.

Article 29

Health care

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.

2. By exception to the general rule laid down in paragraph 1, Member States may limit health care granted to beneficiaries of subsidiary protection to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.

3. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care to beneficiaries of refugee or subsidiary protection status who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.

Article 30

Unaccompanied minors

1. As soon as possible after the granting of refugee or subsidiary protection status Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or Court order.

2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.

3. Member States shall ensure that unaccompanied minors are placed either:

(a) with adult relatives; or

(b) with a foster family; or

(c) in centres specialised in accommodation for minors; or

(d) in other accommodation suitable for minors.

In In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

4. 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 the minor's 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.

6. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs.

Article 31

Access to accommodation

The Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories.

Article 32

Freedom of movement within the Member State

Member States shall allow freedom of movement within their territory to beneficiaries of refugee or subsidiary protection status, under the same conditions and restrictions as those provided for other third country nationals legally resident in their territories.

Article 33

Access to integration facilities

1. In order to facilitate the integration of refugees into society, Member States shall make provision for integration programmes which they consider to be appropriate or create pre-conditions which guarantee access to such programmes.

2. Where it is considered appropriate by Member States, beneficiaries of subsidiary protection status shall be granted access to integration programmes.

Article 34

Repatriation

Member States may provide assistance to beneficiaries of refugee or subsidiary protection status who wish to repatriate.

CHAPTER VIII

ADMINISTRATIVE COOPERATION

Article 35

Cooperation

Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

Article 36

Staff

Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary training 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.

CHAPTER IX

FINAL PROVISIONS

Article 37

Reports

1. By 10 April 2008, 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. These proposals for amendments shall be made by way of priority in relation to Articles 15, 26 and 33. Member States shall send the Commission all the information that is appropriate for drawing up that report by 10 October 2007.

2. 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 38

Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 10 October 2006. They shall forthwith inform the Commission thereof.

When the Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 39

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 40

Addressees

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

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

COUNCIL DIRECTIVE 2005/85/EC

of 1 December 2005

on minimum standards on procedures in Member States for granting and withdrawing refugee status

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1)(d) of the first paragraph 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 European Economic and Social Committee [3],

Whereas:

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution.

(3) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Community rules leading to a common asylum procedure in the European Community.

(4) The minimum standards laid down in this Directive on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures.

(5) The main objective of this Directive is to introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.

(6) The approximation of rules on the procedures for granting and withdrawing refugee status should help to limit the secondary movements of applicants for asylum between Member States, where such movement would be caused by differences in legal frameworks.

(7) It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.

(8) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(9) 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.

(10) It is essential that decisions on all applications for asylum be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or receives the necessary training in the field of asylum and refugee matters.

(11) It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The organisation of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.

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[1] OJ C 62, 27.2.2001, p. 231 and OJ C 291, 26.11.2002, p. 143.
[2] OJ C 77, 28.3.2002, p. 94.
[3] OJ C 193, 10.7.2001, p. 77. Opinion delivered following non-compulsory consultation.

(12) The notion of public order may cover a conviction for committing a serious crime.

(13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should normally provide an applicant at least with the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any organisation working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand.

(14) In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.

(15) Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant.

(16) Many asylum applications are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.

(17) A key consideration for the well-foundedness of an asylum application is the safety of the applicant in his/her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he/she presents serious counter-indications.

(18) Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.

(19) Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the minimum common list of safe countries of origin to be adopted pursuant to this Directive, Member States should be obliged to consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, after consultation of the European Parliament.

(20) It results from the status of Bulgaria and Romania as candidate countries for accession to the European Union and the progress made by these countries towards membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union.

(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [1], except where the present Directive provides otherwise, in particular where it can be reasonably assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

(23) Member States should also not be obliged to assess the substance of an asylum application where the applicant, due to a connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

(24) Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of asylum applications regarding applicants who enter their territory from such European third countries. Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.

(25) It follows from the nature of the common standards concerning both safe third country concepts as set out in this Directive, that the practical effect of the concepts depends on whether the third country in question permits the applicant in question to enter its territory.

(26) With respect to the withdrawal of refugee status, Member States should ensure that persons benefiting from refugee status are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. However, dispensing with these guarantees should be allowed where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.

(27) It reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of refugee status are subject to an effective remedy before a court or tribunal within the meaning of Article 234 of the Treaty. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.

(28) In accordance with Article 64 of the Treaty, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

(29) This Directive does not deal with procedures governed by Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2].

(30) The implementation of this Directive should be evaluated at regular intervals not exceeding two years.

(31) Since the objective of this Directive, namely to establish minimum standards on procedures in Member States for granting and withdrawing refugee status cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 this objective.

(32) 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 has notified, by letter of 24 January 2001, its wish to take part in the adoption and application of this Directive.

[1] OJ L 304, 30.9.2004, p. 12.

[2] OJ L 50, 25.2.2003, p. 1.

(33) 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, Ireland has notified, by letter of 14 February 2001, its wish to take part in the adoption and application of this Directive.

(34) 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 does not take part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

Article 2

Definitions

For the purposes of this Directive:

(a) 'Geneva Convention' means 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' or 'application for asylum' means an application made by a third country national or 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 the person concerned explicitly requests another kind of protection that can be applied for separately;

(c) 'applicant' or 'applicant for asylum' means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;

(d) 'final decision' means a decision on whether the third country national or stateless person be granted refugee status by virtue of Directive 2004/83/EC and which is no longer subject to a remedy within the framework of Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome, subject to Annex III to this Directive;

(e) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;

(f) 'refugee' means a third country national or a stateless person who fulfils the requirements of Article 1 of the Geneva Convention as set out in Directive 2004/83/EC;

(g) 'refugee status' means the recognition by a Member State of a third country national or stateless person as a refugee;

(h) 'unaccompanied minor' means a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;

(i) 'representative' means a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests;

(j) 'withdrawal of refugee status' means the decision by a competent authority to revoke, end or refuse to renew the refugee status of a person in accordance with Directive 2004/83/EC;

(k) 'remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for asylum has been made or is being examined.

Article 3

Scope

1. This Directive shall apply to all applications for asylum made in the territory, including at the border or in the transit zones of the Member States, and to the withdrawal of refugee status.

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

3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.

4. Moreover, Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection.

Article 4

Responsible authorities

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with this Directive, in particular Articles 8(2) and 9.

In accordance with Article 4(4) of Regulation (EC) No 343/2003, applications for asylum made in a Member State to the authorities of another Member State carrying out immigration controls there shall be dealt with by the Member State in whose territory the application is made.

2. However, Member States may provide that another authority is responsible for the purposes of:

(a) processing cases in which it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum, until the transfer takes place or the requested State has refused to take charge of or take back the applicant;

(b) taking a decision on the application in the light of national security provisions, provided the determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Directive 2004/83/EC;

(c) conducting a preliminary examination pursuant to Article 32, provided this authority has access to the applicant's file regarding the previous application;

(d) processing cases in the framework of the procedures provided for in Article 35(1);

(e) refusing permission to enter in the framework of the procedure provided for in Article 35(2) to (5), subject to the conditions and as set out therein;

(f) establishing that an applicant is seeking to enter or has entered into the Member State from a safe third country pursuant to Article 36, subject to the conditions and as set out in that Article.

3. Where authorities are designated in accordance with paragraph 2, Member States shall ensure that the personnel of such authorities have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

Article 5

More favourable provisions

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

1. Member States may require that applications for asylum be made in person and/or at a designated place.

2. Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.

3. Member States may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted.

4. Member States may determine in national legislation:

(a) the cases in which a minor can make an application on his/her own behalf;

(b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 17(1)(a);

(c) the cases in which the lodging of an application for asylum is deemed to constitute also the lodging of an application for asylum for any unmarried minor.

5. Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.

Article 7

Right to remain in the Member State pending the examination of the application

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

2. Member States can make an exception only where, in accordance with Articles 32 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant [1] or otherwise, or to a third country, or to international criminal courts or tribunals.

Article 8

Requirements for the examination of applications

1. Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that:

(a) applications are examined and decisions are taken individually, objectively and impartially;

(b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

3. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 2(b), necessary for the fulfilment of their task.

4. Member States may provide for rules concerning the translation of documents relevant for the examination of applications.

Article 9

Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for asylum are given in writing.

2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

Member States need not state the reasons for not granting refugee status in a decision where the applicant is granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting refugee status are stated in the applicant's file and that the applicant has, upon request, access to his/her file.

Moreover, Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant.

3. For the purposes of Article 6(3), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.

[1] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

Article 10

Guarantees for applicants for asylum

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

(a) they shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2004/83/EC. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 11;

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles 12 and 13 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

(c) they shall not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with that Member State;

(d) they shall be given notice in reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

(e) they shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 9(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants for asylum enjoy equivalent guarantees to the ones referred to in paragraph 1(b), (c) and (d) of this Article.

Article 11

Obligations of the applicants for asylum

1. Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

(a) applicants for asylum are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;

(b) applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports;

(c) applicants for asylum are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;

(d) the competent authorities may search the applicant and the items he/she carries with him/her;

(e) the competent authorities may take a photograph of the applicant; and

(f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

Article 12

Personal interview

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview.

Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3).

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

2. The personal interview may be omitted where:

(a) the determining authority is able to take a positive decision on the basis of evidence available; or

(b) the competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Directive 2004/83/EC; or

(c) the determining authority, on the basis of a complete examination of information provided by the applicant, considers the application to be unfounded in cases where the circumstances mentioned in Article 23(4)(a), (c), (g), (h) and (j) apply.

3. The personal interview may also be omitted where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.

Where the Member State does not provide the applicant with the opportunity for a personal interview pursuant to this paragraph, or where applicable, to the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

4. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum.

5. The absence of a personal interview pursuant to paragraph 2(b) and (c) and paragraph 3 shall not adversely affect the decision of the determining authority.

6. Irrespective of Article 20(1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he/she had good reasons for the failure to appear.

Article 13

Requirements for a personal interview

1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

2. A personal interview shall take place under conditions which ensure appropriate confidentiality.

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

(a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so; and

(b) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she may reasonably be supposed to understand and in which he/she is able to communicate.

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

5. This Article is also applicable to the meeting referred to in Article 12(2)(b).

Article 14

Status of the report of a personal interview in the procedure

1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Directive 2004/83/EC.

2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

3. Member States may request the applicant's approval of the contents of the report of the personal interview.

Where an applicant refuses to approve the contents of the report, the reasons for this refusal shall be entered into the applicant's file.

The refusal of an applicant to approve the contents of the report shall not prevent the determining authority from taking a decision on his/her application.

4. This Article is also applicable to the meeting referred to in Article 12(2)(b).

Article 15

Right to legal assistance and representation

1. Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3.

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:

(a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or

(b) only to those who lack sufficient resources; and/or

(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or

(d) only if the appeal or review is likely to succeed.

Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.

4. Rules concerning the modalities for filing and processing requests for legal assistance and/or representation may be provided by Member States.

5. Member States may also:

(a) impose monetary and/or time-limits on the provision of free legal assistance and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance and/or representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

6. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

Article 16

Scope of legal assistance and representation

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, and who assists or represents an applicant for asylum under the terms of national law, shall enjoy access to such information in the applicant's file as is liable to be examined by the authorities referred to in Chapter V, insofar as the information is relevant to the examination of the application.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question shall be available to the authorities referred to in Chapter V, except where such access is precluded in cases of national security.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility of visiting applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area, or in order to ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

3. Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article 17(1)(b).

4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Member States may require the presence of the applicant at the personal interview, even if he/she is represented under the terms of national law by such a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

The absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting the personal interview with the applicant.

Article 17

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:

(a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [1];

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2. Member States may refrain from appointing a representative where the unaccompanied minor:

(a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or

(b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or

(c) is married or has been married.

3. Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.

4. Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 12, 13 and 14, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

(b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for asylum.

In cases where medical examinations are used, Member States shall ensure that:

(a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

(b) unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minors concerned; and

(c) the decision to reject an application for asylum from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for asylum.

[1] OJ L 31, 6.2.2003, p. 18.

6. The best interests of the child shall be a primary consideration for Member States when implementing this Article.

Article 18

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

Article 19

Procedure in case of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant for asylum explicitly withdraws his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application.

2. Member States may also decide that the determining authority can decide to discontinue the examination without taking a decision. In this case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

Article 20

Procedure in the case of implicit withdrawal or abandonment of the application

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.

Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for asylum in particular when it is ascertained that:

(a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Directive 2004/83/EC or has not appeared for a personal interview as provided for in Articles 12, 13 and 14, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his control;

(b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

For the purposes of implementing these provisions, Member States may lay down time-limits or guidelines.

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened, unless the request is examined in accordance with Articles 32 and 34.

Member States may provide for a time-limit after which the applicant's case can no longer be re-opened.

Member States shall ensure that such a person is not removed contrary to the principle of non-refoulement.

Member States may allow the determining authority to take up the examination at the stage where it was discontinued.

Article 21

The role of UNHCR

1. Member States shall allow the UNHCR:

(a) to have access to applicants for asylum, including those in detention and in airport or port transit zones;

(b) to have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees thereto;

(c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

2. Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of the UNHCR pursuant to an agreement with that Member State.

Article 22

Collection of information on individual cases

For the purposes of examining individual cases, Member States shall not:

(a) directly disclose information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum;

(b) obtain any information from the alleged actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 23

Examination procedure

1. Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:

(a) be informed of the delay; or

(b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time-frame.

3. Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.

4. Member States may also provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:

(a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC; or

(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or

(c) the application for asylum is considered to be unfounded:

(i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31, or

(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or

(d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

(e) the applicant has filed another application for asylum stating other personal data; or

(f) the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

(g) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC; or

(h) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or

(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or

(j) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or

(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles11(2)(a) and (b) and 20(1) of this Directive; or

(l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/-herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or

(m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or

(n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or

(o) the application was made by an unmarried minor to whom Article 6(4)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

Article 24

Specific procedures

1. Member States may provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:

(a) a preliminary examination for the purposes of processing cases considered within the framework set out in Section IV;

(b) procedures for the purposes of processing cases considered within the framework set out in Section V.

2. Member States may also provide a derogation in respect of Section VI.

SECTION II

Article 25

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EC) No 343/2003, Member States are not required to examine whether the applicant qualifies as a refugee in accordance with Directive 2004/83/EC where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:

(a) another Member State has granted refugee status;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 26;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;

(d) the applicant is allowed to remain in the Member State concerned on some other grounds and as result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC;

(e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);

(f) the applicant has lodged an identical application after a final decision;

(g) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6(3) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.

Article 26

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant for asylum if:

(a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection; or

(b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement;

provided that he/she will be re-admitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant for asylum Member States may take into account Article 27(1).

Article 27

The safe third country concept

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned:

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) the principle of non-refoulement in accordance with the Geneva Convention is respected;

(c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:

(a) rules requiring a connection between the person seeking asylum and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

3. When implementing a decision solely based on this Article, Member States shall:

(a) inform the applicant accordingly; and

(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant for asylum to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

SECTION III

Article 28

Unfounded applications

1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.

2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.

Article 29

Minimum common list of third countries regarded as safe countries of origin

1. The Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin in accordance with Annex II.

2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State to submit a proposal to amend the minimum common list.

3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.

4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 31(2) shall be suspended with regard to the third country as of the day following the notification to the Council.

6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.

7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall in any case end where the Council rejects a proposal by the Commission to withdraw the third country from the list.

8. Upon request by the Council, the Commission shall report to the European Parliament and the Council on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report, the Commission may make such recommendations or proposals as it deems appropriate.

Article 30

National designation of third countries as safe countries of origin

1. Without prejudice to Article 29, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.

2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:

(a) persecution as defined in Article 9 of Directive 2004/83/EC; nor

(b) torture or inhuman or degrading treatment or punishment.

3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.

4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.

5. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.

6. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

Article 31

The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with either Article 29 or 30 may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:

(a) he/she has the nationality of that country; or

(b) he/she is a stateless person and was formerly habitually resident in that country;

and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee in accordance with Directive 2004/83/EC.

2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 29.

3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

SECTION IV

Article 32

Subsequent application

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State may examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:

(a) after his/her previous application has been withdrawn or abandoned by virtue of Articles 19 or 20;

(b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.

3. A subsequent application for asylum shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3 of this Article, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee by virtue of Directive 2004/83/EC, the application shall be further examined in conformity with Chapter II.

5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons why a procedure has to be re-opened.

6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 39.

7. The procedure referred to in this Article may also be applicable in the case of a dependant who lodges an application after he/she has, in accordance with Article 6(3), consented to have his/her case be part of an application made on his/her behalf. In this case the preliminary examination referred to in paragraph 3 of this Article will consist of examining whether there are facts relating to the dependant's situation which justify a separate application.

Article 33

Failure to appear

Member States may retain or adopt the procedure provided for in Article 32 in the case of an application for asylum filed at a later date by an applicant who, either intentionally or owing to gross negligence, fails to go to a reception centre or appear before the competent authorities at a specified time.

Article 34

Procedural rules

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 32 enjoy the guarantees provided for in Article 10(1).

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 32. Those rules may, *inter alia*:

(a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;

(b) require submission of the new information by the applicant concerned within a time-limit after he/she obtained such information;

(c) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview.

The conditions shall not render impossible the access of applicants for asylum to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that:

(a) the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further examined, of the reasons for this and the possibilities for seeking an appeal or review of the decision;

(b) if one of the situations referred to in Article 32(2) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

SECTION V

Article 35

Border procedures

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on applications made at such locations.

2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force on 1 December 2005, procedures derogating from the basic principles and guarantees described in Chapter II, in order to decide at the border or in transit zones as to whether applicants for asylum who have arrived and made an application for asylum at such locations, may enter their territory.

3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned:

(a) are allowed to remain at the border or transit zones of the Member State, without prejudice to Article 7;

(b) are be immediately informed of their rights and obligations, as described in Article 10(1) (a);

(c) have access, if necessary, to the services of an interpreter, as described in Article 10(1)(b);

(d) are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 12, 13 and 14;

(e) can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 15(1); and

(f) have a representative appointed in the case of unaccompanied minors, as described in Article 17(1), unless Article 17(2) or (3) applies.

Moreover, in case permission to enter is refused by a competent authority, this competent authority shall state the reasons in fact and in law why the application for asylum is considered as unfounded or as inadmissible.

4. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 2 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant for asylum shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.

5. In the event of particular types of arrivals, or arrivals involving a large number of third country nationals or stateless persons lodging applications for asylum at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 or the specific procedure set out in paragraphs 2 and 3, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

SECTION VI

Article 36

The European safe third countries concept

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;

(b) it has in place an asylum procedure prescribed by law;

(c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies; and

(d) it has been so designated by the Council in accordance with paragraph 3.

3. The Council shall, acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.

4. The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement under the Geneva Convention, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

5. When implementing a decision solely based on this Article, the Member States concerned shall:

(a) inform the applicant accordingly; and

(b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

6. Where the safe third country does not re-admit the applicant for asylum, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

7. Member States which have designated third countries as safe countries in accordance with national legislation in force on 1 December 2005 and on the basis of the criteria in paragraph 2(a), (b) and (c), may apply paragraph 1 to these third countries until the Council has adopted the common list pursuant to paragraph 3.

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF REFUGEE STATUS

Article 37

Withdrawal of refugee status

Member States shall ensure that an examination to withdraw the refugee status of a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his/her refugee status.

Article 38

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing the refugee status of a third country national or stateless person in accordance with Article 14 of Directive 2004/83/EC, the person concerned shall enjoy the following guarantees:

(a) to be informed in writing that the competent authority is reconsidering his or her qualification for refugee status and the reasons for such a reconsideration; and

(b) to be given the opportunity to submit, in a personal interview in accordance with Article 10(1)(b) and Articles 12, 13 and 14 or in a written statement, reasons as to why his/her refugee status should not be withdrawn.

In addition, Member States shall ensure that within the framework of such a procedure:

(c) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and

(d) where information on an individual case is collected for the purposes of reconsidering the refugee status, it is not obtained from the actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a refugee whose status is under reconsideration, nor jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

2. Member States shall ensure that the decision of the competent authority to withdraw the refugee status is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

3. Once the competent authority has taken the decision to withdraw the refugee status, Article 15, paragraph 2, Article 16, paragraph 1 and Article 21 are equally applicable.

4. By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide that the refugee status shall lapse by law in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC or if the refugee has unequivocally renounced his/her recognition as a refugee.

CHAPTER V

APPEALS PROCEDURES

Article 39

The right to an effective remedy

1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for asylum, including a decision:

(i) to consider an application inadmissible pursuant to Article 25(2),

(ii) taken at the border or in the transit zones of a Member State as described in Article 35(1),

(iii) not to conduct an examination pursuant to Article 36;

(b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20;

(c) a decision not to further examine the subsequent application pursuant to Articles 32 and 34;

(d) a decision refusing entry within the framework of the procedures provided for under Article 35(2);

(e) a decision to withdraw of refugee status pursuant to Article 38.

2. Member States shall provide for time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:

(a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;

(b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and

(c) the grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).

4. Member States may lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

5. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC, the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.

6. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 40

Challenge by public authorities

This Directive does not affect the possibility for public authorities of challenging the administrative and/or judicial decisions as provided for in national legislation.

Article 41

Confidentiality

Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work.

Article 42

Report

No later than 1 December 2009, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every two years.

Article 43

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2007. Concerning Article 15, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2008. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 44

Transition

Member States shall apply the laws, regulations and administrative provisions set out in Article 43 to applications for asylum lodged after 1 December 2007 and to procedures for the withdrawal of refugee status started after 1 December 2007.

Article 45

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 46

Addressees

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

Done at Brussels, 1 December 2005.

For the Council

The President

Ashton of UPHOLLAND

ANNEX I

Definition of 'determining authority'

When implementing the provision of this Directive, Ireland may, insofar as the provisions of section 17(1) of the *Refugee Act 1996* (as amended) continue to apply, consider that:

— 'determining authority' provided for in Article 2(e) of this Directive shall, insofar as the examination of whether an applicant should or, as the case may be, should not be declared to be a refugee is concerned, mean the *Office of the Refugee Applications Commissioner*; and

— 'decisions at first instance' provided for in Article 2(e) of this Directive shall include recommendations of the *Refugee Applications Commissioner* as to whether an applicant should or, as the case may be, should not be declared to be a refugee.

Ireland will notify the Commission of any amendments to the provisions of section 17(1) of the *Refugee Act* 1996 (as amended).

ANNEX II

Designation of safe countries of origin for the purposes of Articles 29 and 30(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2004/83/EC, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or mistreatment by:

(a) the relevant laws and regulations of the country and the manner in which they are applied;

(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect of the non-refoulement principle according to the Geneva Convention;

(d) provision for a system of effective remedies against violations of these rights and freedoms.

ANNEX III

Definition of 'applicant' or 'applicant for asylum'

When implementing the provisions of this Directive Spain may, insofar as the provisions of *'Ley 30/1992 de Régimen jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común'* of 26 November 1992 and *'Ley 29/1998 reguladora de la Jurisdicción Contencioso-Administrativa'* of 13 July 1998 continue to apply, consider that, for the purposes of Chapter V, the definition of 'applicant' or 'applicant for asylum' in Article 2(c) of this Directive shall include '*recurrente*' as established in the abovementioned Acts.

A '*recurrente*' shall be entitled to the same guarantees as an 'applicant' or an 'applicant for asylum' as set out in this Directive for the purposes of exercising his/her right to an effective remedy in Chapter V.

Spain will notify the Commission of any relevant amendments to the abovementioned Act.

REGULATION (EU) No 439/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 May 2010

establishing a European Asylum Support Office

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and Article 78(1) and (2) thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure [1],

Whereas:

(1) The policy of the Union on the Common European Asylum System (the CEAS) is designed, under the terms of the Hague Programme, to establish a common asylum area by means of an effective harmonised procedure consistent with the values and humanitarian tradition of the European Union.

(2) Much progress has been made in recent years towards the establishment of the CEAS thanks to the introduction of common minimum standards. There remain great disparities between the Member States, however, in the granting of international protection and the forms that such international protection takes. Those disparities should be reduced.

(3) In its Policy Plan on Asylum, adopted in June 2008, the Commission announced its intention to develop the CEAS by proposing a revision of existing legal instruments in order to achieve greater harmonisation of the applicable standards and by strengthening support for practical cooperation between the Member States, in particular by a legislative proposal to establish a European Asylum Support Office (the Support Office) in order to increase coordination of operational cooperation between Member States so that the common rules are implemented effectively.

(4) In the European Pact on Immigration and Asylum, adopted in September 2008, the European Council solemnly reiterated that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and other relevant treaties. It was also expressly agreed that a European support office would be established in 2009.

(5) Practical cooperation on asylum aims to increase convergence and ensure ongoing quality of Member States' decision-making procedures in that area within a European legislative framework. A substantial number of practical cooperation measures has already been undertaken in recent years, notably the adoption of a common approach to information on countries of origin and the establishment of a common European asylum curriculum.

(6) The Support Office should be established in order to strengthen and develop those cooperation measures. The Support Office should take due account of those cooperation measures and the lessons learnt therefrom.

(7) For Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographic situation, the Support Office should support the development of solidarity within the Union to promote a better relocation of beneficiaries of international protection between Member States, while ensuring that asylum and reception systems are not abused.

(8) In order to best fulfil its mandate, the Support Office should be independent in technical matters and should enjoy legal, administrative and financial autonomy. To that end, the Support Office should be a body of the Union having legal personality and exercising the implementing powers conferred upon it by this Regulation.

[1] Position of the European Parliament of 7 May 2009 (not yet published in the Official Journal), position of the Council at first reading of 25 February 2010 (not yet published in the Official Journal). Position of the European Parliament of 18 May 2010 (not yet published in the Official Journal).

(9) The Support Office should work in close cooperation with Member States'asylum authorities, with national immigration and asylum services and other services, drawing on the capacity and expertise of those services, and with the Commission. Member States should cooperate with the Support Office to ensure that it is able to fulfil its mandate.

(10) The Support Office should also act in close cooperation with the UN High Commissioner for Refugees (the UNHCR) and, where appropriate, with relevant international organisations in order to benefit from their expertise and support. To that end, the roles of the UNHCR and the other relevant international organisations should be fully recognised and those organisations should be fully involved in the work of the Support Office. Any financial resources made available by the Support Office to the UNHCR in accordance with this Regulation should not result in double financing of the UNHCR's activities with other international or national sources.

(11) Furthermore, to fulfil its purpose, and to the extent required for the fulfilment of its duties, the Support Office should cooperate with other bodies of the Union, in particular with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), established by Council Regulation (EC) No 2007/2004 ([1]), and the European Union Agency for Fundamental Rights (FRA), established by Council Regulation (EC) No 168/2007 ([2]).

(12) The Support Office should cooperate with the European Migration Network, established by Council Decision 2008/381/EC ([3]), in order to avoid duplication of activities. The Support Office should also maintain a close dialogue with civil society with a view to exchanging information and pooling knowledge in the field of asylum.

(13) The Support Office should be a European centre of expertise on asylum, responsible for facilitating, coordinating and strengthening practical cooperation among Member States on the many aspects of asylum, so that Member States are better able to provide international protection to those entitled, while dealing fairly and efficiently with those who do not qualify for international protection,where appropriate. The Support Office's mandate should be focused on three major duties, namely contributing to the implementation of the CEAS, supporting practical cooperation among Member States on asylum and supporting Member States that are subject to particular pressure.

(14) The Support Office should have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection.

(15) In order to provide and/or coordinate the provision of speedy and effective operational support to Member States subject to particular pressure on their asylum and reception systems, the Support Office should, at the request of the Member States concerned, coordinate action to support those Member States inter alia through the deployment in their territories of asylum support teams made up of asylum experts. Those teams should, in particular, provide expertise relating to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases. The arrangements for the asylum support teams should be governed by this Regulation in order to ensure their effective deployment.

(16) The Support Office should fulfil its purpose in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its procedures and operating methods, and its diligence in performing the duties assigned to it.

(17) The Commission and the Member States should be represented on the Management Board of the Support Office in order effectively to control its workings. The Management Board should, where possible, consist of the operational heads of the Member States' asylum administrations or their representatives. It should be given the necessary powers, in particular to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision-making by the Support Office, adopt the annual report on the situation of asylum in the Union and technical documents on the implementation of the Union's asylum instruments, and appoint an Executive Director and, if appropriate, an Executive Committee. Given its expertise in the field of asylum, the UNHCR should be represented by a non-voting member of the Management Board so that it is fully involved in the work of the Support Office.

([1]) OJ L 349, 25.11.2004, p. 1.
([2]) OJ L 53, 22.2.2007, p. 1.
([3]) OJ L 131, 21.5.2008, p. 7.

(18) Given the nature of the duties of the Support Office and the role of the Executive Director, and with a view to enabling the European Parliament to adopt an opinion on the selected candidate, before his appointment as well as before a possible extension of his term of office, the Executive Director should be invited to make a statement and to answer questions to the European Parliament's competent committee or committees. The Executive Director should also present the annual report to the European Parliament. Furthermore, the European Parliament should have the possibility to invite the Executive Director to report on the performance of his duties.

(19) To ensure the Support Office's full autonomy and independence, it should have its own budget, most of which will comprise a contribution from the Union. The financing of the Support Office should be subject to an agreement by the budgetary authority as set out in point 47 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management [1]. The budgetary procedure of the Union should be applicable to the Union's contribution and to any grant chargeable to the general budget of the European Union. The auditing of accounts should be undertaken by the Court of Auditors.

(20) The Support Office should cooperate with third-country authorities and international organisations competent in matters falling within the scope of this Regulation and third countries within the framework of working arrangements concluded in accordance with the relevant provisions of the Treaty on the Functioning of the European Union (TFEU).

(21) In accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the European Union (TEU) and to the TFEU, the United Kingdom and Ireland have notified their wish, by letters of 18 May 2009, to take part in the adoption and application of this Regulation.

(22) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it nor subject to its application.

(23) Considering that Denmark, as a Member State, has hitherto contributed to the practical cooperation between Member States within the area of asylum, the Support Office should facilitate operational cooperation with Denmark. To that end, a Danish representative should be invited to attend all the meetings of the Management Board, which should also be able to decide to invite Danish observers to the meetings of working parties, where appropriate.

(24) To fulfil its purpose, the Support Office should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union in the field covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland. It should also, in agreement with the Commission, be able to conclude working arrangements in accordance with the TFEU with countries other than those which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union. Under no circumstances, however, should it formulate any independent external policy.

(25) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [2] (the Financial Regulation), and in particular Article 185 thereof should apply to the Support Office.

(26) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [3] should apply without restriction to the Support Office, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office [4].

(27) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [5] should apply to the Support Office.

(28) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [6] should apply to the processing of personal data by the Support Office.

[1] OJ C 139, 14.6.2006, p. 1.

[2] OJ L 248, 16.9.2002, p. 1.
[3] OJ L 136, 31.5.1999, p. 1.
[4] OJ L 136, 31.5.1999, p. 15.
[5] OJ L 145, 31.5.2001, p. 43.
[6] OJ L 8, 12.1.2001, p. 1.

(29) The necessary provisions regarding accommodation for the Support Office in the Member State in which it is to have its headquarters and the specific rules applicable to all the Support Office's staff and members of their families should be laid down in a headquarters agreement. Furthermore, the host Member State should provide the best possible conditions to ensure the proper functioning of the Support Office, including schools for children and transport, in order to attract high-quality human resources from as wide a geographical area as possible.

(30) Since the objectives of this Regulation, namely the need to improve the implementation of the CEAS, to facilitate, coordinate and strengthen practical cooperation between Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(31) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should be applied in accordance with the right to asylum recognised in Article 18 of the Charter,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1

ESTABLISHMENT AND PURPOSE OF THE EUROPEAN ASYLUM SUPPORT OFFICE

Article 1

Establishment of the European Asylum Support Office

A European Asylum Support Office (the Support Office) is hereby established in order to help to improve the implementation of the Common European Asylum System (the CEAS), to strengthen practical cooperation among Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems.

Article 2

Purpose of the Support Office

1. The Support Office shall facilitate, coordinate and strengthen practical cooperation among Member States on the many aspects of asylum and help to improve the implementation of the CEAS. In this regard, the Support Office shall be fully involved in the external dimension of the CEAS.

2. The Support Office shall provide effective operational support to Member States subject to particular pressure on their asylum and reception systems, drawing upon all useful resources at its disposal which may include the coordination of resources provided for by Member States under the conditions laid down in this Regulation.

3. The Support Office shall provide scientific and technical assistance in regard to the policy and legislation of the Union in all areas having a direct or indirect impact on asylum so that it is in a position to lend its full support to practical cooperation on asylum and to carry out its duties effectively. It shall be an independent source of information on all issues in those areas.

4. The Support Office shall fulfil its purpose in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it disseminates, the transparency of its operating procedures and methods, its diligence in performing the duties assigned to it, and the information technology support needed to fulfil its mandate.

5. The Support Office shall work closely with the Member States' asylum authorities, with national immigration and asylum services and other national services and with the Commission. The Support Office shall carry out its duties without prejudice to those assigned to other relevant bodies of the Union and shall work closely with those bodies and with the UNHCR.

6. The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection.

CHAPTER 2

DUTIES OF THE SUPPORT OFFICE

SECTION 1

Supporting practical cooperation on asylum

Article 3

Best practices

The Support Office shall organise, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in asylum matters between the Member States.

Article 4

Information on countries of origin

The Support Office shall organise, promote and coordinate activities relating to information on countries of origin, in particular:

(a) the gathering of relevant, reliable, accurate and up-to date information on countries of origin of persons applying for international protection in a transparent and impartial manner, making use of all relevant sources of information, including information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union;

(b) the drafting of reports on countries of origin, on the basis of information gathered in accordance with point (a);

(c) the management and further development of a portal for gathering information on countries of origin and its maintenance with a view to ensuring transparency in accordance with the necessary rules for access to such information under Article 42;

(d) the development of a common format and a common methodology for presenting, verifying and using information on countries of origin;

(e) the analysis of information on countries of origin in a transparent manner with a view to fostering convergence of assessment criteria, and, where appropriate, making use of the results of meetings of one or more working parties. That analysis shall not purport to give instructions to Member States about the grant or refusal of applications for international protection.

Article 5

Supporting relocation of beneficiaries of international protection within the Union

For Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographic situation, the Support Office shall promote, facilitate and coordinate exchanges of information and other activities related to relocation within the Union. Relocation within the Union shall be carried out only on an agreed basis between Member States and with consent of the beneficiary of international protection concerned and, where appropriate, in consultation with the UNHCR.

Article 6

Support for training

1. The Support Office shall establish and develop training available to members of all national administrations and courts and tribunals, and national services responsible for asylum matters in the Member States. Participation in training is without prejudice to national systems and procedures.

The Support Office shall develop such training in close co-operation with Member States' asylum authorities and, where relevant, take advantage of expertise of academic institutions and other relevant organisations.

2. The Support Office shall manage and develop a European asylum curriculum taking into account the Union's existing cooperation in that field.

3. The training offered by the Support Office may be general, specific or thematic and may include 'train-the-trainers' methodology.

4. Specific or thematic training activities in knowledge and skills regarding asylum matters shall include and shall not be limited to:

(a) international human rights and the asylum *acquis* of the Union, including specific legal and case-law issues;

(b) issues related to the handling of asylum applications from minors and vulnerable persons with specific needs;

(c) interview techniques;

(d) the use of expert medical and legal reports in asylum procedures;

(e) issues relating to the production and use of information on countries of origin;

(f) reception conditions, including special attention given to vulnerable groups and victims of torture.

5. The training offered shall be of high quality and shall identify key principles and best practices with a view to greater convergence of administrative methods and decisions and legal practice, in full respect of the independence of national courts and tribunals.

6. The Support Office shall provide experts who are part of the Asylum Intervention Pool referred to in Article 15 with specialist training relevant to their duties and functions and shall conduct regular exercises with those experts in accordance with the specialist training and exercise schedule referred to in its annual work programme.

7. The Support Office may organise training activities in cooperation with Member States in their territory.

Article 7

Support for the external dimensions of the CEAS

The Support Office shall, in agreement with the Commission, coordinate the exchange of information and other action taken on issues arising from the implementation of instruments and mechanisms relating to the external dimension of the CEAS.

The Support Office shall coordinate exchanges of information and other actions on resettlement taken by Member States with a view to meeting the international protection needs of refugees in third countries and showing solidarity with their host countries.

Pursuant to its mandate, and in accordance with Article 49, the Support Office may cooperate with competent authorities of third countries in technical matters, in particular with a view to promoting and assisting capacity building in the third countries' own asylum and reception systems and implementing regional protection programmes, and other actions relevant to durable solutions.

SECTION 2

Support for Member States subject to particular pressure

Article 8

Particular pressure on the asylum and reception system

The Support Office shall coordinate and support common action assisting asylum and reception systems of Member States subject to particular pressure which places exceptionally heavy and urgent demands on their reception facilities and asylum systems. Such pressure may be characterised by the sudden arrival of a large number of third-country nationals who may be in need of international protection and may arise from the geographical or demographical situation of the Member State.

Article 9

Gathering and analysing information

1. To be able to assess the needs of Member States subject to particular pressure, the Support Office shall gather, in particular on the basis of information provided by Member States, the UNHCR and, where appropriate, other relevant organisations, relevant information for the identification, preparation and formulation of emergency measures referred to in Article 10 to cope with such pressure.

2. The Support Office shall systematically identify, collect and analyse, on the basis of data provided by Member States subject to particular pressure, information relating to the structures and staff available, especially for translation and interpretation, information on countries of origin and on assistance in the handling and management of asylum cases and the asylum capacity in those Member States subject to particular pressure, with a view to fostering quick and reliable mutual information to the various Member States' asylum authorities.

3. The Support Office shall analyse data on any sudden arrival of large numbers of third country nationals, which may cause particular pressure on asylum and reception systems and ensure the rapid exchange of relevant information amongst Member States and the Commission. The Support Office shall make use of existing early warning systems and mechanisms and, if necessary, set up an early warning system for its own purposes.

Article 10

Support actions for the Member States

At the request of the Member States concerned, the Support Office shall coordinate actions to support Member States subject to particular pressure on their asylum and reception systems, including coordinating:

(a) action to help Member States subject to particular pressure to facilitate an initial analysis of asylum applications under examination by the competent national authorities;

(b) action designed to ensure that appropriate reception facilities can be made available by the Member States subject to particular pressure, in particular emergency accommodation, transport and medical assistance;

(c) the asylum support teams, the operating arrangements of which are set out in Chapter 3.

SECTION 3

Contribution to the implementation of the CEAS

Article 11

Gathering and exchanging information

1. The Support Office shall organise, coordinate and promote the exchange of information between the Member States' asylum authorities and between the Commission and the Member States' asylum authorities concerning the implementation of all relevant instruments of the asylum *acquis* of the Union. To that end, the Support Office may create factual, legal and case-law databases on national, Union and international asylum instruments making use, inter alia, of existing arrangements. Without prejudice to the activities of the Support Office pursuant to Article 15 and 16, no personal data shall be stored in such databases, unless such data has been obtained by the Support Office from documents that are publicly accessible.

2. In particular, the Support Office shall gather information on the following:

(a) the processing of applications for international protection by national administrations and authorities;

(b) national law and legal developments in the field of asylum, including case law.

Article 12

Reports and other Support Office documents

1. The Support Office shall draw up an annual report on the situation of asylum in the Union, taking due account of information already available from other relevant sources. As part of that report, the Support Office shall evaluate the results of activities carried out under this Regulation and make a comprehensive comparative analysis of them with the aim of improving the quality, consistency and effectiveness of the CEAS.

2. The Support Office may adopt, in accordance with its work programme or at the request of the Management Board or the Commission, taking due account of views expressed by Member States or the European Parliament, acting in close consultation with its working parties and the Commission, technical documents on the implementation of the asylum instruments of the Union, including guidelines and operating manuals. Whenever such technical documents make reference to points of international refugee law, due regard shall be given to relevant UNHCR guidelines. The documents shall not purport to give instructions to Member States about the grant or refusal of applications for international protection.

CHAPTER 3

ASYLUM SUPPORT TEAMS

Article 13

Coordination

1. A Member State or Member States subject to particular pressure may request the Support Office for deployment of an asylum support team. The requesting Member State or Member States shall provide, in particular a description of the situation, indicate the objectives of the request for deployment and specify the estimated deployment requirements, in accordance with Article 18(1).

2. In response to such a request, the Support Office may coordinate the necessary technical and operational assistance to the requesting Member State or Member States and the deployment, for a limited time, of an asylum support team in the territory of that Member State or those Member States on the basis of an operating plan as referred to in Article 18.

Article 14

Technical assistance

The asylum support teams shall provide expertise as agreed upon in the operating plan referred to in Article 18, in particular in relation to interpreting services, information on countries of origin and knowledge of the handling and management of asylum cases within the framework of the actions to support Member States referred to in Article 10.

Article 15

Asylum Intervention Pool

1. On a proposal by the Executive Director, the Management Board shall decide by a majority of three quarters of its members with voting rights on the profiles and the overall number of the experts to be made available for the asylum support teams (Asylum Intervention Pool). As part of the Asylum Intervention Pool, the Support Office shall set up a list of interpreters. The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of experts of the Asylum Intervention Pool.

2. Member States shall contribute to the Asylum Intervention Pool via a national expert pool on the basis of defined profiles and propose experts corresponding to the required profiles.

Member States shall assist the Support Office in identifying interpreters for the list of interpreters.

Member States may choose to deploy interpreters or to make them available via video-conferencing.

Article 16

Deployment

1. The home Member State shall retain its autonomy as regards the selection of the number and the profiles of the experts (national pool) and the duration of their deployment. Member States shall make those experts available for deployment at the Support Office's request unless they are faced with a situation substantially affecting the discharge of national duties, such as one resulting in insufficient staffing for the performing of procedures to determine the status of persons applying for international protection. Member States shall, at the request of the Support Office, as soon as possible communicate the number, names and profiles of experts from their national pool who can be made available as soon as possible to join an asylum support team.

2. When determining the composition of an asylum support team, the Executive Director shall take into account the particular circumstances confronting the requesting Member State. The asylum support team shall be constituted in accordance with the operating plan referred to in Article 18.

Article 17

Procedure for deciding on deployment

1. If required, the Executive Director may send the Support Office experts to assess the situation in the requesting Member State.

2. The Executive Director shall immediately notify the Management Board of any request for deployment of asylum support teams.

3. The Executive Director shall take a decision on the request for deployment of asylum support teams as soon as possible and no later than five working days from the date of receipt of the request. The Executive Director shall notify the requesting Member State and the Management Board of the decision simultaneously in writing stating the main reasons therefor.

4. If the Executive Director decides to deploy one or more asylum support teams, an operating plan shall immediately be drawn up by the Support Office and the requesting Member State in accordance with Article 18.

5. As soon as that plan has been agreed, the Executive Director shall inform the Member States providing the experts to be deployed of the number and profiles required. That information shall be provided, in writing, to the national contact points referred to in Article 19 and shall specify the scheduled date of deployment. A copy of the operating plan shall also be sent to them.

6. If the Executive Director is absent or indisposed, the decisions on the deployment of the asylum support teams shall be taken by the head of unit assuming his duties.

Article 18

Operating plan

1. The Executive Director and the requesting Member State shall agree on an operating plan setting out in detail the conditions for deployment of the asylum support teams. The operating plan shall include:

(a) a description of the situation, with the modus operandi and objectives of the deployment, including the operational objective;

(b) the forecast duration of the teams' deployment;

(c) the geographical area of responsibility in the requesting Member State where the teams will be deployed;

(d) a description of the tasks and special instructions for members of the teams, including databases that they are authorised to consult and the equipment that they may carry in the requesting Member State; and

(e) the composition of the teams.

2. Any amendments to or adaptations of the operating plan shall require the agreement of both the Executive Director and the requesting Member State. The Support Office shall immediately send a copy of the amended or adapted operating plan to the participating Member States.

Article 19

National contact point

Each Member State shall designate a national contact point for communication with the Support Office on all matters pertaining to the asylum support teams.

Article 20

Union contact point

1. The Executive Director shall designate one or more Support Office experts to act as the Union contact point for coordination. The Executive Director shall notify the host Member State of such designations.

2. The Union contact point shall act on behalf of the Support Office in all aspects of the deployment of asylum support teams. In particular, the Union contact point shall:

(a) act as an interface between the Support Office and the host Member State;

(b) act as an interface between the Support Office and members of the asylum support teams, providing assistance, on behalf of the Support Office, on all issues relating to the conditions of deployment of those teams;

(c) monitor the correct implementation of the operating plan; and

(d) report to the Support Office on all aspects of the asylum support teams' deployment.

3. The Executive Director may authorise the Union contact point to assist in resolving any disputes concerning the implementation of the operating plan and the deployment of asylum support teams.

4. In discharging his duties, the Union contact point shall take instructions only from the Support Office.

Article 21

Civil liability

1. Where members of an asylum support team are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.

2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.

3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.

4. Any dispute between Member States relating to the application of paragraphs 2 and 3 of this Article which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice in accordance with Article 273 of the TFEU.

5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Support Office shall meet costs relating to damage caused to the Support Office's equipment during deployment, except in cases of gross negligence or wilful misconduct.

Article 22

Criminal liability

During the deployment of an asylum support team, members of an asylum support team shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

Article 23

Costs

Where Member States make their experts available for deployment to asylum support teams, the Support Office shall meet costs relating to the following:

(a) travel from the home Member State to the host Member State and from the host Member State to the home Member State;

(b) vaccinations;

(c) special insurance cover required;

(d) health care;

(e) daily subsistence allowances, including accommodation;

(f) the Support Office's technical equipment; and

(g) experts' fees.

CHAPTER 4

ORGANISATION OF THE SUPPORT OFFICE

Article 24

Administrative and management structure of the Support Office

The administrative and management structure of the Support Office shall comprise:

(a) a Management Board;

(b) an Executive Director and the staff of the Support Office.

The administrative and management structure of the Support Office may comprise an Executive Committee, if established in accordance with Article 29(2).

Article 25

Composition of the Management Board

1. Each Member State bound by this Regulation shall appoint one member to the Management Board and the Commission shall appoint two members.

2. Each member of the Management Board may be represented or accompanied by an alternate; when accompanying a member, the alternate member shall attend without having the right to vote.

3. Management Board members shall be appointed on the basis of their experience, professional responsibility and high degree of expertise in the field of asylum.

4. A representative of the UNHCR shall be a non-voting member of the Management Board.

5. The term of office of members of the Management Board shall be three years. That term shall be renewable. On the expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.

Article 26

Chair of the Management Board

1. The Management Board shall elect a Chair and a Deputy Chair from among its members with voting rights. The Deputy Chair shall automatically replace the Chair if he is prevented from attending to his duties.

2. The terms of office of the Chair and of the Deputy Chair shall be three years and may be renewed only once. If, however, their membership of the Management Board ends at any time during their term of office as Chair or Deputy Chair, their term of office shall automatically expire on that date also.

Article 27

Meetings of the Management Board

1. The meetings of the Management Board shall be convened by the Chair. The Executive Director shall take part in the meetings. The representative of the UNHCR shall not take part in the meeting when the Management Board performs the functions laid down in points (b), (h), (i), (j) and (m) of Article 29(1) and in Article 29(2), and when the Management Board decides to make financial resources available for financing the activities enabling the Support Office to benefit from the UNHCR's expertise in asylum matters as referred to in Article 50.

2. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chair or at the request of one third of its members.

3. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.

Denmark shall be invited to attend the meetings of the Management Board.

4. The members of the Management Board may, subject to the provisions of its rules of procedure, be assisted by advisers or experts.

5. The secretariat for the Management Board shall be provided by the Support Office.

Article 28

Voting

1. Unless provided otherwise, the Management Board shall take its decisions by an absolute majority of its members with voting rights. Each member entitled to vote shall have one vote. In the absence of a member, his alternate shall be entitled to exercise his right to vote.

2. The Executive Director shall not vote.

3. The Chair shall take part in the voting.

4. Member States that do not fully participate in the *acquis* of the Union in the field of asylum shall not vote where the Management Board is called on to take decisions falling within point (e) of Article 29(1) and where the technical document in question relates exclusively to an asylum instrument of the Union by which they are not bound.

5. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the circumstances in which a member may act on behalf of another member, and any quorum requirements, where necessary.

Article 29

Functions of the Management Board

1. The Management Board shall ensure that the Support Office performs the duties assigned to it. It shall be the Support Office's planning and monitoring body. In particular, it shall:

(a) adopt its rules of procedure, by a majority of three quarters of its members with voting rights and after receiving the opinion of the Commission;

(b) appoint the Executive Director in accordance with Article 30, exercise disciplinary authority over the Executive Director and, where necessary, suspend or dismiss him;

(c) adopt an annual general report on the Support Office's activities and send it, by 15 June of the following year, to the European Parliament, the Council, the Commission and the Court of Auditors. The annual general report shall be made public;

(d) adopt an annual report on the situation of asylum in the Union in accordance with Article 12(1). That report shall be presented to the European Parliament. The Council and the Commission may request that the report to be presented also to them;

(e) adopt the technical documents referred to in Article 12(2);

(f) by 30 September each year, on the basis of a draft put forward by the Executive Director and after having received the opinion of the Commission, adopt, by a majority of three quarters of its members with voting rights, the Support Office's work programme for the following year and send it to the European Parliament, the Council and the Commission. That work programme shall be adopted in accordance with the annual budgetary procedure of the Union and the legislative work programme of the Union in the area of asylum;

(g) exercise its responsibilities in respect of the Support Office's budget as laid down in Chapter 5;

(h) adopt the detailed rules for applying Regulation (EC) No 1049/2001 in accordance with Article 42 of this Regulation;

(i) adopt the Support Office's staff policy in accordance with Article 38;

(j) adopt, having requested the opinion of the Commission, the multiannual staff policy plan;

(k) take all decisions for the purpose of fulfilling the Support Office's mandate as laid down in this Regulation;

(l) take all decisions on the establishment and, where necessary, the development of the information systems provided for in this Regulation, including the information portal referred to in point (c) of Article 4; and

(m) take all decisions on the establishment and, where necessary, the modification of the Support Office's internal structures.

2. The Management Board may establish an Executive Committee to assist it and the Executive Director with regard to the preparation of the decisions, work programme and activities to be adopted by the Management Board and when necessary, because of urgency, to take certain provisional decisions on behalf of the Management Board.

Such an Executive Committee shall consist of eight members appointed from among the members of the Management Board amongst whom one of the Commission members of the Management Board. The term of office of members of the Executive Committee shall be the same as that of members of the Management Board.

At the request of the Executive Committee, UNHCR representatives or any other person whose opinion might be of interest may attend meetings of the Executive Committee without the right to vote.

The Support Office shall lay down the operating procedures of the Executive Committee in the Support Office's rules of procedure and make those procedures public.

Article 30

Appointment of the Executive Director

1. The Executive Director shall be appointed for a term of five years by the Management Board from among the suitable candidates identified in an open competition organised by the Commission. That selection procedure will provide for publication in the *Official Journal of the European Union* and elsewhere, of a call for expressions of interest. The Management Board may require a new procedure if it is not satisfied with the suitability of any of the candidates retained in the first list. The Executive Director shall be appointed on the basis of his personal merits, experience in the field of asylum and administrative and management skills. Before appointment, the candidate selected by the Management Board shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members.

After that statement, the European Parliament may adopt an opinion setting out its view relating to the selected candidate. The Management Board shall inform the European Parliament of the manner in which that opinion is taken into account. The opinion shall be treated as personal and confidential until the appointment of the candidate.

In the course of the last nine months of the Executive Director's five-year term, the Commission shall carry out an evaluation focusing on:

— the performance of the Executive Director; and

— the Support Office's duties and requirements in coming years.

2. The Management Board, taking into account that evaluation, may extend the term of office of the Executive Director once for not more than three years but only where such an extension is justified by the purpose and requirements of the Support Office.

3. The Management Board shall inform the European Parliament of its intention to extend the Executive Director's term of office. In the month prior to such extension of his term of office the Executive Director shall be invited to make a statement before the competent committee or committees of the European Parliament and answer questions put by its or their members.

Article 31

Duties of the Executive Director

1. The Support Office shall be managed by its Executive Director, who shall be independent in the performance of his duties. The Executive Director shall be accountable to the Management Board for his activities.

2. Without prejudice to the powers of the Commission, the Management Board, or the Executive Committee, if established, the Executive Director shall neither seek nor take instructions from any government or from any other body.

3. The Executive Director shall report to the European Parliament on the performance of his duties when invited. The Council may invite the Executive Director to report on the performance of his duties.

4. The Executive Director shall be the legal representative of the Support Office.

5. The Executive Director may be assisted by one or more heads of unit. If the Executive Director is absent or indisposed, a head of unit shall take his place.

6. The Executive Director shall be responsible for the administrative management of the Support Office and for the implementation of the duties assigned to it by this Regulation. In particular, the Executive Director shall be responsible for:

(a) the day-to-day administration of the Support Office;

(b) establishing the Support Office's work programmes, after having received the opinion of the Commission;

(c) implementing the work programmes and decisions adopted by the Management Board;

(d) drafting reports on countries of origin as provided for in point (b) of Article 4;

(e) preparing the Support Office's draft financial regulation for adoption by the Management Board under Article 37, and its implementing rules;

(f) preparing the Support Office's draft statement of estimates of revenue and expenditure and of implementation of its budget;

(g) exercising the powers laid down in Article 38 in respect of Support Office staff;

(h) taking all decisions on the management of the information systems provided for in this Regulation, including the information portal referred to in point (c) of Article 4;

(i) taking all decisions on the management of the Support Office's internal structures; and

(j) the coordination and operation of the Consultative Forum referred to in Article 51. To this end, the Executive Director shall, in consultation with relevant civil society organisations, first adopt a plan for installing the Consultative Forum. Once formally installed, the Executive Director shall, in consultation with the Consultative Forum, adopt an operational plan which will include rules on the frequency and nature of consultation and the organisational mechanisms for implementing Article 51. Transparent criteria for ongoing participation in the Consultative Forum shall also be agreed.

Article 32

Working parties

1. As part of its mandate as laid down in this Regulation, the Support Office may set up working parties composed of experts from competent Member State authorities operating in the field of asylum, including judges. The Support Office shall set up working parties for the purposes of point (e) of Article 4 and Article 12(2). Experts may be replaced by alternates, appointed at the same time.

2. The Commission shall take part in the working parties as of right. UNHCR representatives may attend all or part of the meetings of the Support Office's working parties, depending on the nature of the issues under discussion.

3. The working parties may invite any person whose opinion may be of interest to attend meetings, including representatives of civil society working in the field of asylum.

CHAPTER 5

FINANCIAL PROVISIONS

Article 33

Budget

1. Estimates of all the revenue and expenditure of the Support Office shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the Support Office's budget.

2. The Support Office's budget shall be balanced in terms of revenue and of expenditure.

3. Without prejudice to other resources, the Support Office's revenue shall comprise:

(a) a contribution from the Union entered in the general budget of the European Union;

(b) any voluntary contribution from the Member States;

(c) charges for publications and any service provided by the Support Office;

(d) a contribution from the associate countries.

4. The expenditure of the Support Office shall include staff remuneration, administrative and infrastructure expenses, operating costs.

Article 34

Establishment of the budget

1. Each year the Executive Director shall draw up a draft statement of estimates of the Support Office's revenue and expenditure together for the following financial year, including the establishment plan, and send it to the Management Board.

2. The Management Board shall, on the basis of that draft, produce a provisional draft estimate of the Support Office's revenue and expenditure for the following financial year.

3. The provisional draft estimate of the Support Office's revenue and expenditure shall be sent to the Commission by 10 February each year. The Management Board shall send a final draft estimate, which shall include a draft establishment plan, to the Commission by 31 March.

4. The Commission shall send the statement of estimates to the European Parliament and the Council (the budgetary authority) together with the draft general budget of the European Union.

5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the TFEU.

6. The budgetary authority shall authorise the appropriations for the Support Office's subsidy.

7. The budgetary authority shall adopt the Support Office's establishment plan.

8. The Support Office's budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.

9. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to immovable property such as the rental or purchase of buildings. It shall inform the Commission accordingly.

10. Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall send its opinion to the Management Board within a period of six weeks from the date of the project's notification.

Article 35

Implementation of the budget

1. The Executive Director shall implement the Support Office's budget.

2. Each year the Executive Director shall send to the budgetary authority all information relevant to the findings of the evaluation procedures.

Article 36

Presentation of accounts and discharge

1. By 1 March following each financial year, the Support Office's accounting officer shall communicate the provisional accounts to the Commission's Accounting Officer, together with a report on the budgetary and financial management for that financial year. The Commission's Accounting Officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the Financial Regulation.

2. By 31 March following each financial year, the Commission's accounting officer shall send the Support Office's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be sent to the European Parliament and the Council.

3. On receipt of the Court of Auditors' observations on the Support Office's provisional accounts pursuant to Article 129 of Financial Regulation, the Executive Director shall draw up the Support Office's final accounts under his own responsibility and submit them to the Management Board for an opinion.

4. The Management Board shall deliver an opinion on the Support Office's final accounts.

5. The Executive Director shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

6. The final accounts shall be published.

7. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September. He shall also send this reply to the Management Board.

8. The Executive Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Financial Regulation.

9. On a recommendation from the Council acting by a qualified majority, the European Parliament, shall, before 15 May of year N + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

Article 37

Financial regulation

The financial regulation applicable to the Support Office shall be adopted by the Management Board after consultation with the Commission. It shall not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [1] unless such departure is specifically required for the Support Office's operation and the Commission has given its prior consent.

CHAPTER 6

STAFF PROVISIONS

Article 38

Staff

1. The Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 [2] (the Staff Regulations) and the rules adopted jointly by the Union's institutions for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the Support Office, including the Executive Director.

2. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations.

3. The powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants shall be exercised by the Support Office in respect of its own staff.

4. The Management Board shall adopt provisions to allow national experts from Member States to be employed on secondment to the Support Office.

[1] OJ L 357, 31.12.2002, p. 72.
[2] OJ L 56, 4.3.1968, p. 1.

Article 39

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the Support Office.

CHAPTER 7

GENERAL PROVISIONS

Article 40

Legal status

1. The Support Office shall be a body of the Union. It shall have legal personality.

2. In each of the Member States the Support Office shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.

3. The Support Office shall be represented by its Executive Director.

Article 41

Language arrangements

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community [3] shall apply to the Support Office.

2. Without prejudice to decisions taken on the basis of Article 342 of the TFEU, the annual general report on the Support Office's activities and the annual work programme referred to in points (c) and (f) of Article 29(1) shall be produced in all the official languages of the institutions of the European Union.

3. The translation services required for the functioning of the Support Office shall be provided by the Translation Centre of the bodies of the European Union.

Article 42

Access to documents

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Support Office.

2. The Management Board shall, within six months of the date of its first meeting, adopt the detailed rules for applying Regulation (EC) No 1049/2001.

[3] OJ 17, 6.10.1958, p. 385.

3. Decisions taken by the Support Office under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the TFEU respectively.

4. The processing of data of a personal nature by the Support Office shall be subject to the Regulation (EC) No 45/2001.

Article 43

Security rules on the protection of classified information and non-classified sensitive information

1. The Support Office shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure [1], inter alia, the provisions for the exchange, processing and storage of classified information.

2. The Support Office shall also apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the Commission.

Article 44

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities the Regulation (EC) No 1073/1999 shall apply without restriction.

2. The Support Office shall accede to the Interinstitutional Agreement of 25 May 1999 and shall issue, without delay, the appropriate provisions applicable to all the employees of the Support Office.

3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among recipients of the Support Office's funding and the agents responsible for allocation thereof.

Article 45

Provisions on liability

1. The Support Office's contractual liability shall be governed by the law applicable to the contract in question.

2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Support Office.

3. In the case of non-contractual liability, the Support Office shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its staff in the performance of their duties.

4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.

5. The personal liability of its staff towards the Support Office shall be governed by the provisions laid down in the Staff Regulations applicable to them.

Article 46

Evaluation and review

1. No later than 19 June 2014, the Support Office shall commission an independent external evaluation of its achievements on the basis of terms of reference issued by the Management Board in agreement with the Commission. That evaluation shall cover the Support Office's impact on practical cooperation on asylum and on the CEAS. The evaluation shall take due regard to progress made, within its mandate, including assessing whether additional measures are necessary to ensure effective solidarity and sharing of responsibilities with Member States subject to particular pressure. It shall, in particular, address the possible need to modify the mandate of the Support Office, including the financial implications of any such modification and shall also examine whether the management structure is appropriate for carrying out the Support Office's duties. The evaluation shall take into account the views of stakeholders, at both Union and national level.

2. The Management Board, in agreement with the Commission, shall decide the timing of future evaluations, taking into account the findings of the evaluation referred to in paragraph 1.

Article 47

Administrative controls

The activities of the Support Office shall be subject to the controls of the Ombudsman in accordance with Article 228 of the TFEU.

[1] OJ L 317, 3.12.2001, p. 1.

Article 48

Cooperation with Denmark

The Support Office shall facilitate operational cooperation with Denmark, including the exchange of information and best practices in matters covered by its activities.

Article 49

Cooperation with third and associate countries

1. The Support Office shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland as observers. Arrangements shall be made, specifying in particular the nature, extent and manner in which those countries are to participate in the Support Office's work. Such arrangements shall include provisions relating to participation in initiatives undertaken by the Support Office, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations.

2. In matters connected with its activities and to the extent required for the fulfilment of its duties the Support Office shall, in agreement with the Commission and within the limits of its mandate, facilitate operational cooperation between Member States and third countries other than those referred to in paragraph 1 within the framework of the Union's external relations policy, and may also cooperate with the authorities of third countries competent in technical aspects of the areas covered by this Regulation, within the framework of working arrangements concluded with those authorities, in accordance with the relevant provisions of the TFEU.

Article 50

Cooperation with the UNHCR

The Support Office shall cooperate with the UNHCR in the areas governed by this Regulation within the framework of working arrangements concluded with it. From the side of the Support Office, the Management Board shall decide on the working arrangements including their budgetary implications.

In addition, the Management Board may decide that the Support Office can make available financial resources to cover the expenses of the UNHCR for activities that are not provided for in the working arrangements. They shall form part of the special cooperation relations established between the Support Office and the UNHCR in accordance with this Article and with Article 2(5), Article 5, Article 9(1), Article 25(4) and Article 32(2). In accordance with Article 75 of Regulation (EC, Euratom) No 2343/2002, the relevant provisions of the Financial Regulation and its implementing rules shall apply.

Article 51

Consultative Forum

1. The Support Office shall maintain a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, European or international level and shall set up a Consultative Forum for this purpose.

2. The Consultative Forum shall constitute a mechanism for the exchange of information and pooling of knowledge. It shall ensure there is a close dialogue between the Support Office and relevant stakeholders.

3. The Consultative Forum shall be open to relevant stakeholders in accordance with paragraph 1. The Support Office shall address the members of the Consultative Forum in accordance with specific needs related to areas identified as priority for the Support Office's work.

The UNHCR shall be a member of the Consultative Forum ex officio.

4. The Support Office shall call upon the Consultative Forum in particular to:

(a) make suggestions to the Management Board on the annual work programme to be adopted under point (f) of Article 29(1);

(b) provide feedback to the Management Board and suggest measures as follow-up to the annual report referred to in point (c) of Article 29(1) and the annual report on the situation of asylum in the Union referred to in Article 12(1); and

(c) communicate conclusions and recommendations of conferences, seminars and meetings relevant to the work of the Support Office to the Executive Director and the Management Board.

5. The Consultative Forum shall meet at least once a year.

Article 52

Cooperation with Frontex, FRA, other bodies of the Union and with international organisations

The Support Office shall cooperate with the bodies of the Union having activities relating to its field of activity, and in particular with Frontex and FRA and with international organisations competent in matters covered by this Regulation, within the framework of working arrangements concluded with those bodies, in accordance with the TFEU and the provisions on the competence of those bodies.

Cooperation shall create synergies between the bodies concerned and prevent any duplication of effort in the work carried out pursuant to their mandate.

Article 53

Headquarters agreement and operating conditions

The necessary arrangements concerning the accommodation to be provided for the Support Office in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the Support Office's host Member State to the Executive Director, members of the Management Board, Support Office staff and members of their families shall be laid down in a headquarters agreement between the Support Office and the host Member State concluded once the Management Board's approval is obtained. The host Member State shall provide the best possible conditions to ensure the proper functioning of the Support Office, including multilingual, European-oriented schooling and appropriate transport connections.

Article 54

Start of the Support Office's activities

The Support Office shall become fully operational by 19 June 2011.

The Commission shall be responsible for the establishment and initial operation of the Support Office until it has the operational capacity to implement its own budget.

To that end:

— until such time as the Executive Director takes up his duties following his appointment by the Management Board in accordance with Article 30, a Commission official may act as interim Director and exercise the duties assigned to the Executive Director;

— Commission officials may carry out the duties assigned to the Support Office under the responsibility of its interim Director or Executive Director.

The interim Director may authorise all payments covered by appropriations entered in the Support Office's budget after approval by the Management Board and may conclude contracts, including staff contracts, following the adoption of the Support Office's establishment plan.

Article 55

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 19 May 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
D. LÓPEZ GARRIDO

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 2(a) and (b) 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) The preparation of a common policy on asylum, including common European arrangements for asylum, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.

(2) Cases of mass influx of displaced persons who cannot return to their country of origin have become more substantial in Europe in recent years. In these cases it may be necessary to set up exceptional schemes to offer them immediate temporary protection.

(3) In the conclusions relating to persons displaced by the conflict in the former Yugoslavia adopted by the Ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the Community institutions expressed their concern at the situation of displaced persons.

(4) On 25 September 1995 the Council adopted a Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis [5], and, on 4 March 1996, adopted Decision 96/198/JHA on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis [6].

(5) The Action Plan of the Council and the Commission of 3 December 1998 [7] provides for the rapid adoption, in accordance with the Treaty of Amsterdam, of minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and of measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons.

(6) On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty.

(7) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

(8) It is therefore necessary to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons.

(9) Those standards and measures are linked and interdependent for reasons of effectiveness, coherence and solidarity and in order, in particular, to avert the risk of secondary movements. They should therefore be enacted in a single legal instrument.

(10) This temporary protection should be compatible with the Member States' international obligations as regards refugees. In particular, it must not prejudge the recognition of refugee status pursuant to the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967, ratified by all the Member States.

[1] OJ C 311 E, 31.10.2000, p. 251.
[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).
[3] OJ C 155, 29.5.2001, p. 21.
[4] Opinion delivered on 13 June 2001 (not yet published in the Official Journal).
[5] OJ C 262, 7.10.1995, p. 1.
[6] OJ L 63, 13.3.1996, p. 10.
[7] OJ C 19, 20.1.1999, p. 1.

(11) The mandate of the United Nations High Commissioner for Refugees regarding refugees and other persons in need of international protection should be respected, and effect should be given to Declaration No 17, annexed to the Final Act to the Treaty of Amsterdam, on Article 63 of the Treaty establishing the European Community which provides that consultations are to be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy.

(12) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons enjoying temporary protection in the event of a mass influx of displaced persons.

(13) Given the exceptional character of the provisions established by this Directive in order to deal with a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, the protection offered should be of limited duration.

(14) The existence of a mass influx of displaced persons should be established by a Council Decision, which should be binding in all Member States in relation to the displaced persons to whom the Decision applies. The conditions for the expiry of the Decision should also be established.

(15) The Member States' obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned.

(16) With respect to the treatment of persons enjoying temporary protection under this Directive, the Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(17) Member States should, in concert with the Commission, enforce adequate measures so that the processing of personal data respects the standard of protection of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1].

(18) Rules should be laid down to govern access to the asylum procedure in the context of temporary protection in the event of a mass influx of displaced persons, in conformity with the Member States' international obligations and with the Treaty.

(19) Provision should be made for principles and measures governing the return to the country of origin and the measures to be taken by Member States in respect of persons whose temporary protection has ended.

(20) Provision should be made for a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial and the second concerns the actual reception of persons in the Member States.

(21) The implementation of temporary protection should be accompanied by administrative cooperation between the Member States in liaison with the Commission.

(22) It is necessary to determine criteria for the exclusion of certain persons from temporary protection in the event of a mass influx of displaced persons.

(23) Since the objectives of the proposed action, namely to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons, cannot be sufficiently attained by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle 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.

(24) 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 27 September 2000, of its wish to take part in the adoption and application of this Directive.

(25) Pursuant to 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.

(26) 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 not bound by it nor subject to its application,

[1] OJ L 281, 23.11.1995, p. 31.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.

Article 2

For the purposes of this Directive:

(a) 'temporary protection' means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;

(b) 'Geneva Convention' means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(c) 'displaced persons' means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

  (i) persons who have fled areas of armed conflict or endemic violence;

  (ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

(d) 'mass influx' means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme;

(e) 'refugees' means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention;

(f) 'unaccompanied minors' means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States;

(g) 'residence permit' means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State's legislation, allowing a third country national or a stateless person to reside on its territory;

(h) 'sponsor' means a third-country national enjoying temporary protection in a Member State in accordance with a decision taken under Article 5 and who wants to be joined by members of his or her family.

Article 3

1. Temporary protection shall not prejudge recognition of refugee status under the Geneva Convention.

2. Member States shall apply temporary protection with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement.

3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other relevant international organisations.

4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.

5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable conditions for persons covered by temporary protection.

CHAPTER II

Duration and implementation of temporary protection

Article 4

1. Without prejudice to Article 6, the duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.

2. Where reasons for temporary protection persist, the Council may decide by qualified majority, on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council, to extend that temporary protection by up to one year.

Article 5

1. The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Commission proposal shall include at least:

(a) a description of the specific groups of persons to whom the temporary protection will apply;

(b) the date on which the temporary protection will take effect;

(c) an estimation of the scale of the movements of displaced persons.

3. The Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive. The Decision shall include at least:

(a) a description of the specific groups of persons to whom the temporary protection applies;

(b) the date on which the temporary protection will take effect;

(c) information received from Member States on their reception capacity;

(d) information from the Commission, UNHCR and other relevant international organisations.

4. The Council Decision shall be based on:

(a) an examination of the situation and the scale of the movements of displaced persons;

(b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;

(c) information received from the Member States, the Commission, UNHCR and other relevant international organisations.

5. The European Parliament shall be informed of the Council Decision.

Article 6

1. Temporary protection shall come to an end:

(a) when the maximum duration has been reached; or

(b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement. The European Parliament shall be informed of the Council Decision.

Article 7

1. Member States may extend temporary protection as provided for in this Directive to additional categories of displaced persons over and above those to whom the Council Decision provided for in Article 5 applies, where they are displaced for the same reasons and from the same country or region of origin. They shall notify the Council and the Commission immediately.

2. The provisions of Articles 24, 25 and 26 shall not apply to the use of the possibility referred to in paragraph 1, with the exception of the structural support included in the European Refugee Fund set up by Decision 2000/596/EC [1], under the conditions laid down in that Decision.

CHAPTER III

Obligations of the Member States towards persons enjoying temporary protection

Article 8

1. The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued for that purpose.

2. Whatever the period of validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 16.

3. The Member States shall, if necessary, provide persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum.

Article 9

The Member States shall provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out.

Article 10

To enable the effective application of the Council Decision referred to in Article 5, Member States shall register the personal data referred to in Annex II, point (a), with respect to the persons enjoying temporary protection on their territory.

[1] OJ L 252, 6.10.2000, p. 12.

Article 11

A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply.

Article 12

The Member States shall authorise, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience. For reasons of labour market policies, Member States may give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit. The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

Article 13

1. The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.

2. The Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care. Without prejudice to paragraph 4, the assistance necessary for medical care shall include at least emergency care and essential treatment of illness.

3. Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.

4. The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

Article 14

1. The Member States shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State The Member States may stipulate that such access must be confined to the state education system.

2. The Member States may allow adults enjoying temporary protection access to the general education system.

Article 15

1. For the purpose of this Article, in cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass influx, the following persons shall be considered to be part of a family:

(a) the spouse of the sponsor or his/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; the minor unmarried children of the sponsor or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted;

(b) other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time.

2. In cases where the separate family members enjoy temporary protection in different Member States, Member States shall reunite family members where they are satisfied that the family members fall under the description of paragraph 1(a), taking into account the wish of the said family members. Member States may reunite family members where they are satisfied that the family members fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship they would face if the reunification did not take place.

3. Where the sponsor enjoys temporary protection in one Member State and one or some family members are not yet in a Member State, the Member State where the sponsor enjoys temporary protection shall reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(a). The Member State may reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship which they would face if the reunification did not take place.

4. When applying this Article, the Member States shall taken into consideration the best interests of the child.

5. The Member States concerned shall decide, taking account of Articles 25 and 26, in which Member State the reunification shall take place.

6. Reunited family members shall be granted residence permits under temporary protection. Documents or other equivalent evidence shall be issued for that purpose. Transfers of family members onto the territory of another Member State for the purposes of reunification under paragraph 2, shall result in the withdrawal of the residence permits issued, and the termination of the obligations towards the persons concerned relating to temporary protection, in the Member State of departure.

7. The practical implementation of this Article may involve cooperation with the international organisations concerned.

8. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person receiving temporary protection which is needed to process a matter under this Article.

Article 16

1. The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection 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.

2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:

(a) with adult relatives;

(b) with a foster-family;

(c) in reception centres with special provisions for minors, or in other accommodation suitable for minors;

(d) with the person who looked after the child when fleeing.

The Member States shall take the necessary steps to enable the placement. Agreement by the adult person or persons concerned shall be established by the Member States. The views of the child shall be taken into account in accordance with the age and maturity of the child.

CHAPTER IV

Access to the asylum procedure in the context of temporary protection

Article 17

1. Persons enjoying temporary protection must be able to lodge an application for asylum at any time.

2. The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period.

Article 18

The criteria and mechanisms for deciding which Member State is responsible for considering an asylum application shall apply. In particular, the Member State responsible for examining an asylum application submitted by a person enjoying temporary protection pursuant to this Directive, shall be the Member State which has accepted his transfer onto its territory.

Article 19

1. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration.

2. Where, after an asylum application has been examined, refugee status or, where applicable, other kind of protection is not granted to a person eligible for or enjoying temporary protection, the Member States shall, without prejudice to Article 28, provide for that person to enjoy or to continue to enjoy temporary protection for the remainder of the period of protection.

CHAPTER V

Return and measures after temporary protection has ended

Article 20

When the temporary protection ends, the general laws on protection and on aliens in the Member States shall apply, without prejudice to Articles 21, 22 and 23.

Article 21

1. The Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity.

The Member State shall ensure that the decision of those persons to return is taken in full knowledge of the facts. The Member States may provide for exploratory visits.

2. For such time as the temporary protection has not ended, the Member States shall, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return.

3. At the end of the temporary protection, the Member States may provide for the obligations laid down in CHAPTER III to be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme. The extension shall have effect until the date of return.

Article 22

1. The Member States shall take the measures necessary to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission is conducted with due respect for human dignity.

2. In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

Article 23

1. The Member States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel; where for example they would suffer serious negative effects if their treatment was interrupted. They shall not be expelled so long as that situation continues.

2. The Member States may allow families whose children are minors and attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period.

CHAPTER VI

Solidarity

Article 24

The measures provided for in this Directive shall benefit from the European Refugee Fund set up by Decision 2000/596/EC, under the terms laid down in that Decision.

Article 25

1. The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons. This information shall be set out in the Council Decision referred to in Article 5. After that Decision has been adopted, the Member States may indicate additional reception capacity by notifying the Council and the Commission. This information shall be passed on swiftly to UNHCR.

2. The Member States concerned, acting in cooperation with the competent international organisations, shall ensure that the eligible persons defined in the Council Decision referred to in Article 5, who have not yet arrived in the Community have expressed their will to be received onto their territory.

3. When the number of those who are eligible for temporary protection following a sudden and massive influx exceeds the reception capacity referred to in paragraph 1, the Council shall, as a matter of urgency, examine the situation and take appropriate action, including recommending additional support for Member States affected.

Article 26

1. For the duration of the temporary protection, the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the consent of the persons concerned to such transferral.

2. A Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR. The Member States shall inform the requesting Member State of their capacity for receiving transferees.

3. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person enjoying temporary protection which is needed to process a matter under this Article.

4. Where a transfer is made from one Member State to another, the residence permit in the Member State of departure shall expire and the obligations towards the persons concerned relating to temporary protection in the Member State of departure shall come to an end. The new host Member State shall grant temporary protection to the persons concerned.

5. The Member States shall use the model pass set out in Annex I for transfers between Member States of persons enjoying temporary protection.

CHAPTER VII

Administrative cooperation

Article 27

1. For the purposes of the administrative cooperation required to implement temporary protection, the Member States shall each appoint a national contact point, whose address they shall communicate to each other and to the Commission. The Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

2. The Member States shall, regularly and as quickly as possible, communicate data concerning the number of persons enjoying temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection.

CHAPTER VIII

Special provisions

Article 28

1. The Member States may exclude a person from temporary protection if:

(a) there are serious reasons for considering that:

(i) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(ii) he or she has committed a serious non-political crime outside the Member State of reception prior to his or her admission to that Member State as a person enjoying temporary protection. The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators;

(iii) he or she has been guilty of acts contrary to the purposes and principles of the United Nations;

(b) there are reasonable grounds for regarding him or her as a danger to the security of the host Member State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host Member State.

2. The grounds for exclusion referred to in paragraph 1 shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.

CHAPTER IX

Final provisions

Article 29

Persons who have been excluded from the benefit of temporary protection or family reunification by a Member State shall be entitled to mount a legal challenge in the Member State concerned.

Article 30

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 31

1. Not later than two years after the date specified in Article 32, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report.

2. After presenting the report referred to at paragraph 1, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 32

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

2. When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 33

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

Article 34

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

Done at Brussels, 20 July 2001.

For the Council

The President

J. VANDE LANOTTE

ANNEX I

Model pass for the transfer of persons enjoying temporary protection

PASS

Name of the Member State delivering the pass:

Reference number (*):

Issued under Article 26 of 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 effort between Member States in receiving such persons and bearing the consequences thereof.

Valid only for the transfer from ..... (1) to ..... (2).

The person in question must present himself/herself at ..... (3) by ..... (4).

Issued at: .....

SURNAME: .....

FORENAMES: .....

PLACE AND DATE OF BIRTH: .....

In case of a minor, name(s) of responsible adult: .....

SEX: .....

NATIONALITY: .....

Date issued: .....

PHOTO

SEAL

Signature of the beneficiary: ..... For the competent authorities: .....

The pass-holder has been identified by the authorities ..... (5) (6)

The identity of the pass-holder has not been established .....

This document is issued pursuant to Article 26 of Directive 2001/55/EC only and in no way constitutes a document which can be equated to a travel document authorising the crossing of the external border or a document proving the individual's identity.

(*) The reference number is allocated by the country from which the transfer to another Member State is made.
(1) Member State from which the transfer is being made.
(2) Member State to which the transfer is being made.
(3) Place where the person must present himself/herself on arrival in the second Member State.
(4) Deadline by which the person must present himself/herself on arrival in the second Member State.
(5) On the basis of the following travel or identity documents, presented to the authorities.
(6) On the basis of documents other than a travel or identity document.

ANNEX II

The information referred to in Articles 10, 15 and 26 of the Directive includes to the extent necessary one or more of the following documents or data:

(a) personal data on the person concerned (name, nationality, date and place of birth, marital status, family relationship);

(b) identity documents and travel documents of the person concerned;

(c) documents concerning evidence of family ties (marriage certificate, birth certificate, certificate of adoption);

(d) other information essential to establish the person's identity or family relationship;

(e) residence permits, visas or residence permit refusal decisions issued to the person concerned by the Member State, and documents forming the basis of decisions;

(f) residence permit and visa applications lodged by the person concerned and pending in the Member State, and the stage reached in the processing of these.

The providing Member State shall notify any corrected information to the requesting Member State.

V. Irregular Migration, Detention and Return

A. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

B. Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals

C. Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air

D. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

E. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

F. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

COUNCIL DIRECTIVE 2002/90/EC
of 28 November 2002
defining the facilitation of unauthorised entry, transit and residence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(a) and Article 63(3)(b) thereof,

Having regard to the initiative of the French Republic ([1]),

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) One of the objectives of the European Union is the gradual creation of an area of freedom, security and justice, which means, *inter alia*, that illegal immigration must be combated.

(2) Consequently, measures should be taken to combat the aiding of illegal immigration both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings.

(3) To that end it is essential to approximate existing legal provisions, in particular, on the one hand, the precise definition of the infringement in question and the cases of exemption, which is the subject of this Directive and, on the other hand, minimum rules for penalties, liability of legal persons and jurisdiction, which is the subject of Council framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence ([3]).

(4) The purpose of this Directive is to provide a definition of the facilitation of illegal immigration and consequently to render more effective the implementation of framework Decision 2002/946/JHA in order to prevent that offence.

(5) This Directive supplements other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children.

(6) As regards Iceland and Norway, this Directive constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ([4]), which fall within the area referred to in Article 1(E) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ([5]).

(7) The United Kingdom and Ireland are taking part in the adoption and application of this Directive in accordance with the relevant provisions of the Treaties.

(8) 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 taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Directive whether it will implement it in its national law,

HAS ADOPTED THIS DIRECTIVE:

Article 1

General infringement

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens;

(b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

Article 2

Instigation, participation and attempt

Each Member State shall take the measures necessary to ensure that the sanctions referred to in Article 1 are also applicable to any person who:

(a) is the instigator of,

(b) is an accomplice in, or

(c) attempts to commit

an infringement as referred to in Article 1(1)(a) or (b).

([1]) OJ C 253, 4.9.2000, p. 1.
([2]) OJ C 276, 1.10.2001, p. 244.
([3]) See page 1 of this Official Journal.
([4]) OJ L 176, 10.7.1999, p. 36.
([5]) OJ L 176, 10.7.1999, p. 31.

Article 3

Sanctions

Each Member State shall take the measures necessary to ensure that the infringements referred to in Articles 1 and 2 are subject to effective, proportionate and dissuasive sanctions.

Article 4

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 5 December 2004. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of their national law which they adopt in the field covered by this Directive, together with a table showing how the provisions of this Directive correspond to the national provisions adopted. The Commission shall inform the other Member States thereof.

Article 5

Repeal

Article 27(1) of the 1990 Schengen Convention shall be repealed as from 5 December 2004. Where a Member State implements this Directive pursuant to Article 4(1) in advance of that date, the said provision shall cease to apply to that Member State from the date of implementation.

Article 6

Entry into force

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

Article 7

Addressees

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

Done at Brussels, 28 November 2002.

For the Council

The President

B. HAARDER

COUNCIL DIRECTIVE 2001/40/EC
of 28 May 2001
on the mutual recognition of decisions on the expulsion of third country nationals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) thereof,

Having regard to the initiative of the French Republic [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) The Treaty stipulates that the Council is to adopt measures on immigration policy within areas comprising conditions of entry and residence as well as illegal immigration and illegal residence.

(2) The Tampere European Council on 15 and 16 October 1999 reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim both at fair treatment of third country nationals and better management of migration flows.

(3) The need to ensure greater effectiveness in enforcing expulsion decisions and better cooperation between Member States entails mutual recognition of expulsion decisions.

(4) Decisions on the expulsion of third country nationals have to be adopted in accordance with fundamental rights, as safeguarded by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, in particular Articles 3 and 8 thereof, and the Geneva Convention relating to the Status of Refugees of 28 July 1951 and as they result from the constitutional principles common to the Member States.

(5) In accordance with the principle of subsidiarity, the objective of the proposed action, namely cooperation between Member States on expulsion of third country nationals, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the envisaged action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve that objective.

(6) 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 the Treaty establishing the European Community, the United Kingdom has given notice by letter of 18 October 2000 of its wish to take part in the adoption and application of this Directive.

(7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it or subject to its application. Given that this Directive aims to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, in accordance with Article 5 of the abovementioned Protocol, Denmark will decide within a period of six months after the Council has adopted this Directive whether it will transpose this decision into its national law.

(8) As regards the Republic of Iceland and the Kingdom of Norway, this Directive constitutes a development of the Schengen acquis within the meaning of the agreement concluded on 18 May 1999 between the Council of the European Union and those two States. As a result of the procedures laid down in the agreement, the rights and obligations arising from this Directive should also apply to those two States and in relations between those two States and the Member States of the European Community to which this Directive is addressed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Without prejudice to the obligations arising from Article 23 and to the application of Article 96 of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990, hereinafter referred to as the 'Schengen Convention', the purpose of this Directive is to make possible the recognition of an expulsion decision issued by a competent authority in one Member State, hereinafter referred to as the 'issuing Member State', against a third country national present within the territory of another Member State, hereinafter referred to as the 'enforcing Member State'.

2. Any decision taken pursuant to paragraph 1 shall be implemented according to the applicable legislation of the enforcing Member State.

3. This Directive shall not apply to family members of citizens of the Union who have exercised their right of free movement.

[1] OJ C 243, 24.8.2000, p. 1.
[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).

Article 2

For the purposes of this Directive,

(a) 'third country national' shall mean anyone who is not a national of any of the Member States;

(b) 'expulsion decision' shall mean any decision which orders an expulsion taken by a competent administrative authority of an issuing Member State;

(c) 'enforcement measure' shall mean any measure taken by the enforcing Member State with a view to implementing an expulsion decision.

Article 3

1. The expulsion referred to in Article 1 shall apply to the following cases:

(a) a third country national is the subject of an expulsion decision based on a serious and present threat to public order or to national security and safety, taken in the following cases:

— conviction of a third country national by the issuing Member State for an offence punishable by a penalty involving deprivation of liberty of at least one year,

— the existence of serious grounds for believing that a third country national has committed serious criminal offences or the existence of solid evidence of his intention to commit such offences within the territory of a Member State.

Without prejudice to Article 25(2) of the Schengen Convention, if the person concerned holds a residence permit issued by the enforcing Member State or by another Member State, the enforcing State shall consult the issuing State and the State which issued the permit. The existence of an expulsion decision taken under this point shall allow for the residence permit to be withdrawn if this is authorised by the national legislation of the State which issued the permit;

(b) a third country national is the subject of an expulsion decision based on failure to comply with national rules on the entry or residence of aliens.

In the two cases referred to in (a) and (b), the expulsion decision must not have been rescinded or suspended by the issuing Member State.

2. Member States shall apply this Directive with due respect for human rights and fundamental freedoms.

3. This Directive shall be applied without prejudice to the provisions of the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities and readmission agreements between Member States.

Article 4

The Member States shall ensure that the third country national concerned may, in accordance with the enforcing Member State's legislation, bring proceedings for a remedy against any measure referred to in Article 1(2).

Article 5

Protection of personal data and data security shall be ensured in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1].

Without prejudice to Articles 101 and 102 of the Schengen Convention, personal data files shall be used in the context of this Directive only for the purposes laid down therein.

Article 6

The authorities of the issuing Member State and of the enforcing Member State shall make use of all appropriate means of cooperation and of exchanging information to implement this Directive.

The issuing Member State shall provide the enforcing Member State with all documents needed to certify the continued enforceability of the decision by the fastest appropriate means, where appropriate in accordance with the relevant provisions of the SIRENE Manual.

The enforcing Member State shall first examine the situation of the person concerned to ensure that neither the relevant international instruments nor the national rules applicable conflict with the enforcement of the expulsion decision.

After implementation of the enforcement measure, the enforcing Member State shall inform the issuing Member State.

Article 7

Member States shall compensate each other for any financial imbalances which may result from application of this Directive where expulsion cannot be effected at the expense of the national(s) of the third country concerned.

In order to enable this Article to be implemented, the Council, acting on a proposal from the Commission, shall adopt appropriate criteria and practical arrangements before 2 December 2002. These criteria and practical arrangements shall also apply to the implementation of Article 24 of the Schengen Convention.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 2 December 2002. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

[1] OJ L 281, 23.11.1995, p. 31.

Article 9

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

Article 10

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

Done at Brussels, 28 May 2001.

For the Council

The President

T. BODSTRÖM

COUNCIL DIRECTIVE 2003/110/EC

of 25 November 2003

on assistance in cases of transit for the purposes of removal by air

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,

Having regard to the initiative of the Federal Republic of Germany,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Mutual assistance for the purposes of removal takes into consideration the common objective of ending the illegal residence of third-country nationals who are the subject of removal orders. Rules binding on all the Member States contribute furthermore to legal certainty and standardisation of procedures.

(2) Removal by air is increasingly gaining in importance for the purpose of terminating the residence of third-country nationals. Despite the efforts of the Member States to give priority to using direct flights, it may be necessary, from an economic viewpoint or insufficient availability of direct flights, to use flight connections via airports of transit of other Member States.

(3) The Council recommendation of 22 December 1995 on concerted action and cooperation in carrying out removal measures [1] and the decision of the Executive Committee of 21 April 1998 on cooperation between the Contracting Parties in returning third-country nationals by air, (SCH/Com-ex (98) 10) [2] already address the need for cooperation between Member States in the field of removal by air of third-country nationals.

(4) The sovereignty of the Member States, particularly with regard to the use of direct force against third-country nationals resisting removal should remain unaffected.

(5) The Convention of 14 September 1963 on Offences and Certain Other Acts committed on board Aircraft (Tokyo Convention), particularly with regard to the on-board powers of the pilot responsible and matters of liability should remain unaffected.

(6) With regard to the briefing of airlines as to how to conduct unescorted and escorted removals, reference is made to Annex 9 to the Convention of the International Civil Aviation Organisation (ICAO) of 7 December 1944.

(7) Member States are to implement this Directive with due respect for human rights and fundamental freedoms, in particular the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 and the European Convention for the Protection of Human Rights and Fundamental Freedoms. In accordance with the applicable international obligations, transit by air should be neither requested nor granted if in the third country of destination or of transit the third-country national faces the threat of inhumane or humiliating treatment, torture or the death penalty, or if his life or liberty would be at risk by reason of his/her race, religion, nationality, membership of a particular social group or political conviction.

(8) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3].

(9) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it or subject to its application. Given that this Directive builds upon the Schengen *acquis* under the provisions of Title IV of part Three of the Treaty establishing the European Community to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions for a short stay applicable within the territory of a Member State by virtue of the provisions of the Schengen *acquis*, in accordance with Article 5 of the abovementioned Protocol, Denmark is to decide within a period of six months after the Council has adopted this Directive, whether it will implement it in its national law or not.

(10) As regards the Republic of Iceland and the Kingdom of Norway, this Directive constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded on 18 May 1999 by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of these two States with the implementation, application and development of the Schengen *acquis* [4], to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions for a short stay applicable within the territory of a Member State by virtue of the provisions of the Schengen *acquis*, which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement [5].

[1] OJ C 5, 10.1.1996, p. 3.
[2] OJ L 239, 22.9.2000, p. 193.
[3] OJ L 184, 17.7.1999, p. 23.
[4] OJ L 176, 10.7.1999, p. 36.
[5] OJ L 176, 10.7.1999, p. 31.

(11) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty establishing the European Community, these Member States are not taking part in the adoption of this Directive and therefore, subject to Article 4 of that Protocol, are not bound by it or subject to its application.

(12) This Directive constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(1) of the 2003 Act of Accession,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to define measures on assistance between the competent authorities at Member State airports of transit with regard to unescorted and escorted removals by air.

Article 2

For the purposes of this Directive:

(a) 'third-country national' means any person who is not a national of a Member State of the European Union, the Republic of Iceland or the Kingdom of Norway;

(b) 'requesting Member State' means the Member State which enforces a removal order in respect of a third-country national and requests transit via the airport of transit of another Member State;

(c) 'requested Member State' or 'transit Member State' means the Member State via whose airport of transit the transit is to be effected;

(d) 'escort' means all persons from the requesting Member State responsible for accompanying the third-country national, including persons responsible for medical care and interpreters;

(e) 'transit by air' means the passage of the third-country national and, if necessary, the escort through the area of the airport of the requested Member State for the purposes of removal by air.

Article 3

1. A Member State wishing to return a third-country national by air shall examine whether it is possible to use a direct flight to the country of destination.

2. If a Member State wishing to return a third-country national cannot for reasonable practical circumstances use a direct flight to the country of destination, it can request transit by air via another Member State. An application for transit by air shall in principle not be made if the removal measure requires a change of airport on the territory of the requested Member State.

3. Without prejudice to the obligations of Article 8, the requested Member State may refuse transit by air if:

(a) the third-country national under national legislation in the requested Member State is charged with criminal offences or is wanted for the carrying out of a sentence;

(b) transit through other States or admission by the country of destination is not feasible;

(c) the removal measure requires a change of airport on the territory of the requested Member State;

(d) the requested assistance is impossible at a particular moment for practical reasons, or

(e) the third-country national will be a threat to public policy, public security, public health or to the international relations of the requested Member State.

4. In the case of paragraph 3(d), the requested Member State shall as quickly as possible inform the requesting Member State of a date as close as possible to the originally requested date on which transit by air may be assisted, in so far as the other conditions are complied with.

5. Authorisations for transit by air which have already been issued may be revoked by the requested Member State if circumstances within the meaning of paragraph 3 subsequently come to light, justifying a refusal of the transit.

6. The requested Member State shall inform the requesting Member State forthwith of the refusal or revocation of a transit by air authorisation under paragraph 3 or 5 or of any other reason why the transit is not possible, and shall provide an explanation of the reasons.

Article 4

1. The request for escorted or unescorted transit by air and the associated assistance measures under Article 5(1) shall be made in writing by the requesting Member State. It shall reach the requested Member State as early as possible, and in any case no later than two days before the transit. This time limit may be waived in particularly urgent and duly justified cases.

2. The requested Member State shall inform the requesting Member State forthwith of its decision within two days. This time limit may be extended in duly justified cases by a maximum of 48 hours. Transit by air shall not be started without the approval of the requested Member State.

Where no reply is provided by the requested Member State within the deadline referred to in the first subparagraph, the transit operations may be started by means of a notification by the requesting Member State.

Member States may provide on the basis of bilateral or multilateral agreements or arrangements that the transit operations may be started by means of a notification by the requesting Member State.

Member States shall notify the Commission regarding the agreements or arrangements referred to in the third subparagraph. The Commission shall regularly report to the Council on such agreements and arrangements.

3. For the purposes of dealing with the request under paragraph 1, the information on the form to be used for requesting and authorising transit by air in accordance with the Annex shall be forwarded to the requested Member State.

The measures necessary for the update and the adjustment of the transit request as set out in the Annex as well as the methods of its transmission shall be taken in accordance with the procedure referred to in Article 9(2).

4. With respect to any request for transit, the requesting Member State shall provide the requested Member State with the details as provided for in the Annex.

5. The Member States shall each appoint a central authority to which requests under paragraph 1 are to be sent.

The central authorities shall appoint contact points for all the relevant airports of transit who can be contacted throughout the transit operations.

Article 5

1. The requesting Member State shall take appropriate arrangements to ensure that the transit operation takes place in the shortest possible time.

The transit operation shall take place at a maximum within 24 hours.

2. The requested Member State, subject to mutual consultations with the requesting Member State within available means and in compliance with relevant international standards, shall provide all the assistance measures necessary from landing and the opening of the aircraft doors until it is ensured that the third-country national has left. However, mutual consultations are not required in the cases referred to in point (b).

This relates to the following assistance measures in particular:

(a) meeting the third-country national at the aircraft and escorting him/her within the confines of the transit airport, in particular to his/her connecting flight;

(b) providing emergency medical care to the third-country national and, if necessary, his/her escort;

(c) providing sustenance for the third-country national and, if necessary, his/her escort;

(d) receiving, keeping and forwarding travel documents, particularly in the case of unescorted removals;

(e) in cases of unescorted transit, informing the requesting Member State of the place and time of departure of the third-country national from the territory of the Member State concerned;

(f) informing the requesting Member State if any serious incidents took place during the transit of the third-country national.

3. The requested Member State may, in accordance with its national law:

(a) place and accommodate the third-country nationals in a secure facility;

(b) use legitimate means to prevent or end any attempt by the third-country national to resist the transit.

4. Without prejudice to Article 6(1), in cases where the completion of transit operations cannot be ensured, despite the assistance provided for in accordance with paragraphs 1 and 2, the requested Member State may, upon request by and in consultation with the requesting Member State, take all the necessary assistance measures to continue the transit operation.

In such cases, the time limit referred to in paragraph 1 may be extended by a maximum of 48 hours.

5. The competent authorities of the requested Member State with whom responsibility for the measure lies shall decide the nature and extent of the assistance afforded under paragraphs 2, 3 and 4.

6. The costs of the services provided according to paragraph 2(b) and (c) shall be borne by the requesting Member State.

The remaining costs shall also be borne by the requesting Member State to the extent that they are actual and quantifiable.

Member States shall provide appropriate information with regard to the criteria of quantification of the costs referred to in the second subparagraph.

Article 6

1. The requesting Member State shall undertake to readmit the third-country national forthwith if:

(a) the transit by air authorisation was refused or revoked under Article 3(3) or (5);

(b) the third-country national entered the requested Member State without authorisation during the transit;

(c) removal of the third-country national to another transit country or to the country of destination, or boarding of the connecting flight, was unsuccessful; or

(d) transit by air is not possible for another reason.

2. The requested Member State shall assist with the readmission of the third-country national to the requesting Member State in the cases referred to in paragraph 1. The requesting Member State shall bear the costs incurred in returning the third-country national.

Article 7

1. When carrying out the transit operation, the powers of the escorts shall be limited to self-defence. In addition, in the absence of law-enforcement officers from the transit Member State or for the purpose of supporting the law-enforcement officers, the escorts may use reasonable and proportionate action in response to an immediate and serious risk to prevent the third-country national from escaping, causing injury to himself/herself or to a third party, or damage to property.

Under all circumstances escorts must comply with the legislation of the requested Member State.

2. Escorts shall not carry weapons during transit by air and shall wear civilian clothes. They shall provide means of appropriate identification, including the transit authorisation delivered by the transit Member State, or where applicable, the notification referred to in Article 4(2), at the request of the requested Member State.

Article 8

This Directive shall be without prejudice to the obligations arising from the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, from international conventions on human rights and fundamental freedoms and from international conventions on the extradition of persons.

Article 9

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its Rules of Procedure.

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 6 December 2005 They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 11

The Decision of the Executive Committee of 21 April 1998 on cooperation between the Contracting Parties in returning foreign nationals by air (SCH/Com-ex (98) 10) shall be repealed.

Article 12

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

Article 13

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

Done at Brussels, 25 November 2003.

For the Council

The President

G. TREMONTI

ANNEX

I. Transit request for the purposes of removal by air
(in accordance with Article 4 of Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, 6.12.2003, p. 26).

(Requesting unit) Authority: _____ Address: _____ _____	Place/Date: _____ Telephone/Fax/e-mail: _____ Name of officer: _____ Signature: _____

(Requested unit) Authority: _____ Address: _____ _____

General information on third-country national whom the transit request concerns

Request No	Surname	First name	m/f	Date of birth	Place of birth	Nationality	Travel document No/Type/Validity	Number of visa delivered by a third country (if required)
1								
2								

Flight details

Flight No	From	Departure date	Time	To	Arrival date	Time

Particular information

Is the third-country national accompanied by an escort?	☐ yes ☐ no	Names and functions: _____
Is the presence of a police escort at the airport recommended?	☐ yes ☐ no	
Is medical care required?	☐ yes ☐ no	If so, specify: _____
Contagious identifiable diseases? (*)	☐ yes ☐ no	If so, specify: _____
Previous unsuccessful attempts at removal?	☐ yes ☐ no	If so, state reasons: _____

Further comments

_____

_____

NB: At the time the request was made, no grounds for refusal under Article 3(3) and (5) of Directive 2003/110/ EC were known.

Decision of the requested unit

The transit is authorised. ☐

The transit is not authorised. ☐

Grounds: _____

_____

_____

(Name / Signature / Date)

(*) This information shall be provided in accordance with the applicable national or international law.

DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 2008

on common standards and procedures in Member States for returning illegally staying third-country nationals

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [1],

Whereas:

(1) The Tampere European Council of 15 and 16 October 1999 established a coherent approach in the field of immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration.

(2) The Brussels European Council of 4 and 5 November 2004 called for the establishment of an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity.

(3) On 4 May 2005 the Committee of Ministers of the Council of Europe adopted 'Twenty guidelines on forced return'.

(4) Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy.

(5) This Directive should establish a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfil the conditions for entry, stay or residence in a Member State.

(6) Member States should ensure that the ending of illegal stay of third-country nationals is carried out through a fair and transparent procedure. According to general principles of EU law, decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria, implying that consideration should go beyond the mere fact of an illegal stay. When using standard forms for decisions related to return, namely return decisions and, if issued, entry-ban decisions and decisions on removal, Member States should respect that principle and fully comply with all applicable provisions of this Directive.

(7) The need for Community and bilateral readmission agreements with third countries to facilitate the return process is underlined. International cooperation with countries of origin at all stages of the return process is a prerequisite to achieving sustainable return.

(8) It is recognised that it is legitimate for Member States to return illegally staying third-country nationals, provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement.

(9) In accordance with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2], a third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force.

(10) Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted. An extension of the period for voluntary departure should be provided for when considered necessary because of the specific circumstances of an individual case. In order to promote voluntary return, Member States should provide for enhanced return assistance and counselling and make best use of the relevant funding possibilities offered under the European Return Fund.

(11) A common minimum set of legal safeguards on decisions related to return should be established to guarantee effective protection of the interests of the individuals concerned. The necessary legal aid should be made available to those who lack sufficient resources. Member States should provide in their national legislation for which cases legal aid is to be considered necessary.

[1] Opinion of the European Parliament of 18 June 2008 (not yet published in the Official Journal) and Council Decision of 9 December 2008.

[2] OJ L 326, 13.12.2005, p. 13.

(12) The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive.

(13) The use of coercive measures should be expressly subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued. Minimum safeguards for the conduct of forced return should be established, taking into account Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders [1]. Member States should be able to rely on various possibilities to monitor forced return.

(14) The effects of national return measures should be given a European dimension by establishing an entry ban prohibiting entry into and stay on the territory of all the Member States. The length of the entry ban should be determined with due regard to all relevant circumstances of an individual case and should not normally exceed five years. In this context, particular account should be taken of the fact that the third-country national concerned has already been the subject of more than one return decision or removal order or has entered the territory of a Member State during an entry ban.

(15) It should be for the Member States to decide whether or not the review of decisions related to return implies the power for the reviewing authority or body to substitute its own decision related to the return for the earlier decision.

(16) The use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued. Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient.

(17) Third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law. Without prejudice to the initial apprehension by law-enforcement authorities, regulated by national legislation, detention should, as a rule, take place in specialised detention facilities.

(18) Member States should have rapid access to information on entry bans issued by other Member States. This information sharing should take place in accordance with Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2].

(19) Cooperation between the institutions involved at all levels in the return process and the exchange and promotion of best practices should accompany the implementation of this Directive and provide European added value.

(20) Since the objective of this Directive, namely to establish common rules concerning return, removal, use of coercive measures, detention and entry bans, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 to achieve that objective.

(21) Member States should implement this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

(22) In line with the 1989 United Nations Convention on the Rights of the Child, the 'best interests of the child' should be a primary consideration of Member States when implementing this Directive. In line with the European Convention for the Protection of Human Rights and Fundamental Freedoms, respect for family life should be a primary consideration of Member States when implementing this Directive.

(23) Application of this Directive is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.

(24) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

[1] OJ L 261, 6.8.2004, p. 28.

[2] OJ L 381, 28.12.2006, p. 4.

(25) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Given that this Directive builds — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code [1] — upon the Schengen acquis under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide, within a period of six months after the adoption of this Directive, whether it will implement it in its national law.

(26) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code, this Directive constitutes a development of provisions of the Schengen acquis in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis [2]; moreover, in accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Directive and is therefore not bound by it in its entirety or subject to its application.

(27) To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code, this Directive constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis [3]; moreover, in accordance with Articles 1 and 2 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, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Directive and is therefore not bound by it in its entirety or subject to its application.

(28) As regards Iceland and Norway, this Directive constitutes — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code — a development of provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C, of Council Decision 1999/437/EC [4] on certain arrangements for the application of that Agreement.

(29) As regards Switzerland, this Directive constitutes — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code — a development of provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC [5] on the conclusion, on behalf of the European Community, of that Agreement.

(30) As regards Liechtenstein, this Directive constitutes — to the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Schengen Borders Code — a development of provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC [6] on the signature, on behalf of the European Community, and on the provisional application of, certain provisions of that Protocol,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive sets out common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.

[1] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).
[2] OJ L 131, 1.6.2000, p. 43.
[3] OJ L 64, 7.3.2002, p. 20.
[4] OJ L 176, 10.7.1999, p. 31.
[5] OJ L 53, 27.2.2008, p. 1.
[6] OJ L 83, 26.3.2008, p. 3.

Article 2

Scope

1. This Directive applies to third-country nationals staying illegally on the territory of a Member State.

2. Member States may decide not to apply this Directive to third-country nationals who:

(a) are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State;

(b) are subject to return as a criminal law sanction or as a consequence of a criminal law sanction, according to national law, or who are the subject of extradition procedures.

3. This Directive shall not apply to persons enjoying the Community right of free movement as defined in Article 2(5) of the Schengen Borders Code.

Article 3

Definitions

For the purpose of this Directive the following definitions shall apply:

1. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

2. 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;

3. 'return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

   — his or her country of origin, or

   — a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

   — another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

4. 'return decision' means an administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return;

5. 'removal' means the enforcement of the obligation to return, namely the physical transportation out of the Member State;

6. 'entry ban' means an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision;

7. 'risk of absconding' means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond;

8. 'voluntary departure' means compliance with the obligation to return within the time-limit fixed for that purpose in the return decision;

9. 'vulnerable persons' means 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.

Article 4

More favourable provisions

1. This Directive shall be without prejudice to more favourable provisions of:

(a) bilateral or multilateral agreements between the Community or the Community and its Member States and one or more third countries;

(b) bilateral or multilateral agreements between one or more Member States and one or more third countries.

2. This Directive shall be without prejudice to any provision which may be more favourable for the third-country national, laid down in the Community acquis relating to immigration and asylum.

3. This Directive shall be without prejudice to the right of the Member States to adopt or maintain provisions that are more favourable to persons to whom it applies provided that such provisions are compatible with this Directive.

4. With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a), Member States shall:

(a) ensure that their treatment and level of protection are no less favourable than as set out in Article 8(4) and (5) (limitations on use of coercive measures), Article 9(2)(a) (postponement of removal), Article 14(1) (b) and (d) (emergency health care and taking into account needs of vulnerable persons), and Articles 16 and 17 (detention conditions) and

(b) respect the principle of non-refoulement.

Article 5

Non-refoulement, best interests of the child, family life and state of health

When implementing this Directive, Member States shall take due account of:

(a) the best interests of the child;

(b) family life;

(c) the state of health of the third-country national concerned,

and respect the principle of non-refoulement.

CHAPTER II

TERMINATION OF ILLEGAL STAY

Article 6

Return decision

1. Member States shall issue a return decision to any third-country national staying illegally on their territory, without prejudice to the exceptions referred to in paragraphs 2 to 5.

2. Third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit or other authorisation offering a right to stay issued by another Member State shall be required to go to the territory of that other Member State immediately. In the event of non-compliance by the third-country national concerned with this requirement, or where the third-country national's immediate departure is required for reasons of public policy or national security, paragraph 1 shall apply.

3. Member States may refrain from issuing a return decision to a third-country national staying illegally on their territory if the third-country national concerned is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Directive. In such a case the Member State which has taken back the third-country national concerned shall apply paragraph 1.

4. Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory. In that event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.

5. If a third-country national staying illegally on the territory of a Member State is the subject of a pending procedure for renewing his or her residence permit or other authorisation offering a right to stay, that Member State shall consider refraining from issuing a return decision, until the pending procedure is finished, without prejudice to paragraph 6.

6. This Directive shall not prevent Member States from adopting a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act as provided for in their national legislation, without prejudice to the procedural safeguards available under Chapter III and under other relevant provisions of Community and national law.

Article 7

Voluntary departure

1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier.

2. Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.

3. Certain obligations aimed at avoiding the risk of absconding, such as regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed for the duration of the period for voluntary departure.

4. If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days.

Article 8

Removal

1. Member States shall take all necessary measures to enforce the return decision if no period for voluntary departure has been granted in accordance with Article 7(4) or if the obligation to return has not been complied with within the period for voluntary departure granted in accordance with Article 7.

2. If a Member State has granted a period for voluntary departure in accordance with Article 7, the return decision may be enforced only after the period has expired, unless a risk as referred to in Article 7(4) arises during that period.

3. Member States may adopt a separate administrative or judicial decision or act ordering the removal.

4. Where Member States use — as a last resort — coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportionate and shall not exceed reasonable force. They shall be implemented as provided for in national legislation in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned.

5. In carrying out removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removals by air annexed to Decision 2004/573/EC.

6. Member States shall provide for an effective forced-return monitoring system.

Article 9

Postponement of removal

1. Member States shall postpone removal:

(a) when it would violate the principle of non-refoulement, or

(b) for as long as a suspensory effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:

(a) the third-country national's physical state or mental capacity;

(b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 7(3) may be imposed on the third-country national concerned.

Article 10

Return and removal of unaccompanied minors

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Article 11

Entry ban

1. Return decisions shall be accompanied by an entry ban:

(a) if no period for voluntary departure has been granted, or

(b) if the obligation to return has not been complied with.

In other cases return decisions may be accompanied by an entry ban.

2. The length of the entry ban shall be determined with due regard to all relevant circumstances of the individual case and shall not in principle exceed five years. It may however exceed five years if the third-country national represents a serious threat to public policy, public security or national security.

3. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in full compliance with a return decision.

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [1] shall not be subject of an entry ban without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned does not represent a threat to public policy, public security or national security.

Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons.

Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

4. Where a Member State is considering issuing a residence permit or other authorisation offering a right to stay to a third-country national who is the subject of an entry ban issued by another Member State, it shall first consult the Member State having issued the entry ban and shall take account of its interests in accordance with Article 25 of the Convention implementing the Schengen Agreement [2].

5. Paragraphs 1 to 4 shall apply without prejudice to the right to international protection, as defined in Article 2(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [3], in the Member States.

CHAPTER III

PROCEDURAL SAFEGUARDS

Article 12

Form

1. Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies.

The information on reasons in fact may be limited where national law allows for the right to information to be restricted, in particular in order to safeguard national security, defence, public security and for the prevention, investigation, detection and prosecution of criminal offences.

2. Member States shall provide, upon request, a written or oral translation of the main elements of decisions related to return, as referred to in paragraph 1, including information on the available legal remedies in a language the third-country national understands or may reasonably be presumed to understand.

3. Member States may decide not to apply paragraph 2 to third country nationals who have illegally entered the territory of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.

In such cases decisions related to return, as referred to in paragraph 1, shall be given by means of a standard form as set out under national legislation.

Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages which are most frequently used or understood by illegal migrants entering the Member State concerned.

Article 13

Remedies

1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC.

Article 14

Safeguards pending return

1. Member States shall, with the exception of the situation covered in Articles 16 and 17, ensure that the following principles are taken into account as far as possible in relation to third-country nationals during the period for voluntary departure granted in accordance with Article 7 and during periods for which removal has been postponed in accordance with Article 9:

[1] OJ L 261, 6.8.2004, p. 19.
[2] OJ L 239, 22.9.2000, p. 19.
[3] OJ L 304, 30.9.2004, p. 12.

(a) family unity with family members present in their territory is maintained;

(b) emergency health care and essential treatment of illness are provided;

(c) minors are granted access to the basic education system subject to the length of their stay;

(d) special needs of vulnerable persons are taken into account.

2. Member States shall provide the persons referred to in paragraph 1 with a written confirmation in accordance with national legislation that the period for voluntary departure has been extended in accordance with Article 7(2) or that the return decision will temporarily not be enforced.

CHAPTER IV

DETENTION FOR THE PURPOSE OF REMOVAL

Article 15

Detention

1. Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when:

(a) there is a risk of absconding or

(b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

Any detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

2. Detention shall be ordered by administrative or judicial authorities.

Detention shall be ordered in writing with reasons being given in fact and in law.

When detention has been ordered by administrative authorities, Member States shall:

(a) either provide for a speedy judicial review of the lawfulness of detention to be decided on as speedily as possible from the beginning of detention;

(b) or grant the third-country national concerned the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review to be decided on as speedily as possible after the launch of the relevant proceedings. In such a case Member States shall immediately inform the third-country national concerned about the possibility of taking such proceedings.

The third-country national concerned shall be released immediately if the detention is not lawful.

3. In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.

4. When it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in paragraph 1 no longer exist, detention ceases to be justified and the person concerned shall be released immediately.

5. Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. Each Member State shall set a limited period of detention, which may not exceed six months.

6. Member States may not extend the period referred to in paragraph 5 except for a limited period not exceeding a further twelve months in accordance with national law in cases where regardless of all their reasonable efforts the removal operation is likely to last longer owing to:

(a) a lack of cooperation by the third-country national concerned, or

(b) delays in obtaining the necessary documentation from third countries.

Article 16

Conditions of detention

1. Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners.

2. Third-country nationals in detention shall be allowed — on request — to establish in due time contact with legal representatives, family members and competent consular authorities.

3. Particular attention shall be paid to the situation of vulnerable persons. Emergency health care and essential treatment of illness shall be provided.

4. Relevant and competent national, international and non-governmental organisations and bodies shall have the possibility to visit detention facilities, as referred to in paragraph 1, to the extent that they are being used for detaining third-country nationals in accordance with this Chapter. Such visits may be subject to authorisation.

5. Third-country nationals kept in detention shall be systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations. Such information shall include information on their entitlement under national law to contact the organisations and bodies referred to in paragraph 4.

Article 17

Detention of minors and families

1. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time.

2. Families detained pending removal shall be provided with separate accommodation guaranteeing adequate privacy.

3. Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on the length of their stay, access to education.

4. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

5. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.

Article 18

Emergency situations

1. In situations where an exceptionally large number of third-country nationals to be returned places an unforeseen heavy burden on the capacity of the detention facilities of a Member State or on its administrative or judicial staff, such a Member State may, as long as the exceptional situation persists, decide to allow for periods for judicial review longer than those provided for under the third subparagraph of Article 15(2) and to take urgent measures in respect of the conditions of detention derogating from those set out in Articles 16(1) and 17(2).

2. When resorting to such exceptional measures, the Member State concerned shall inform the Commission. It shall also inform the Commission as soon as the reasons for applying these exceptional measures have ceased to exist.

3. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under this Directive.

CHAPTER V

FINAL PROVISIONS

Article 19

Reporting

The Commission shall report every three years to the European Parliament and the Council on the application of this Directive in the Member States and, if appropriate, propose amendments.

The Commission shall report for the first time by 24 December 2013 and focus on that occasion in particular on the application of Article 11, Article 13(4) and Article 15 in Member States. In relation to Article 13(4) the Commission shall assess in particular the additional financial and administrative impact in Member States.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 December 2010. In relation to Article 13(4), Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 December 2011. They shall forthwith communicate to the Commission the text of those measures.

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

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

Article 21

Relationship with the Schengen Convention

This Directive replaces the provisions of Articles 23 and 24 of the Convention implementing the Schengen Agreement.

Article 22

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 23

Addressees

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

Done at Strasbourg, 16 December 2008.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	B. LE MAIRE

COUNCIL DIRECTIVE 2004/81/EC

of 29 April 2004

on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point 3 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 European Economic and Social Committee, ([3])

Having consulted the Committee of the Regions,

Whereas:

(1) The framing of a common immigration policy, including the definition of the conditions of entry and residence for foreigners and measures to combat illegal immigration, is a constituent element of the European Union's objective of creating an area of freedom, security and justice.

(2) At its special meeting in Tampere on 15 and 16 October 1999, the European Council expressed its determination to tackle illegal immigration at source, for example by targeting those who engage in trafficking of human beings and the economic exploitation of migrants. It called on the Member States to concentrate their efforts on detecting and dismantling criminal networks while protecting the rights of victims.

(3) An indication of the growing concern about this phenomenon at international level was the adoption by the United Nations General Assembly of a Convention against Transnational Organised Crime, supplemented by a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and a Protocol Against the Smuggling of Migrants by Land, Sea and Air. These were signed by the Community and the 15 Member States in December 2000.

(4) This Directive is without prejudice to the protection granted to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments.

(5) This Directive is without prejudice to other provisions on the protection of victims, witnesses or persons who are particularly vulnerable. Nor does it detract from the prerogatives of the Member States as regards the right of residence granted on humanitarian or other grounds.

(6) This Directive respects fundamental rights and complies with the principles recognised for example by the Charter of Fundamental Rights of the European Union.

(7) Member States should give effect to the provision of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(8) At European level, Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence ([4]) and Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings ([5]) were adopted to strengthen the prevention and the fight against the above offences.

(9) This Directive introduces a residence permit intended for victims of trafficking in human beings or, if a Member State decides to extend the scope of this Directive, to third-country nationals who have been the subject of an action to facilitate illegal immigration to whom the residence permit offers a sufficient incentive to cooperate with the competent authorities while including certain conditions to safeguard against abuse.

(10) To this end, it is necessary to lay down the criteria for issuing a residence permit, the conditions of stay and the grounds for non-renewal and withdrawal. The right to stay under this Directive is subject to conditions and is of provisional nature.

(11) The third country nationals concerned should be informed of the possibility of obtaining this residence permit and be given a period in which to reflect on their position. This should help put them in a position to reach a well-informed decision as to whether or not to cooperate with the competent authorities, which may be the police, prosecution and judicial authorities (in view of the risks this may entail), so that they cooperate freely and hence more effectively.

([1]) OJ C 126 E, 28.5.2002, p. 393.
([2]) Opinion delivered on 5 December 2002 (not yet published in the Official Journal).
([3]) OJ C 221, 17.9.2002, p. 80.
([4]) OJ L 328, 5.12.2002, p. 17.
([5]) OJ L 203, 1.8.2002, p. 1.

(12) Given their vulnerability, the third-country nationals concerned should be granted the assistance provided by this Directive. This assistance should allow them to recover and escape the influence of the perpetrators of the offences. The medical treatment to be provided to the third-country nationals covered by this Directive also includes, where appropriate, psychotherapeutical care.

(13) A decision on the issue of a residence permit for at least six months or its renewal has to be taken by the competent authorities, who should consider if the relevant conditions are fulfilled.

(14) This Directive should apply without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating the offences concerned.

(15) Member States should consider authorising the stay on other grounds, according to their national legislation, for third-country nationals who may fall within the scope of this Directive, but who do not, or no longer, fulfil the conditions set by it, for the members of his/her family or for persons treated as members of his/her family.

(16) To enable the third-country nationals concerned to gain their independence and not return to the criminal network, the holders of the residence permit should be authorised, under the conditions set by this Directive, to have access to the labour market and pursue vocational training and education. In authorising access of the holders of the residence permit to vocational training and education, Member States should consider in particular the likely duration of stay.

(17) The participation of the third-country nationals concerned to programmes and schemes, already existing or to be introduced, should contribute to their recovery of a normal social life.

(18) If the third-country nationals concerned submit an application for another kind of residence permit, Member States take a decision on the basis of ordinary national aliens' law. When examining such an application, Member States should consider the fact that the third-country nationals concerned have been granted the residence permit issued under this Directive.

(19) Member States should provide the Commission, with respect to the implementation of this Directive, with the information which has been identified in the framework of the activities developed with regard to the collection and treatment of statistical data concerning matters falling within the area of Justice and Home Affairs.

(20) Since the objective of introducing a residence permit for the third-country nationals concerned who cooperate in the fight against trafficking in human beings cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at the Community level, the Community may adopt measures, in accordance with the principle 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 that objective.

(21) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(22) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

Article 2

Definitions

For the purposes of this Directive:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) 'action to facilitate illegal immigration' covers cases such as those referred to in Articles 1 and 2 of Directive 2002/90/EC;

(c) 'trafficking in human beings' covers cases such as those referred to in Articles 1, 2 and 3 of Framework Decision 2002/629/JHA;

(d) 'measure to enforce an expulsion order' means any measure taken by a Member State to enforce the decision of the competent authorities ordering the expulsion of a third-country national;

(e) 'residence permit' means any authorisation issued by a Member State, allowing a third-country national who fulfils the conditions set by this Directive to stay legally on its territory.

(f) 'unaccompanied minors' means third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State.

Article 3

Scope

1. Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States.

2. Member States may apply this Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration.

3. This Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned.

By way of derogation, Member States may decide to apply this Directive to minors under the conditions laid down in their national law.

Article 4

More favourable provisions

This Directive shall not prevent Member States from adopting or maintaining more favourable provisions for the persons covered by this Directive.

CHAPTER II

PROCEDURE FOR ISSUING THE RESIDENCE PERMIT

Article 5

Information given to the third-country nationals concerned

When the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform the person concerned of the possibilities offered under this Directive.

Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned.

Article 6

Reflection period

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

3. The reflection period shall not create any entitlement to residence under this Directive.

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

Article 7

Treatment granted before the issue of the residence permit

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

Article 8

Issue and renewal of the residence permit

1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:

(a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and

(b) whether he/she has shown a clear intention to cooperate and

(c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.

3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

CHAPTER III

TREATMENT OF HOLDERS OF THE RESIDENCE PERMIT

Article 9

Treatment granted after the issue of the residence permit

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

Article 10

Minors

If Member States have recourse to the option provided for in Article 3(3), the following provisions shall apply:

(a) Member States shall take due account of the best interests of the child when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.

(b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

(c) In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

Article 11

Work, vocational training and education

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

Such access shall be limited to the duration of the residence permit.

2. The conditions and the procedures for authorising access to the labour market, to vocational training and education shall be determined, under the national legislation, by the competent authorities.

Article 12

Programmes or schemes for the third-country nationals concerned

1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

CHAPTER IV

NON-RENEWAL AND WITHDRAWAL

Article 13

Non-renewal

1. The residence permit issued on the basis of this Directive shall not be renewed if the conditions of Article 8(2) cease to be satisfied or if a decision adopted by the competent authorities has terminated the relevant proceedings.

2. When the residence permit issued on the basis of this Directive expires ordinary aliens' law shall apply.

Article 14

Withdrawal

The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

(a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or

(b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or

(c) for reasons relating to public policy and to the protection of national security; or

(d) when the victim ceases to cooperate; or

(e) when the competent authorities decide to discontinue the proceedings.

CHAPTER V

FINAL PROVISIONS

Article 15

Safeguard clause

This Directive shall apply without prejudice to specific national rules concerning the protection of victims and witnesses.

Article 16

Report

1. No later than 6 August 2008, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose any amendments that are necessary. The Member States shall send the Commission any information relevant to the preparation of this report.

2. After presenting the report referred to in paragraph 1, the Commission shall report to the European Parliament and the Council at least every three years on the application of this Directive in the Member States.

Article 17

Transposal

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 6 August 2006. They shall immediately inform the Commission accordingly.

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. The methods of making such reference shall be laid down by Member States.

Article 18

Entry into force

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

Article 19

Addressees

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

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

DIRECTIVES

DIRECTIVE 2009/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 18 June 2009

providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) The European Council meeting of 14 and 15 December 2006 agreed that cooperation among Member States should be strengthened in the fight against illegal immigration and in particular that measures against illegal employment should be intensified at Member State and EU level.

(2) A key pull factor for illegal immigration into the EU is the possibility of obtaining work in the EU without the required legal status. Action against illegal immigration and illegal stay should therefore include measures to counter that pull factor.

(3) The centrepiece of such measures should be a general prohibition on the employment of third-country nationals who do not have the right to be resident in the EU, accompanied by sanctions against employers who infringe that prohibition.

(4) As this Directive provides for minimum standards, Member States should remain free to adopt or maintain stricter sanctions and measures and impose stricter obligations on employers.

(5) This Directive should not apply to third-country nationals staying legally in a Member State regardless of whether they are allowed to work in its territory. Furthermore, it should not apply to persons enjoying the Community right of free movement, as defined in Article 2(5) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) [4]. Moreover it should not apply to third-country nationals who are in a situation covered by Community law, such as those who are lawfully employed in a Member State and who are posted by a service provider to another Member State in the context of the provision of services. This Directive should apply without prejudice to national law prohibiting the employment of legally staying third-country nationals who work in breach of their residence status.

(6) For the specific purposes of this Directive, certain terms should be defined and such definitions should be used only for the purposes of this Directive.

(7) The definition of employment should encompass its constituent elements, namely activities that are or ought to be remunerated, undertaken for or under the direction and/or supervision of an employer, irrespective of the legal relationship.

(8) The definition of employer may include an association of persons recognised as having the capacity to perform legal acts without having legal personality.

[1] OJ C 204, 9.8.2008, p. 70.
[2] OJ C 257, 9.10.2008, p. 20.
[3] Opinion of the European Parliament of 4 February 2009 (not yet published in the Official Journal) and Council Decision of 25 May 2009.
[4] OJ L 105, 13.4.2006, p. 1.

(9) To prevent the employment of illegally staying third-country nationals, employers should be required, before recruiting a third-country national, including in cases where the third-country national is being recruited for the purpose of posting to another Member State in the context of the provision of services, to check that the third-country national has a valid residence permit or another authorisation for stay showing that he or she is legally staying on the territory of the Member State of recruitment.

(10) To enable Member States in particular to check for forged documents, employers should also be required to notify the competent authorities of the employment of a third-country national. In order to minimise the administrative burden, Member States should be free to provide for such notifications to be undertaken within the framework of other notification schemes. Member States should be free to decide a simplified procedure for notification by employers who are natural persons where the employment is for their private purposes.

(11) Employers that have fulfilled the obligations set out in this Directive should not be held liable for having employed illegally staying third-country nationals, in particular if the competent authority later finds that the document presented by an employee had in fact been forged or misused, unless the employer knew that the document was a forgery.

(12) To facilitate the fulfilment by employers of their obligations, Member States should use their best endeavours to handle requests for renewal of residence permits in a timely manner.

(13) To enforce the general prohibition and to deter infringements, Member States should provide for appropriate sanctions. These should include financial sanctions and contributions to the costs of returning illegally staying third-country nationals, together with the possibility of reduced financial sanctions on employers who are natural persons where the employment is for their private purposes.

(14) The employer should in any event be required to pay to the third-country nationals any outstanding remuneration for the work which they have undertaken and any outstanding taxes and social security contributions. If the level of remuneration cannot be determined, it should be presumed to be at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches. The employer should also be required to pay, where appropriate, any costs arising from the sending of outstanding remuneration to the country to which the illegally employed third-country national has, or has been, returned. In those cases where back payments are not made by the employer, Member States should not be obliged to fulfil that obligation in place of the employer.

(15) An illegally employed third-country national should not derive a right to entry, stay and access to the labour market from the illegal employment relationship or from the payment or back payment of remuneration, social security contributions or taxes by the employer or by a legal entity which has to pay instead of the employer.

(16) Member States should ensure that claims are or may be lodged and that mechanisms are in place to ensure that recovered amounts of outstanding remuneration are able to be received by the third-country nationals to whom they are due. Member States should not be obliged to involve their missions or representations in third countries in those mechanisms. Member States should, in the context of establishing effective mechanisms to facilitate complaints and if not already provided for by national legislation, consider the possibility and added value of enabling a competent authority to bring proceedings against an employer for the purpose of recovering outstanding remuneration.

(17) Member States should further provide for a presumption of an employment relationship of at least three months' duration so that the burden of proof is on the employer in respect of at least a certain period. Among others, the employee should also have the opportunity of proving the existence and duration of an employment relationship.

(18) Member States should provide for the possibility of further sanctions against employers, inter alia, exclusions from entitlement to some or all public benefits, aids or subsidies, including agricultural subsidies, exclusions from public procurement procedures and recovery of some or all public benefits, aids or subsidies, including EU funding managed by Member States, that have already been granted. Member States should be free to decide not to apply those further sanctions against employers who are natural persons where the employment is for their private purposes.

(19) This Directive, and in particular its Articles 7, 10 and 12, should be without prejudice to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1].

(20) In view of the prevalence of subcontracting in certain affected sectors, it is necessary to ensure that at least the contractor of which the employer is a direct subcontractor may be liable to pay financial sanctions in addition to or in place of the employer. In specific cases, other contractors may be liable to pay financial sanctions in addition to or in place of an employer of

[1] OJ L 248, 16.9.2002, p. 1.

illegally staying third-country nationals. Back payments which are to be covered by the liability provisions of this Directive should also include contributions to national holiday pay funds and social funds regulated by law or collective agreements.

(21) Experience has shown that the existing systems of sanctions have not been sufficient to achieve complete compliance with prohibitions against the employment of illegally staying third-country nationals. One of the reasons is that administrative sanctions alone are likely not to be enough to deter certain unscrupulous employers. Compliance can and should be strengthened by the application of criminal penalties.

(22) To guarantee the full effectiveness of the general prohibition, there is therefore a particular need for more dissuasive sanctions in serious cases, such as persistently repeated infringements, the illegal employment of a significant number of third-country nationals, particularly exploitative working conditions, the employer knowing that the worker is a victim of trafficking in human beings and the illegal employment of a minor. This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of those serious infringements. It creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.

(23) In all cases deemed to be serious according to this Directive the infringement should be considered a criminal offence throughout the Community when committed intentionally. The provisions of this Directive regarding criminal offences should be without prejudice to the application of Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [1].

(24) The criminal offence should be punishable by effective, proportionate and dissuasive criminal penalties. The obligation to ensure effective, proportionate and dissuasive criminal penalties under this Directive is without prejudice to the internal organisation of criminal law and criminal justice in the Member States.

(25) Legal persons may also be held liable for the criminal offences referred to in this Directive, because many employers are legal persons. The provisions of this Directive do not entail an obligation for Member States to introduce criminal liability of legal persons.

(26) To facilitate the enforcement of this Directive, there should be effective complaint mechanisms by which relevant third-country nationals may lodge complaints directly or through designated third parties such as trade unions or other associations. The designated third parties should be protected, when providing assistance to lodge complaints, against possible sanctions under rules prohibiting the facilitation of unauthorised residence.

(27) To supplement the complaint mechanisms, Member States should be free to grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who have been subjected to particularly exploitative working conditions or who were illegally employed minors and who cooperate in criminal proceedings against the employer. Such permits should be granted under arrangements comparable to those applicable to third-country nationals who fall within the scope of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [2].

(28) To ensure a satisfactory level of enforcement of this Directive and to reduce, as far as possible, differences in the level of enforcement in the Member States, Member States should ensure that effective and adequate inspections are carried out on their territory and should communicate data on the inspections they carry out to the Commission.

(29) Member States should be encouraged to determine every year a national target for the number of inspections in respect of the sectors of activity in which the employment of illegally staying third-country nationals is concentrated on their territory.

(30) With a view to increasing the effectiveness of inspections for the purposes of applying this Directive, Member States should ensure that national legislation gives adequate powers to competent authorities to carry out inspections; that information about illegal employment, including the results of previous inspections, is collected and processed for the effective implementation of this Directive; and that sufficient staff are available with the skills and qualifications needed to carry out inspections effectively.

(31) Member States should ensure that inspections for the purposes of applying this Directive do not affect, from a quantitative or qualitative point of view, inspections carried out to assess employment and working conditions.

[1] OJ L 203, 1.8.2002, p. 1.

[2] OJ L 261, 6.8.2004, p. 19.

(32) In the case of posted workers who are third-country nationals, Member States' inspection authorities may avail themselves of the cooperation and exchange of information provided for in Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1], in order to verify that the third-country nationals concerned are lawfully employed in the Member State of origin.

(33) This Directive should be seen as complementary to measures to counter undeclared work and exploitation.

(34) In accordance with point 34 of the Interinstitutional Agreement on better law-making [2], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.

(35) Any processing of personal data undertaken in the implementation of this Directive should be in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [3].

(36) Since the objective of this Directive, namely to counteract illegal immigration by acting against the employment pull factor, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle 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 to achieve that objective.

(37) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. Specifically, it should be applied with due respect for the freedom to conduct a business, equality before the law and the principle of non-discrimination, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties, in accordance with Articles 16, 20, 21, 47 and 49 of the Charter.

(38) In accordance with Articles 1 and 2 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, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are therefore not bound by it or subject to its application.

(39) 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 taking part in the adoption of this Directive and is therefore not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

This Directive prohibits the employment of illegally staying third-country nationals in order to fight illegal immigration. To this end, it lays down minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe that prohibition.

Article 2

Definitions

For the specific purposes of this Directive, the following definitions shall apply:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

(b) 'illegally staying third-country national' means a third-country national present on the territory of a Member State, who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State;

(c) 'employment' means the exercise of activities covering whatever form of labour or work regulated under national law or in accordance with established practice for or under the direction and/or supervision of an employer;

(d) 'illegal employment' means the employment of an illegally staying third-country national;

[1] OJ L 18, 21.1.1997, p. 1.
[2] OJ C 321, 31.12.2003, p. 1.
[3] OJ L 281, 23.11.1995, p. 31.

(e) 'employer' means any natural person or any legal entity, including temporary work agencies, for or under the direction and/or supervision of whom the employment is undertaken;

(f) 'subcontractor' means any natural person or any legal entity, to whom the execution of all or part of the obligations of a prior contract is assigned;

(g) 'legal person' means any legal entity having such status under applicable national law, except for States or public bodies exercising State authority and for public international organisations;

(h) 'temporary work agency' means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;

(i) 'particularly exploitative working conditions' means working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity;

(j) 'remuneration of illegally staying third-country national' means the wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly in respect of his employment from his employer and which is equivalent to that which would have been enjoyed by comparable workers in a legal employment relationship.

Article 3

Prohibition of illegal employment

1. Member States shall prohibit the employment of illegally staying third-country nationals.

2. Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive.

3. A Member State may decide not to apply the prohibition referred to in paragraph 1 to illegally staying third-country nationals whose removal has been postponed and who are allowed to work in accordance with national law.

Article 4

Obligations on employers

1. Member States shall oblige employers to:

(a) require that a third-country national before taking up the employment holds and presents to the employer a valid residence permit or other authorisation for his or her stay;

(b) keep for at least the duration of the employment a copy or record of the residence permit or other authorisation for stay available for possible inspection by the competent authorities of the Member States;

(c) notify the competent authorities designated by Member States of the start of employment of third-country nationals within a period laid down by each Member State.

2. Member States may provide for a simplified procedure for notification under paragraph 1(c) where the employers are natural persons and the employment is for their private purposes.

Member States may provide that notification under paragraph 1(c) is not required where the employee has been granted long-term residence status under Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ([1]).

3. Member States shall ensure that employers who have fulfilled their obligations set out in paragraph 1 shall not be held liable for an infringement of the prohibition referred to in Article 3 unless the employers knew that the document presented as a valid residence permit or another authorisation for stay was a forgery.

Article 5

Financial sanctions

1. Member States shall take the necessary measures to ensure that infringements of the prohibition referred to in Article 3 are subject to effective, proportionate and dissuasive sanctions against the employer.

2. Sanctions in respect of infringements of the prohibition referred to in Article 3 shall include:

(a) financial sanctions which shall increase in amount according to the number of illegally employed third-country nationals; and

(b) payments of the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out. Member States may instead decide to reflect at least the average costs of return in the financial sanctions under point (a).

([1]) OJ L 16, 23.1.2004, p. 44.

3. Member States may provide for reduced financial sanctions where the employer is a natural person who employs an illegally staying third-country national for his or her private purposes and where no particularly exploitative working conditions are involved.

Article 6

Back payments to be made by employers

1. In respect of each infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer shall be liable to pay:

(a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages;

(b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;

(c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

2. In order to ensure the availability of effective procedures to apply paragraph 1(a) and (c), and having due regard to Article 13, Member States shall enact mechanisms to ensure that illegally employed third-country nationals:

(a) may introduce a claim, subject to a limitation period defined in national law, against their employer and eventually enforce a judgment against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned; or

(b) when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.

Illegally employed third-country nationals shall be systematically and objectively informed about their rights under this paragraph and under Article 13 before the enforcement of any return decision.

3. In order to apply paragraph 1(a) and (b), Member States shall provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise.

4. Member States shall ensure that the necessary mechanisms are in place to ensure that illegally employed third-country nationals are able to receive any back payment of remuneration referred to in paragraph 1(a) which is recovered as part of the claims referred to in paragraph 2, including in cases in which they have, or have been, returned.

5. In respect of cases where residence permits of limited duration have been granted under Article 13(4), Member States shall define under national law the conditions under which the duration of these permits may be extended until the third-country national has received any back payment of his or her remuneration recovered under paragraph 1 of this Article.

Article 7

Other measures

1. Member States shall take the necessary measures to ensure that employers shall also, if appropriate, be subject to the following measures:

(a) exclusion from entitlement to some or all public benefits, aid or subsidies, including EU funding managed by Member States, for up to five years;

(b) exclusion from participation in a public contract as defined in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [1] for up to five years;

(c) recovery of some or all public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer for up to 12 months preceding the detection of illegal employment;

(d) temporary or permanent closure of the establishments that have been used to commit the infringement, or temporary or permanent withdrawal of a licence to conduct the business activity in question, if justified by the gravity of the infringement.

2. Member States may decide not to apply paragraph 1 where the employers are natural persons and the employment is for their private purposes.

[1] OJ L 134, 30.4.2004, p. 114.

Article 8

Subcontracting

1. Where the employer is a subcontractor and without prejudice to the provisions of national law concerning the rights of contribution or recourse or to the provisions of national law in the field of social security, Member States shall ensure that the contractor of which the employer is a direct subcontractor may, in addition to or in place of the employer, be liable to pay:

(a) any financial sanction imposed under Article 5; and

(b) any back payments due under Article 6(1)(a) and (c) and Article 6(2) and(3).

2. Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor, where they knew that the employing subcontractor employed illegally staying third-country nationals, may be liable to make the payments referred to in paragraph 1 in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.

3. A contractor that has undertaken due diligence obligations as defined by national law shall not be liable under paragraphs 1 and 2.

4. Member States may provide for more stringent liability rules under national law.

Article 9

Criminal offence

1. Member States shall ensure that the infringement of the prohibition referred to in Article 3 constitutes a criminal offence when committed intentionally, in each of the following circumstances as defined by national law:

(a) the infringement continues or is persistently repeated;

(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals;

(c) the infringement is accompanied by particularly exploitative working conditions;

(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings;

(e) the infringement relates to the illegal employment of a minor.

2. Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in paragraph 1 is punishable as a criminal offence.

Article 10

Criminal penalties

1. Member States shall take the necessary measures to ensure that natural persons who commit the criminal offence referred to in Article 9 are punishable by effective, proportionate and dissuasive criminal penalties.

2. Unless prohibited by general principles of law, the criminal penalties provided for in this Article may be applied under national law without prejudice to other sanctions or measures of a non-criminal nature, and they may be accompanied by the publication of the judicial decision relevant to the case.

Article 11

Liability of legal persons

1. Member States shall ensure that legal persons may be held liable for the offence referred to in Article 9 where such an offence has been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, on the basis of:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

2. Member States shall also ensure that a legal person may be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the criminal offence referred to in Article 9 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offence referred to in Article 9.

Article 12

Penalties for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 is punishable by effective, proportionate and dissuasive penalties, which may include measures such as those referred to in Article 7.

Member States may decide that a list of employers who are legal persons and who have been held liable for the criminal offence referred to in Article 9 is made public.

Article 13

Facilitation of complaints

1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers, directly or through third parties designated by Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation.

2. Member States shall ensure that third parties which have, in accordance with the criteria laid down in their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of an illegally employed third-country national, with his or her approval, in any administrative or civil proceedings provided for with the objective of implementing this Directive.

3. Providing assistance to third-country nationals to lodge complaints shall not be considered as facilitation of unauthorised residence under Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence ([1]).

4. In respect of criminal offences covered by Article 9(1)(c) or (e), Member States shall define in national law the conditions under which they may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved, under arrangements comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC.

Article 14

Inspections

1. Member States shall ensure that effective and adequate inspections are carried out on their territory to control employment of illegally staying third-country nationals. Such inspections shall be based primarily on a risk assessment to be drawn up by the competent authorities in the Member States.

2. With a view to increasing the effectiveness of inspections, Member States shall, on the basis of a risk assessment, regularly identify the sectors of activity in which the employment of illegally staying third-country nationals is concentrated on their territory.

In respect of each of those sectors, Member States shall, before 1 July of each year, communicate to the Commission the inspections, both in absolute numbers and as a percentage of the employers for each sector, carried out in the previous year as well as their results.

Article 15

More favourable provisions

This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to third-country nationals to whom it applies in relation with Articles 6 and 13, provided that such provisions are compatible with this Directive.

Article 16

Reporting

1. By 20 July 2014, and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council including, where appropriate, proposals for amending Articles 6, 7, 8, 13 and 14. The Commission shall in particular examine in its report the implementation by Member States of Article 6(2) and (5).

2. Member States shall send the Commission all the information that is appropriate for drawing up the report referred to in paragraph 1. The information shall include the number and results of inspections carried out pursuant to Article 14(1), measures applied under Article 13 and, as far as possible, measures applied under Articles 6 and 7.

Article 17

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 July 2011. They shall forthwith inform the Commission thereof.

([1]) OJ L 328, 5.12.2002, p. 17.

When they are adopted by Member States, those measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 18

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 19

Addressees

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

Done at Brussels, 18 June 2009.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	Š. FÜLE