EUROPEAN IMMIGRATION AND ASYLUM LAW

LEGISLATION AND POLICY DOCUMENTS

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Erasmus Teaching Staff Mobility

Table of Contents

(*) I will explicitly use the texts indicated with an (*) in class, so please bring a printed or electronic version of these texts in volume I with you.

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. I will explicitly use the texts indicated with an (*), so please bring a printed or electronic version of these texts in 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.

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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 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)*

4. *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)* (*)

5. *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 (Frontex)*

6. *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)*

7. *Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur)*

►**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
►**M9**	Council Regulation (EU) No 517/2013 of 13 May 2013	L 158	1	10.6.2013
►**M10**	Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013	L 182	1	29.6.2013
►**M11**	Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013	L 347	74	20.12.2013
►**M12**	Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014	L 105	9	8.4.2014

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,

▼B

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. ►M10 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 90 days in any 180-day period. ◄

▼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;

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

▼C1

— 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 [1] 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;

— 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.

▼M11

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

(a) within 30 days of the implementation by the third country of the visa requirement or, in cases where the visa requirement existing on 9 January 2014 is maintained, within 30 days of that date, the Member State concerned shall notify the European Parliament, the Council and the Commission thereof in writing.

That notification:

(i) shall specify the date of implementation of the visa requirement and the types of travel documents and visas concerned;

(ii) shall include a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to ensuring visa-free travel with the third country in question and all relevant information.

Information about that notification shall be published without delay by the Commission in the *Official Journal of the European Union*, including information on the date of implementation of the visa requirement and the types of travel documents and visas concerned.

If the third country decides to lift the visa requirement before the expiry of the deadline referred to in the first subparagraph of this point, the notification shall not be made or shall be withdrawn and the information shall not be published;

(b) the Commission shall, immediately following the date of the publication referred to in the third subparagraph of point (a) and in consultation with the Member State concerned, take steps with the authorities of the third country in question, in particular in the political, economic and commercial fields, in order to restore or introduce visa-free travel and shall inform the European Parliament and the Council of those steps without delay;

[1] OJ L 327, 19.12.1994, p. 1.

▼**M11**

(c) if within 90 days of the date of the publication referred to in the third subparagraph of point (a) and despite all the steps taken in accordance with point (b), the third country has not lifted the visa requirement, the Member State concerned may request the Commission to suspend the exemption from the visa requirement for certain categories of nationals of that third country. Where a Member State makes such a request, it shall inform the European Parliament and the Council thereof;

(d) the Commission shall, when considering further steps in accordance with point (e), (f) or (h), take into account the outcome of the measures taken by the Member State concerned with a view to ensuring visa-free travel with the third country in question, the steps taken in accordance with point (b), and the consequences of the suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with the third country in question;

(e) if the third country concerned has not lifted the visa requirement, the Commission shall, at the latest six months of the date of the publication referred to in the third subparagraph of point (a) and subsequently at intervals not exceeding six months within a total period which may not extend beyond the date on which the delegated act referred to in point (f) takes effect or is objected to:

(i) adopt, at the request of the Member State concerned or on its own initiative, an implementing act temporarily suspending the exemption from the visa requirement for certain categories of nationals of the third country concerned for a period of up to six months. That implementing act shall determine a date, within 90 days of its entry into force, on which the suspension of the exemption from the visa requirement is to take effect, taking into account the available resources in the consulates of the Member States. When adopting subsequent implementing acts, the Commission may extend the period of that suspension by further periods of up to six months and may modify the categories of nationals of the third country in question for which the exemption from the visa requirement is suspended.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 4a(2). Without prejudice to the application of Article 4, during the periods of suspension all the categories of nationals of the third country referred to in the implementing act shall be required to be in possession of a visa when crossing the external borders of the Member States; or

(ii) submit to the committee referred to in Article 4a(1) a report assessing the situation and stating the reasons why it decided not to suspend the exemption from the visa requirement and inform the European Parliament and the Council thereof.

All relevant factors, such as those referred to in point (d), shall be taken into account in that report. The European Parliament and the Council may have a political discussion on the basis of that report;

▼**M11**

(f) if within 24 months of the date of the publication referred to in the third subparagraph of point (a), the third country concerned has not lifted the visa requirement, the Commission shall adopt a delegated act in accordance with Article 4b temporarily suspending the application of Annex II for a period of 12 months for the nationals of that third country. The delegated act shall determine a date, within 90 days of its entry into force, on which the suspension of the application of Annex II is to take effect, taking into account the available resources in the consulates of the Member States and shall amend Annex II accordingly. That amendment shall be made through inserting next to the name of the third country in question a footnote indicating that the exemption from the visa requirement is suspended with regard to that third country and specifying the period of that suspension.

As of the date when the suspension of the application of Annex II for the nationals of the third country concerned takes effect or when an objection to the delegated act is expressed pursuant to Article 4b(5), any implementing act adopted pursuant to point (e) concerning that third country shall expire.

Where the Commission submits a legislative proposal as referred to in point (h), the period of suspension referred to in the first subparagraph of this point shall be extended by six months. The footnote referred to in that subparagraph shall be amended accordingly.

Without prejudice to the application of Article 4, during the periods of that suspension the nationals of the third country concerned by the delegated act shall be required to be in possession of a visa when crossing the external borders of the Member States;

(g) any subsequent notification made by another Member State pursuant to point (a) concerning the same third country during the period of application of measures adopted pursuant to point (e) or (f) with regard to that third country shall be merged into the ongoing procedures without the deadlines or periods set out in those points being extended;

(h) if within six months of the entry into force of the delegated act referred to in point (f) the third country in question has not lifted the visa requirement, the Commission may submit a legislative proposal for amending this Regulation in order to transfer the reference to the third country from Annex II to Annex I;

(i) the procedures referred to in points (e), (f) and (h) shall not affect the right of the Commission to submit at any time a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I;

(j) where the third country in question lifts the visa requirement, the Member State concerned shall immediately notify the European Parliament, the Council and the Commission thereof. The notification shall be published without delay by the Commission in the *Official Journal of the European Union*.

▼**M11**

Any implementing or delegated act adopted pursuant to point (e) or (f) concerning the third country in question shall expire seven days after the publication referred to in the first subparagraph of this point. Where the third country in question has introduced a visa requirement for nationals of two or more Member States, the implementing or delegated act concerning that third country shall expire seven days after the publication of the notification concerning the last Member State whose nationals were subject to visa requirement by that third country. The footnote referred to in the first subparagraph of point (f) shall be deleted upon expiry of the delegated act concerned. The information on that expiry shall be published without delay by the Commission in the *Official Journal of the European Union*.

Where the third country in question lifts the visa requirement without the Member State concerned notifying it in accordance with the first subparagraph of this point, the Commission shall on its own initiative proceed without delay with the publication referred to in that subparagraph, and the second subparagraph of this point shall apply.

———————

Article 1a

1. By way of derogation from Article 1(2), the exemption from the visa requirement for nationals of a third country listed in Annex II shall be temporarily suspended in emergency situations, as a last resort, in accordance with this Article.

2. A Member State may notify the Commission if it is confronted, over a six-month period, in comparison with the same period in the previous year or with the last six months prior to the implementation of the exemption from the visa requirement for nationals of a third country listed in Annex II, with one or more of the following circumstances leading to an emergency situation which it is unable to remedy on its own, namely a substantial and sudden increase in the number of:

(a) nationals of that third country found to be staying in the Member State's territory without a right thereto;

(b) asylum applications from the nationals of that third country for which the recognition rate is low, where such an increase is leading to specific pressures on the Member State's asylum system;

(c) rejected readmission applications submitted by the Member State to that third country for its own nationals.

The comparison with the six-month period prior to the implementation of the exemption from the visa requirement as referred to in the first subparagraph shall only be applicable during a period of seven years from the date of implementation of the exemption from the visa requirement for nationals of that third country.

▼M11

The notification referred to in the first subparagraph shall state the reasons on which it is based and shall include relevant data and statistics as well as a detailed explanation of the preliminary measures that the Member State concerned has taken with a view to remedying the situation. The Commission shall inform the European Parliament and the Council immediately of such notification.

3. The Commission shall examine any notification made pursuant to paragraph 2, taking into account:

(a) whether any of the situations described in paragraph 2 are present;

(b) the number of Member States affected by any of the situations described in paragraph 2;

(c) the overall impact of the increases referred to in paragraph 2 on the migratory situation in the Union as it appears from the data provided by the Member States;

(d) the reports prepared by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the European Asylum Support Office or the European Police Office (Europol) if circumstances so require in the specific case notified;

(e) the overall question of public policy and internal security, in consultations with the Member State concerned.

The Commission shall inform the European Parliament and the Council of the results of its examination.

4. Where the Commission, on the basis of the examination referred to in paragraph 3, and taking into account the consequences of a suspension of the exemption from the visa requirement for the external relations of the Union and its Member States with the third country concerned, while working in close cooperation with that third country to find alternative long-term solutions, decides that action is needed, it shall, within three months of receipt of the notification referred to in paragraph 2, adopt an implementing act temporarily suspending the exemption from the visa requirement for the nationals of the third country concerned for a period of six months. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2). The implementing act shall determine the date on which the suspension of the exemption from the visa requirement is to take effect.

Without prejudice to the application of Article 4, during the periods of that suspension the nationals of the third country concerned by the implementing act shall be required to be in possession of a visa when crossing the external borders of the Member States.

5. Before the end of the period of validity of the implementing act adopted pursuant to paragraph 4, the Commission, in cooperation with the Member State concerned, shall submit a report to the European Parliament and to the Council. The report may be accompanied by a legislative proposal for amending this Regulation in order to transfer the reference to the third country concerned from Annex II to Annex I.

▼M11

6. Where the Commission has submitted a legislative proposal pursuant to paragraph 5, it may extend the validity of the implementing act adopted pursuant to paragraph 4 by a period not exceeding 12 months. The decision to extend the validity of the implementing act shall be adopted in accordance with the examination procedure referred to in Article 4a(2).

Article 1b

By 10 January 2018, the Commission shall submit a report to the European Parliament and to the Council assessing the effectiveness of the reciprocity mechanism provided for in Article 1(4) and the suspension mechanism provided for in Article 1a and shall, if necessary, submit a legislative proposal for amending this Regulation. The European Parliament and the Council shall act on such a proposal by the ordinary legislative procedure.

▼M10

Article 2

For the purposes of this Regulation, 'visa' means a visa as defined in Article 2(2)(a) 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]).

▼M5
▼C1

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▼B

Article 4

▼M11

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:

(a) holders of diplomatic passports, service/official passports or special passports;

(b) civilian air and sea crew members in the performance of their duties;

(c) civilian sea crew members, when they go ashore, who hold a seafarer's identity document issued in accordance with the International Labour Organisation Conventions No 108 of 13 May 1958 or No 185 of 16 June 2003 or the International Maritime Organisation Convention on Facilitation of International Maritime Traffic of 9 April 1965;

(d) crew and members of emergency or rescue missions in the event of disaster or accident;

(e) civilian crew of ships navigating in international inland waters;

([1]) OJ L 243, 15.9.2009, p. 1.

▼M11

(f) holders of travel documents issued by intergovernmental international organisations of which at least one Member State is member, or by other entities recognised by the Member State concerned as subjects of international law, to officials of those organisations or entities.

▼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;

▼M11

(d) 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 and other persons who do not hold the nationality of any country who reside in the United Kingdom or in Ireland and are holders of a travel document issued by the United Kingdom or Ireland, which is recognised by the Member State concerned.

▼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.

▼M11

Article 4a

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council [1].

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

[1] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

▼**M11**

Article 4b

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in point (f) of Article 1(4) shall be conferred on the Commission for a period of five years from 9 January 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in point (f) of Article 1(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to point (f) of Article 1(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

▼**B**

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.

▼B

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';

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.

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

▼B

ANNEX I

Common list referred to in Article 1(1)

1. STATES

Afghanistan

▼M7

_____

▼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

▼M12

_____

▼B

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

▼M9

_____

▼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

▼M12

Moldova, Republic of (2)

▼B

Monaco

▼M6

Montenegro (3)

▼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*)) (3)

▼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 waiver will be limited to the holders of biometric passports issued in line with standards of the International Civil Aviation Organisation (ICAO).

(3) 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
►M2	Regulation (EU) No 154/2012 of the European Parliament and of the Council of 15 February 2012	L 58	3	29.2.2012
►M3	Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013	L 182	1	29.6.2013

▼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.

▼B

(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.

▼B

(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.

▼B

(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

▼M3

1. This Regulation establishes the procedures and conditions for issuing visas for transit through or intended stays on the territory of the Member States not exceeding 90 days in any 180-day period.

▼B

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.

▼B

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:

▼M3

(a) transit through or an intended stay on the territory of the Member States of a duration of no more than 90 days in any 180-day period;

▼B

(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;

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(b) third-country nationals holding a valid residence permit issued by a Member State which does not take part in the adoption of this Regulation or by a Member State which does not yet apply the provisions of the Schengen *acquis* in full, or third-country nationals holding one of 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 which does not take part in the adoption of this Regulation, for a Member State which does not yet apply the provisions of the Schengen *acquis* in full, or for Canada, Japan or the United States of America, when travelling to the issuing country or to any other third country, or when, having used the visa, returning from the issuing country;

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(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.

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(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

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(b) when for reasons deemed justified by the consulate, a new visa is issued for a stay during the same 180-day period to an applicant who, over this 180-day period, has already used a uniform visa or a visa with limited territorial validity allowing for a stay of 90 days.

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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;

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(iv) has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;

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(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;

▼B

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;’;

▼B

(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.

▼B

(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.

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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.

▼B

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.

▼B

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

▼B

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

▶(1) 4. ☐ you have already stayed for 90 days during the current 180-day 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.

▶(1) M3

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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.

▼B

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.

▼B

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.

▼M3

When a visa is valid for more than six months, the duration of stays is 90 days in any 180-day period.

▼B

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';

▼B

(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

▼B

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.

▼B

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,

▼B

— 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.

▼B

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.

▼B

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.

▼B

(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.

▼B

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;

▼B

(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.

▼B

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 I

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.

▼B

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.

▼M3

2. The visa issued shall be a uniform, multiple-entry visa authorising a stay of not more than 90 days for the duration of the Olympic and/or Paralympic Games.

([1]) OJ L 158, 30.4.2004, p. 77.

▼B

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.

▼B

(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).

▼B

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	—

▼B

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

▼B

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	—

▼B

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
►M5	Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013	L 182	1	29.6.2013

Amended by:

►A1	Treaty of Accession of Croatia (2012)	L 112	10	24.4.2012

▼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)

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]).

([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).

▼B

(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 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.

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(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 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 ([2]), 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.

([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).

([2]) 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).

▼B

(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 ([1]).

(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 ([2]).

(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 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.

([1]) OJ L 184, 17.7.1999, p. 23.
([2]) OJ L 239, 22.9.2000, p. 69.

▼B

(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 abovementioned 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 abovementioned Agreement.

([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).

▼B

(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* ([1]). The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(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* ([2]). 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;

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

▼B

(b) the airports of the Member States for internal flights;

▼M5

(c) sea, river and lake ports of the Member States for regular internal ferry connections;

▼B

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;

▼M5

4. ‘regular internal ferry connection’ means any ferry connection between the same two or more ports situated on the territory of the Member States, not calling at any ports situated 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 right of free movement under Union law’ means:

▼B

(a) Union citizens within the meaning of ►M5 Article 20(1) ◄ of the Treaty, and third-country nationals who are members of the 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 ►M5 Union ◄ 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 ►M5 Article 20(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;

[1] OJ L 158, 30.4.2004, p. 77.

▼M5

8a. ‘shared border crossing point’ means any border crossing point situated either on the territory of a Member State or on the territory of a third country, at which Member State border guards and third-country border guards carry out exit and entry checks one after another in accordance with their national law and pursuant to a bilateral agreement;

▼B

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;

▼M5

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 [1] and residence cards issued in accordance with Directive 2004/38/EC;

(b) all other documents issued by a Member State to third-country nationals authorising a stay on its territory, that have been the subject of a notification and subsequent publication in accordance with Article 34, with the exception of:

(i) temporary permits issued pending examination of a first application for a residence permit as referred to in point (a) or an application for asylum and

(ii) visas issued by the Member States in the uniform format laid down by Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas [2];

[1] OJ L 157, 15.6.2002, p. 1.
[2] OJ L 164, 14.7.1995, p. 1.

▼B

16. ‘cruise ship’ means a ship which follows a given itinerary in accordance with a predetermined programme, which includes a 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;

▼M5

18a. ‘offshore worker’ means a person working on an offshore installation located in the territorial waters or in an area of exclusive maritime economic exploitation of the Member States as defined by international maritime law, and who returns regularly by sea or air to the territory of the Member States;

▼B

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:

▼M5

(a) the rights of persons enjoying the right of free movement under Union law;

▼B

(b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.

▼M5

Article 3a

Fundamental Rights

When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union (‘the Charter of Fundamental Rights’); 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. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis.

▼B

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.

▼M5

2. By way of derogation from paragraph 1, exceptions to the obligation to cross external borders only at border crossing points and during fixed opening hours may be allowed:

(a) for individuals or groups of persons, where there is a requirement of a special nature for the occasional crossing of external borders outside border crossing points or outside fixed opening hours, 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. Member States may make specific arrangements in bilateral agreements. General exceptions provided for by national law and bilateral agreements shall be notified to the Commission pursuant to Article 34;

(b) for individuals or groups of persons in the event of an unforeseen emergency situation;

(c) in accordance with the specific rules set out in Articles 18 and 19 in conjunction with Annexes VI and VII.

▼B

3. Without prejudice to the exceptions provided for in paragraph 2 or to their international protection obligations, Member States shall 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.

▼B

Article 5

Entry conditions for third-country nationals

▼M5

1. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals shall be the following:

(a) they are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria:

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

(ii) it shall have been issued within the previous 10 years;

▼M4

(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.

▼M5

1a. For the purposes of implementing paragraph 1, the date of entry shall be considered as the first day of stay on the territory of the Member States and the date of exit shall be considered as the last day of stay on the territory of the Member States. Periods of stay authorised under a residence permit or a long-stay visa shall not be taken into account in the calculation of the duration of stay on the territory of the Member States.

▼B

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.

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[1] OJ L 81, 21.3.2001, p. 1.

▼B

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:

▼M5

(a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but who hold a residence permit or a long-stay visa shall be authorised to enter the territory of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit or the long-stay 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;

(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 territory of the Member States, if a visa is issued at the border in accordance with Articles 35 and 36 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]).

Member States shall compile statistics on visas issued at the border in accordance with Article 46 of Regulation (EC) No 810/2009 and Annex XII thereto.

▼B

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.

([1]) OJ L 243, 15.9.2009, p. 1.
([2]) OJ L 53, 23.2.2002, p. 4.

▼B

CHAPTER II

Control of external borders and refusal of entry

Article 6

Conduct of border checks

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1. Border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons.

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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.

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.

▼M5

The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the right of free movement under Union law.

However, on a non-systematic basis, when carrying out minimum checks on persons enjoying the right of free movement under Union law, 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 right of free movement under Union law into the territory of the Member State concerned as laid down in Directive 2004/38/EC.

▼B

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]);

([1]) OJ L 218, 13.8.2008, p. 60.

▼M2

(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;

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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. ►M5 Without prejudice to the second subparagraph, third-country nationals subject to a thorough second line check shall be given written information in a language which they understand or may reasonably be presumed to understand, or in another effective way, on the purpose of, and the 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.

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6. Checks on a person enjoying the right of free movement under Union law shall be carried out in accordance with Directive 2004/38/EC.

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7. Detailed rules governing the information to be registered are laid down in Annex II.

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8. Where points (a) or (b) of Article 4(2) apply, Member States may also provide derogations from the rules set out in this Article.

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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.

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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.

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.

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2. (a) Persons enjoying the right of free movement under Union law are entitled to use the lanes indicated by the sign in part A ('EU, EEA, CH') of Annex III. They may also use the lanes indicated by the sign in part B1 ('visa not required') and part B2 ('all passports') of Annex III.

Third-country nationals who are not obliged to possess a visa when crossing the external borders of the Member States in accordance with Regulation (EC) No 539/2001 and third-country nationals who hold a valid residence permit or long-stay visa may use the lanes indicated by the sign in part B1 ('visa not required') of Annex III to this Regulation. They may also use the lanes indicated by the sign in part B2 ('all passports') of Annex III to this Regulation.

(b) All other persons shall use the lanes indicated by the sign in part B2 ('all passports') of Annex III.

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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.

The provision of separate lanes indicated by the sign in part B1 ('visa not required') of Annex III is not obligatory. Member States shall decide whether to do so and at which border crossing points in accordance with practical needs.

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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.

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Article 10

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Stamping of the travel documents

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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.

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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 that Directive, shall be stamped on entry and exit.

The travel documents of nationals of third countries who are members of the family of nationals of third countries enjoying the right of free movement under Union law, but who do not present the residence card provided for in Directive 2004/38/EC, shall be stamped on entry and exit.

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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;

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(f) to the travel documents of crews of passengers and goods trains on international connections;

(g) to the travel documents of nationals of third countries who present a residence card provided for in Directive 2004/38/EC.

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 that person's name and passport number. That sheet shall be given to the third-country national. The competent authorities of the Member States may keep statistics of such exceptional cases and may provide those statistics to the Commission.

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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.

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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.

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.

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3. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be returned in accordance with 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 with national law respecting that Directive.

4. The relevant provisions of paragraph 1 and 2 shall apply mutatis mutandis in the absence of an exit stamp.

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Article 12

Border surveillance

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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. A person who has crossed a border illegally and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC.

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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.

([1]) OJ L 348, 24.12.2008, p. 98.

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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. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning additional measures governing surveillance.

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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 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.

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5. Member States shall collect statistics on the number of persons refused entry, the grounds for refusal, the nationality of the persons who were refused entry and the type of border (land, air or sea) at which they were refused entry and submit them yearly to the Commission (Eurostat) 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]).

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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.

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Member States shall ensure that the border guards are specialised and properly trained professionals, taking into account common core curricula for border guards established and developed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States established by Council Regulation (EC) No 2007/2004. Training curricula shall include specialised training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking. Member States, with the support of the Agency, shall encourage border guards to learn the languages necessary for the carrying-out of their tasks.

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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.

([1]) OJ L 199, 31.7.2007, p. 23.

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3. To control borders effectively, each Member State shall ensure close and constant cooperation between its national services responsible for border control.

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.

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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.

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Those specific rules may contain derogations from Articles 4 and 5 and Articles 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;

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(g) rescue services, police and fire brigades and border guards;

(h) offshore workers.

Those specific rules may contain derogations from Articles 4 and 5 and Articles 7 to 13.

▼B

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.

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Article 19a

By way of derogation from the provisions of this Regulation relating to the establishment of border crossing points, and until the entry into force of a decision by the Council on the full application of the provisions of the Schengen *acquis* in Croatia pursuant to Article 4(2) of the Act of Accession or until this Regulation is amended to include provisions governing border control at common border crossing points, whichever is the earlier, Croatia may maintain the common border crossing points at its border with Bosnia and Herzegovina. At these common border crossing points, border guards of one party shall carry out entry and exit checks on the territory of the other party. All

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entry and exit checks by Croatian border guards shall be carried out in compliance with the *acquis* of the Union, including Member States' obligations as regards international protection and non-refoulement. The relevant bilateral agreements establishing the common border crossing points in question shall, if necessary, be amended to that end.

▼B

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 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;

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(d) the possibility for a Member State to provide by law for an obligation on third-country nationals to report their presence on its territory pursuant to the provisions of Article 22 of the Schengen Convention.

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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*.

▼B

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

▼M5

Article 32

Amendments to the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning amendments to Annexes III, IV and VIII.

Article 33

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 12(5) and Article 32 shall be conferred on the Commission for an indeterminate period of time from 19 July 2013.

3. The delegation of powers referred to in Article 12(5) and Article 32 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

▼M5

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 12(5) and Article 32 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

▼B

Article 34

Notifications

1. Member States shall notify the Commission of:

▼M5

(a) the list of residence permits, distinguishing between those covered by point (a) of point 15 of Article 2 and those covered by point (b) of point 15 of Article 2 and accompanied by a specimen for permits covered by point (b) of point 15 of Article 2. Residence cards issued in accordance with Directive 2004/38/EC shall be specifically highlighted as such and specimens shall be provided for those residence cards which have not been issued in accordance with the uniform format laid down by Regulation (EC) No 1030/2002;

▼B

(b) the list of their border crossing points;

(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;

▼M5

(ea) the exceptions to the rules regarding the crossing of the external borders referred to in point (a) of Article 4(2);

(eb) the statistics referred to in Article 10(3).

▼B

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.

▼B

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

▼M5

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 agreements authorised by this Regulation. Subsequent changes to those provisions shall be notified within five working days.

▼B

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;

(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 ([2]);

([1]) OJ L 239, 22.9.2000, p. 73.
([2]) OJ L 116, 26.4.2001, p. 5. Regulation amended by Decision 2004/927/EC (OJ L 396, 31.12.2004, p. 45).

▼B

(e) Council Decision 2004/581/EC of 29 April 2004 determining the minimum indications to be used on signs at external border crossing points ([1]);

(f) Council Decision 2004/574/EC of 29 April 2004 amending the Common Manual ([2]);

(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 ([3]).

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 261, 6.8.2004, p. 119.
([2]) OJ L 261, 6.8.2004, p. 36.
([3]) 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.

▼B

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.

▼B

ANNEX III

Model signs indicating lanes at border crossing points

PART A

([1])

([1]) No logo is required for Norway and Iceland.

▼**M5**

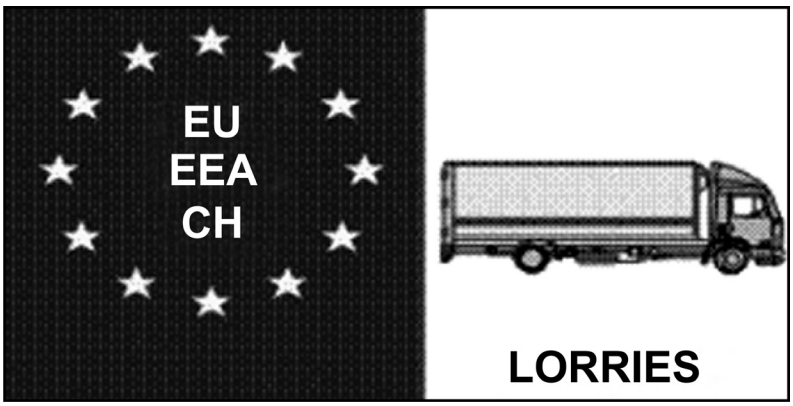
PART B1:
‘visa not required’;

PART B2:
‘all passports’.

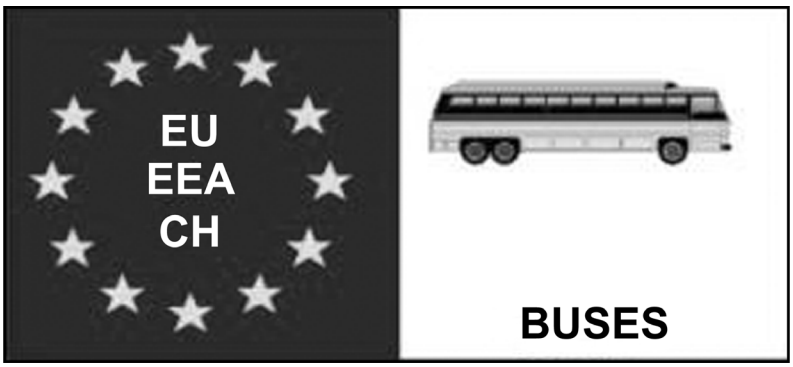
▼B

PART C

([1])



([1])

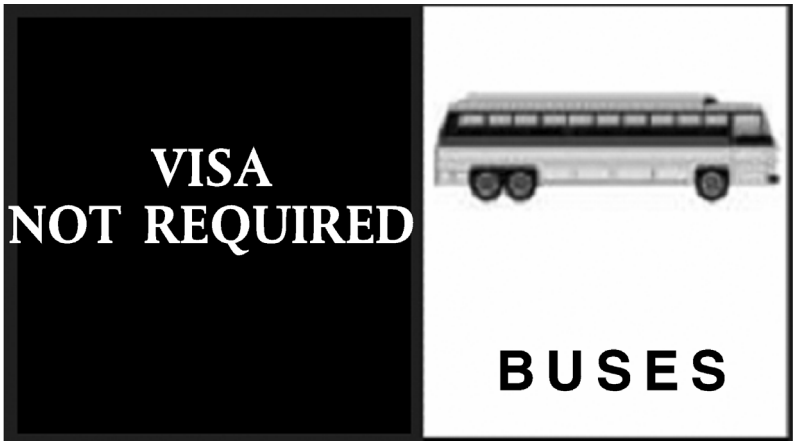


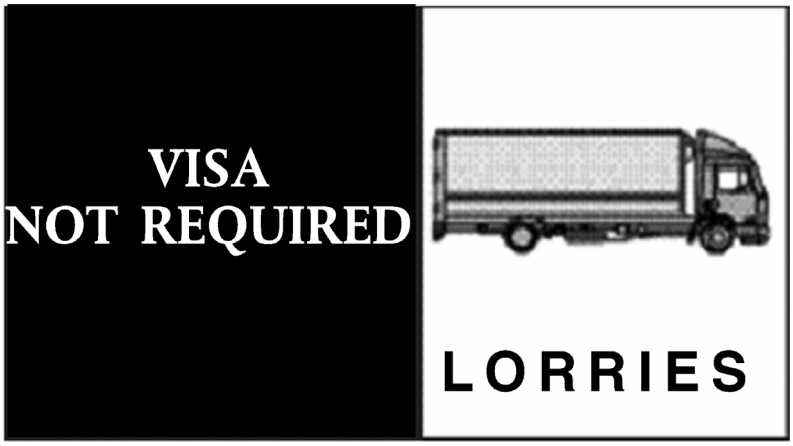
([1])

([1]) No logo is required for Norway and Iceland.

▼M5


VISA
NOT REQUIRED
CARS

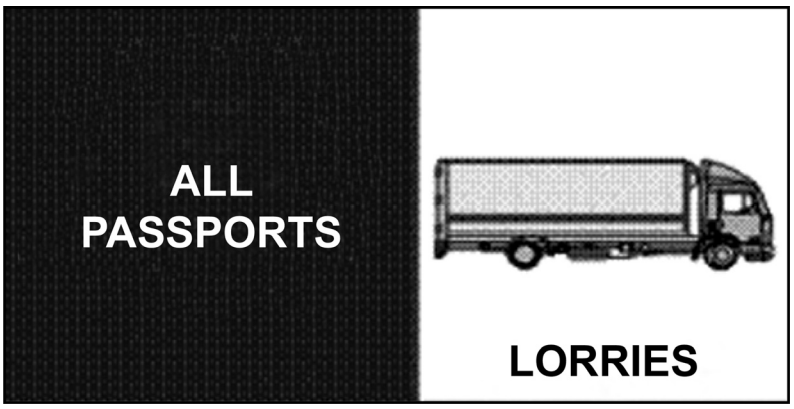

VISA
NOT REQUIRED
BUSES


VISA
NOT REQUIRED
LORRIES

▼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.

▼M5

3. On the entry and exit of third-country nationals subject to the visa obligation, the stamp shall, as a general rule, be affixed on the page facing the one on which the visa is affixed.

▼B

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;

▼M3

   (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]);

▼B

   (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;

▼M3

_____

▼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: _____

▶(0) ☐ (F) has already stayed for 90 days in the preceding 180-day 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.

▶(1) M5

▼B

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.

▼M5

1.1.4. Shared border crossing points

1.1.4.1. Member States may conclude or maintain bilateral agreements with neighbouring third countries concerning the establishment of shared border crossing points, at which Member State border guards and third-country border guards carry out exit and entry checks one after another in accordance with their national law on the territory of the other party. Shared border crossing points may be located either on the territory of a Member State territory or on the territory of a third country.

1.1.4.2. Shared border crossing points located on Member State territory: Bilateral agreements establishing shared border crossing points located on Member State territory shall contain an authorisation for third-country border guards to exercise their tasks in the Member State, respecting the following principles:

(a) International protection: A third-country national asking for international protection on Member State territory shall be given access to relevant Member State procedures in accordance with the Union asylum *acquis*.

(b) Arrest of a person or seizure of property: If third-country border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall inform Member State authorities of those facts and Member State authorities shall ensure an appropriate follow-up in accordance with national, Union and international law, independently of the nationality of the concerned person.

▼**M5**

(c) Persons enjoying the right of free movement under Union law entering Union territory: Third-country border guards shall not prevent persons enjoying the right of free movement under Union law from entering Union territory. If there are reasons justifying refusal of exit from the third country concerned, third-country border guards shall inform Member State authorities of those reasons and Member State authorities shall ensure an appropriate follow-up in accordance with national, Union and international law.

1.1.4.3. Shared border crossing points located on third-country territory: Bilateral agreements establishing shared border crossing points located on third-country territory shall contain an authorisation for Member State border guards to perform their tasks in the third country. For the purpose of this Regulation, any check carried out by Member State border guards in a shared border crossing point located on the territory of a third country shall be deemed to be carried out on the territory of the Member State concerned. Member State border guards shall exercise their tasks in accordance with Regulation (EC) No 562/2006 and respecting the following principles:

(a) International protection: A third-country national who has passed exit control by third-country border guards and subsequently asks Member State border guards present in the third country for international protection, shall be given access to relevant Member State procedures in accordance with Union asylum *acquis*. Third-country authorities shall accept the transfer of the person concerned into Member State territory.

(b) Arrest of a person or seizure of property: If Member State border guards become aware of facts justifying the arrest or placing under protection of a person or seizure of property, they shall act in accordance with national, Union and international law. Third-country authorities shall accept a transfer of the person or object concerned into Member State territory.

(c) Access to IT systems: Member State border guards shall be able to use information systems processing personal data in accordance with Article 7. Member States shall be allowed to establish the technical and organisational security measures required by Union law to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, including access by third-country authorities.

1.1.4.4. Before concluding or amending any bilateral agreement on shared border crossing points with a neighbouring third country, the Member State concerned shall consult the Commission as to the compatibility of the agreement with Union law. Pre-existing bilateral agreements shall be notified to the Commission by 20 January 2014.

If the Commission considers the agreement to be incompatible with Union law, it shall notify the Member State concerned. The Member State shall take all appropriate steps to amend the agreement within a reasonable period in such a way as to eliminate the incompatibilities established.

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1.2. *Checks on rail traffic*

▼M5

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. Member States may conclude bilateral or multilateral agreements on how to conduct those checks respecting the principles set out in point 1.1.4. Those checks shall be carried out in one of the following ways:

— in the first station of arrival or last station of departure on the territory of a Member State,

— on board the train, during transit between the last station of departure in a third country and the first station of arrival on the territory of a Member State or vice versa,

— in the last station of departure or the first station of arrival on the territory of a third country.

1.2.2. In addition, 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 respecting the principles set out in point 1.1.4., to carry out entry checks on persons on 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 stations on the territory of a third country and stations on the territory of the Member States, provided that the persons stay on board the train.

▼B

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.

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.

▼B

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 subject to an airport transit visa in order to check that they are in possession of such a visa.

▼B

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.

[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).

▼B

3. **Sea borders**

▼M5

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, or in an area set aside for that purpose, located in the immediate vicinity of the vessel or on board ship in the territorial waters as defined by the United Nations Convention on the Law of the Sea. Member States may conclude agreements according to which checks may also be carried out during crossings or, upon the ship's arrival or departure, on the territory of a third country, respecting the principles set out in point 1.1.4.

3.1.2. The master, the ship's agent or some other person duly authorised by the master or authenticated in a manner acceptable to the public authority concerned (in both cases hereinafter referred to as 'the master'), shall draw up a list of the crew and any passengers containing the information required in the forms 5 (crew list) and 6 (passenger list) of the Convention on Facilitation of International Maritime Traffic (FAL Convention) as well as, where applicable, the visa or residence permit numbers:

— at the latest twenty-four hours before arriving in the port, or

— at the latest at the time the ship leaves the previous port, if the voyage time is less than twenty-four hours, or

— if the port of call is not known or it is changed during the voyage, as soon as this information is available.

The master shall communicate the list(s) to the border guards or, if national law so provides, to other relevant authorities which shall forward the list(s) without delay to the border guards.

3.1.3. A confirmation of receipt (signed copy of the list(s) or an electronic receipt confirmation) shall be returned to the master by the border guards or by the authorities referred to in point 3.1.2., who shall produce it on request when the ship is in port.

3.1.4. The master shall promptly report to the competent authority any changes to the composition of the crew or the number of passengers.

In addition, the master shall notify the competent authorities promptly, and within the time-limit set out in point 3.1.2., of the presence on board of stowaways. Stowaways, however, remain under the responsibility of the master.

By way of derogation from Articles 4 and 7, no systematic border checks shall be carried out on persons staying aboard. Nevertheless a search of the ship and checks on the persons staying aboard shall be carried out by border guards only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.

3.1.5. The master shall notify the competent authority of the ship's departure in due time and in accordance with the rules in force in the port concerned.

▼B

3.2. *Specific check procedures for certain types of shipping*

Cruise ships

▼M5

3.2.1. The cruise ship's master shall transmit to the competent authority the itinerary and the programme of the cruise, as soon as they have been established and no later than within the time-limit set out in point 3.1.2.

▼B

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.

▼M5

Nevertheless, checks shall be carried out on the crew and passengers of those ships only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.

▼B

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 ►**M5** point 3.1.2. ◄

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 ►**M5** point 3.1.2. ◄ 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.

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.

▼B

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.

▼M5

Nevertheless, checks shall be carried out on the crew and passengers of those ships only when this is justified on the basis of an assessment of the risks related to internal security and illegal immigration.

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▼B

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 waters of one of the Member States, a copy of that document shall be included amongst the ship's papers.

▼B

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.

▼M5

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▼B

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;

▼M5

(i) point 3.1.2. (obligation to submit passenger and crew lists) does not apply. If a list of the persons on board has to be drawn up in accordance with Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community ([1]), a copy of that list shall be transmitted not later than thirty minutes after departure from a third-country port by the master to the competent authority of the port of arrival on the territory of the Member States.

([1]) OJ L 188, 2.7.1998, p. 35.

▼M5

3.2.11. Where a ferry coming from a third country with more than one stop within the territory of the Member States takes passengers on board only for the remaining leg within that territory, those passengers shall be subject to an exit check at the port of departure and an entry check at the port of arrival.

Checks on persons who, during those stop-overs, are already on board the ferry and have not boarded in the territory of the Member States shall be carried out at the port of arrival. The reverse procedure shall apply where the country of destination is a third country.

Cargo connections between Member States

3.2.12. By way of derogation from Article 7, no border checks shall be carried out on cargo connections between the same two or more ports situated on the territory of the Member States, not calling at any ports outside the territory of the Member States and consisting of the transport of goods.

Nevertheless, checks shall be carried out on the crew and passengers of those ships only when they are justified on the basis of an assessment of the risks relating to internal security and illegal immigration.

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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.

▼B

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**

▼M5

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 International Labour Organization (ILO) Seafarers' Identity Documents Convention No 108 (1958) or No 185 (2003), the Convention on Facilitation of International Maritime Traffic (FAL Convention) and the relevant national law, to enter 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, or exit the territory of the Member States by returning to their ships, 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, on the basis of an 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.

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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.

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.

▼B

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.

▼M5

6.4. Member States shall nominate national contact points for consultation on minors and inform the Commission thereof. A list of these national contact points shall be made available to the Member States by the Commission.

6.5. Where there is doubt as to any of the circumstances set out in points 6.1. to 6.3., border guards shall make use of the list of national contact points for consultation on minors.

7. **Rescue services, police, fire brigades and border guards**

The arrangements for the entry and exit of members of rescue services, police, fire brigades acting in emergency situations as well as border guards crossing the border in exercise of their professional tasks shall be laid down by national law. Member States may conclude bilateral agreements with third countries on the entry and exit of those categories of persons. These arrangements and bilateral agreements may provide for derogations from Articles 4, 5 and 7.

8. **Offshore workers**

By way of derogation from Articles 4 and 7, offshore workers as defined in Article 2, point 18a, who regularly return by sea or air to the territory of the Member States without having stayed on the territory of a third country shall not be systematically checked.

Nevertheless, an assessment of the risks of illegal immigration, in particular where the coastline of a third country is located in the immediate vicinity of an offshore site, shall be taken into account in order to determine the frequency of the checks to be carried out.

▼B

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 ▶(1) ENTRY OR EXIT 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 ▶(2) entered or left ◀ 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.

▶(1) (2) M5

►B 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)

(OJ L 218, 13.8.2008, p. 60)

Amended by:

		Official Journal		
		No	page	date
►M1	Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009	L 243	1	15.9.2009
►M2	Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013	L 182	1	29.6.2013

▼B

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)

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)(b)(ii) and Article 66 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) Building upon the conclusions of the Council of 20 September 2001, and the conclusions of the European Council in Laeken in December 2001, in Seville in June 2002, in Thessaloniki in June 2003 and in Brussels in March 2004, the establishment of the Visa Information System (VIS) represents one of the key initiatives within the policies of the European Union aimed at establishing an area of freedom, security and justice.

(2) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) ([2]) established the VIS as a system for the exchange of visa data between Member States.

(3) It is now necessary to define the purpose, the functionalities and responsibilities for the VIS, and to establish the conditions and procedures for the exchange of visa data between Member States to facilitate the examination of visa applications and related decisions, taking into account the orientations for the development of the VIS adopted by the Council on 19 February 2004 and to give the Commission the mandate to set up the VIS.

(4) For a transitional period, the Commission should be responsible for the operational management of the central VIS, of the national interfaces and of certain aspects of the communication infrastructure between the central VIS and the national interfaces.

In the long term, and following an impact assessment containing a substantive analysis of alternatives from a financial, operational and organisational perspective, and legislative proposals from the Commission, a permanent Management Authority with responsibility for these tasks should be established. The transitional period should last for no more than five years from the date of entry into force of this Regulation.

([1]) Opinion of the European Parliament of 7 June 2007 (OJ C 125 E, 22.5.2008, p. 118) and Council Decision of 23 June 2008.

([2]) OJ L 213, 15.6.2004, p. 5.

▼B

(5) The VIS should have the purpose of improving the implementation of the common visa policy, consular cooperation and consultation between central visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order to facilitate the visa application procedure, to prevent 'visa shopping', to facilitate the fight against fraud and to facilitate checks at external border crossing points and within the territory of the Member States. The VIS should also assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States, and facilitate the application of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanism for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [1], and contribute to the prevention of threats to the internal security of any of the Member States.

(6) This Regulation is based on the *acquis* of the common visa policy. The data to be processed by the VIS should be determined on the basis of the data provided by the common form for visa applications as introduced by Council Decision 2002/354/EC of 25 April 2002 on the adaptation of Part III of, and the creation of an Annex 16 to, the Common Consular Instructions [2], and the information on the visa sticker provided for in Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas [3].

(7) The VIS should be connected to the national systems of the Member States to enable the competent authorities of the Member States to process data on visa applications and on visas issued, refused, annulled, revoked or extended.

(8) The conditions and procedures for entering, amending, deleting and consulting the data in the VIS should take into account the procedures laid down in the Common Consular Instructions on visas for the diplomatic missions and consular posts [4] (the Common Consular Instructions).

(9) The technical functionalities of the network for consulting the central visa authorities as laid down in Article 17(2) 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 [5] (the Schengen Convention) should be integrated into the VIS.

(10) To ensure reliable verification and identification of visa applicants, it is necessary to process biometric data in the VIS.

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[1] OJ L 50, 25.2.2003, p. 1.
[2] OJ L 123, 9.5.2002, p. 50.
[3] OJ L 164, 14.7.1995, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).
[4] OJ C 326, 22.12.2005, p. 1. Instructions as last amended by Council Decision 2006/684/EC (OJ L 280, 12.10.2006, p. 29).
[5] OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1987/2006 of the European Parliament and of the Council (OJ L 381, 28.12.2006, p. 4).

▼B

(11) It is necessary to define the competent authorities of the Member States, the duly authorised staff of which are to have access to enter, amend, delete or consult data for the specific purposes of the VIS in accordance with this Regulation to the extent necessary for the performance of their tasks.

(12) Any processing of VIS data should be proportionate to the objectives pursued and necessary for the performance of the tasks of the competent authorities. When using the VIS, the competent authorities should ensure that the human dignity and integrity of the persons whose data are requested are respected and should not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

(13) This Regulation should be complemented by a separate legal instrument adopted under Title VI of the Treaty on European Union concerning access for the consultation of the VIS by authorities responsible for internal security.

(14) The personal data stored in the VIS should be kept for no longer than is necessary for the purposes of the VIS. It is appropriate to keep the data for a maximum period of five years, in order to enable data on previous applications to be taken into account for the assessment of visa applications, including the applicants' good faith, and for the documentation of illegal immigrants who may, at some stage, have applied for a visa. A shorter period would not be sufficient for those purposes. The data should be deleted after a period of five years, unless there are grounds to delete them earlier.

(15) Precise rules should be laid down as regards the responsibilities for the establishment and operation of the VIS, and the responsibilities of the Member States for the national systems and the access to data by the national authorities.

(16) Rules on the liability of the Member States in respect of damage arising from any breach of this Regulation should be laid down. The liability of the Commission in respect of such damage is governed by the second paragraph of Article 288 of the Treaty.

(17) 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] applies to the processing of personal data by the Member States in application of this Regulation. However, certain points should be clarified in respect of the responsibility for the processing of data, of safeguarding the rights of the data subjects and of the supervision on data protection.

[1] OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

▼B

(18) Regulation (EC) No 45/2001 of the European Parliament and 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 [1] applies to the activities of the Community institutions or bodies when carrying out their tasks as responsible for the operational management of the VIS. However, certain points should be clarified in respect of the responsibility for the processing of data and of the supervision of data protection.

(19) The National Supervisory Authorities established in accordance with Article 28 of Directive 95/46/EC should monitor the lawfulness of the processing of personal data by the Member States, while the European Data Protection Supervisor as established by Regulation (EC) No 45/2001 should monitor the activities of the Community institutions and bodies in relation to the processing of personal data, taking into account the limited tasks of the Community institutions and bodies with regard to the data themselves.

(20) The European Data Protection Supervisor and the National Supervisory Authorities should cooperate actively with each other.

(21) The effective monitoring of the application of this Regulation requires evaluation at regular intervals.

(22) The Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented.

(23) 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].

(24) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(25) Since the objectives of this Regulation, namely the establishment of a common Visa Information System and the creation of common obligations, conditions and procedures for the exchange of visa data between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact 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 Regulation does not go beyond what is necessary in order to achieve those objectives.

[1] OJ L 8, 12.1.2001, p. 1.
[2] OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

▼B

(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 Regulation and is therefore 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 that Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.

(27) 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 association of those two States with the implementation, application and development of the Schengen *acquis* ([1]), which falls within the area referred to in Article 1, point B of Council Decision 1999/437/EC ([2]) of 17 May 1999 on certain arrangements for the application of that Agreement.

(28) 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. Such an arrangement has been contemplated in the Agreement in the form of Exchange 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 Agreement referred to in Recital 27.

(29) 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* ([4]), and subsequent Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland ([5]). The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(30) 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* ([6]). 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. 36.
([2]) OJ L 176, 10.7.1999, p. 31.
([3]) OJ L 176, 10.7.1999, p. 53.
([4]) OJ L 131, 1.6.2000, p. 43.
([5]) OJ L 395, 31.12.2004, p. 70.
([6]) OJ L 64, 7.3.2002, p. 20.

▼B

(31) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* which falls within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/860/EC ([1]).

(32) An arrangement should 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 Agreement referred to in Recital 31.

(33) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession and Article 4(2) of the 2005 Act of Accession,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation defines the purpose of, the functionalities of and the responsibilities for the Visa Information System (VIS), as established by Article 1 of Decision 2004/512/EC. It sets up the conditions and procedures for the exchange of data between Member States on applications for short-stay visas and on the decisions taken in relation thereto, including the decision whether to annul, revoke or extend the visa, to facilitate the examination of such applications and the related decisions.

Article 2

Purpose

The VIS shall have the purpose of improving the implementation of the common visa policy, consular cooperation and consultation between central visa authorities by facilitating the exchange of data between Member States on applications and on the decisions relating thereto, in order:

(a) to facilitate the visa application procedure;

(b) to prevent the bypassing of the criteria for the determination of the Member State responsible for examining the application;

([1]) 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).

▼B

(c) to facilitate the fight against fraud;

(d) to facilitate checks at external border crossing points and within the territory of the Member States;

(e) to assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, stay or residence on the territory of the Member States;

(f) to facilitate the application of Regulation (EC) No 343/2003;

(g) to contribute to the prevention of threats to the internal security of any of the Member States.

Article 3

Availability of data for the prevention, detection and investigation of terrorist offences and other serious criminal offences

1. The designated authorities of the Member States may in a specific case and following a reasoned written or electronic request access the data kept in the VIS referred to in Articles 9 to 14 if there are reasonable grounds to consider that consultation of VIS data will substantially contribute to the prevention, detection or investigation of terrorist offences and of other serious criminal offences. Europol may access the VIS within the limits of its mandate and when necessary for the performance of its tasks.

2. The consultation referred to in paragraph 1 shall be carried out through central access point(s) which shall be responsible for ensuring strict compliance with the conditions for access and the procedures established in Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by the designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences [1]. Member States may designate more than one central access point to reflect their organisational and administrative structure in fulfilment of their constitutional or legal requirements. In an exceptional case of urgency, the central access point(s) may receive written, electronic or oral requests and only verify *ex-post* whether all the conditions for access are fulfilled, including whether an exceptional case of urgency existed. The *ex-post* verification shall take place without undue delay after the processing of the request.

3. Data obtained from the VIS pursuant to the Decision referred to in paragraph 2 shall not be transferred or made available to a third country or to an international organisation. However, in an exceptional case of urgency, such data may be transferred or made available to a third country or an international organisation exclusively for the purposes of the prevention and detection of terrorist offences and of other serious criminal offences and under the conditions set out in that Decision. In accordance with national law, Member States shall ensure that records on such transfers are kept and make them available to national data protection authorities on request. The transfer of data by the Member State which entered the data in the VIS shall be subject to the national law of that Member State.

[1] See page 129 of this Official Journal.

▼B

4. This Regulation is without prejudice to any obligations under applicable national law for the communication of information on any criminal activity detected by the authorities referred to in Article 6 in the course of their duties to the responsible authorities for the purposes of preventing, investigating and prosecuting the related criminal offences.

Article 4

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'visa' means:

▼M1

(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) ([1]);

———————

(c) 'airport transit visa' as defined in Article 2(5) of Regulation (EC) No 810/2009;

(d) 'visa with limited territorial validity' as defined in Article 2(4) of Regulation (EC) No 810/2009;

———————

▼B

2. 'visa sticker' means the uniform format for visas as defined by Regulation (EC) No 1683/95;

3. 'visa authorities' means the authorities which in each Member State are responsible for examining and for taking decisions on visa applications or for decisions whether to annul, revoke or extend visas, including the central visa authorities and the authorities responsible for issuing visas 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 ([2]);

4. 'application form' means the uniform application form for visas in Annex 16 to the Common Consular Instructions;

5. 'applicant' means any person subject to the visa requirement 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]), who has lodged an application for a visa;

———————

([1]) OJ L 243, 15.9.2009, p. 1.
([2]) OJ L 64, 7.3.2003, p. 1.
([3]) OJ L 81, 21.3.2001, p. 1. Regulation as last amended by Regulation (EC) No 1932/2006 (OJ L 405, 30.12.2006, p. 23).

▼B

6. ‘group members’ means applicants who are obliged for legal reasons to enter and leave the territory of the Member States together;

7. ‘travel document’ means a passport or other equivalent document entitling the holder to cross the external borders and to which a visa may be affixed;

8. ‘Member State responsible’ means the Member State which has entered the data in the VIS;

9. ‘verification’ means the process of comparison of sets of data to establish the validity of a claimed identity (one-to-one check);

10. ‘identification’ means the process of determining a person's identity through a database search against multiple sets of data (one-to-many check);

11. ‘alphanumeric data’ means data represented by letters, digits, special characters, spaces and punctuation marks.

Article 5

Categories of data

1. Only the following categories of data shall be recorded in the VIS:

(a) alphanumeric data on the applicant and on visas requested, issued, refused, annulled, revoked or extended referred to in Articles 9(1) to (4) and Articles 10 to 14;

(b) photographs referred to in Article 9(5);

(c) fingerprint data referred to in Article 9(6);

(d) links to other applications referred to in Article 8(3) and (4).

2. The messages transmitted by the infrastructure of the VIS, referred to in Article 16, Article 24(2) and Article 25(2), shall not be recorded in the VIS, without prejudice to the recording of data processing operations pursuant to Article 34.

Article 6

Access for entering, amending, deleting and consulting data

1. Access to the VIS for entering, amending or deleting the data referred to in Article 5(1) in accordance with this Regulation shall be reserved exclusively to the duly authorised staff of the visa authorities.

2. Access to the VIS for consulting the data shall be reserved exclusively to the duly authorised staff of the authorities of each Member State which are competent for the purposes laid down in Articles 15 to 22, limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued.

▼B

3. Each Member State shall designate the competent authorities, the duly authorised staff of which shall have access to enter, amend, delete or consult data in the VIS. Each Member State shall without delay communicate to the Commission a list of these authorities, including those referred to in Article 41(4), and any amendments thereto. That list shall specify for what purpose each authority may process data in the VIS.

Within 3 months after the VIS has become operational in accordance with Article 48(1), the Commission shall publish a consolidated list in the *Official Journal of the European Union*. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.

Article 7

General principles

1. Each competent authority authorised to access the VIS in accordance with this Regulation shall ensure that the use of the VIS is necessary, appropriate and proportionate to the performance of the tasks of the competent authorities.

2. Each competent authority shall ensure that in using the VIS, it does not discriminate against applicants and visa holders on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and that it fully respects the human dignity and the integrity of the applicant or of the visa holder.

CHAPTER II

ENTRY AND USE OF DATA BY VISA AUTHORITIES

Article 8

Procedures for entering data upon the application

1. ►**M1** When the application is admissible according to Article 19 of Regulation (EC) No 810/2009 ◄, the visa authority shall create without delay the application file, by entering the data referred to in Article 9 in the VIS, as far as these data are required to be provided by the applicant.

2. When creating the application file, the visa authority shall check in the VIS, in accordance with Article 15, whether a previous application of the individual applicant has been registered in the VIS by any of the Member States.

3. If a previous application has been registered, the visa authority shall link each new application file to the previous application file on that applicant.

4. If the applicant is travelling in a group or with his spouse and/or children, the visa authority shall create an application file for each applicant and link the application files of the persons travelling together.

5. Where particular data are not required to be provided for legal reasons or factually cannot be provided, the specific data field(s) shall be marked as 'not applicable'. In the case of fingerprints, the system shall for the purposes of Article 17 permit a distinction to be made between the cases where fingerprints are not required to be provided for legal reasons and the cases where they cannot be provided factually; after a period of four years this functionality shall expire unless it is confirmed by a Commission decision on the basis of the evaluation referred to in Article 50(4).

▼B

Article 9

►M1 Data to be entered on application ◄

The visa authority shall enter the following data in the application file:

1. the application number;

2. status information, indicating that a visa has been requested;

3. the authority with which the application has been lodged, including its location, and whether the application has been lodged with that authority representing another Member State;

4. the following data to be taken from the application form:

▼M1

(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;

▼B

(b) current nationality and nationality at birth;

(c) type and number of the travel document, the authority which issued it and the date of issue and of expiry;

(d) place and date of the application;

▼M1

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▼B

(f) details of the person issuing an invitation and/or liable to pay the applicant's subsistence costs during the stay, being:

(i) in the case of a natural person, the surname and first name and address of the person;

(ii) in the case of a company or other organisation, the name and address of the company/other organisation, surname and first name of the contact person in that company/organisation;

▼M1

(g) Member State(s) of destination and duration of the intended stay or transit;

(h) main purpose(s) of the journey;

(i) intended date of arrival in the Schengen area and intended date of departure from the Schengen area;

(j) Member State of first entry;

(k) the applicant’s home address;

▼B

(l) current occupation and employer; for students: name of ►M1 educational establishment ◄;

(m) in the case of minors, surname and first name(s) of the applicant's ►M1 parental authority or legal guardian ◄;

▼B

5. a photograph of the applicant, in accordance with Regulation (EC) No 1683/95;

6. fingerprints of the applicant, in accordance with the relevant provisions of the Common Consular Instructions.

Article 10

Data to be added for a visa issued

1. Where a decision has been taken to issue a visa, the visa authority that issued the visa shall add the following data to the application file:

(a) status information indicating that the visa has been issued;

(b) the authority that issued the visa, including its location, and whether that authority issued it on behalf of another Member State;

(c) place and date of the decision to issue the visa;

(d) the type of visa;

(e) the number of the visa sticker;

(f) the territory in which the visa holder is entitled to travel, in accordance with the relevant provisions of the Common Consular Instructions;

(g) the commencement and expiry dates of the validity period of the visa;

(h) the number of entries authorised by the visa in the territory for which the visa is valid;

(i) the duration of the stay as authorised by the visa;

(j) if applicable, the information indicating that the visa has been issued on a separate sheet in accordance with 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 [1];

▼M1

(k) if applicable, the information indicating that the visa sticker has been filled in manually.

▼B

2. If an application is withdrawn or not pursued further by the applicant before a decision has been taken whether to issue a visa, the visa authority with which the application was lodged shall indicate that the application has been closed for these reasons and the date when the application was closed.

[1] OJ L 53, 23.2.2002, p. 4.

▼B

Article 11

Data to be added where the examination of the application is discontinued

▼M1

Where the visa authority representing another Member State discontinues the examination of the application, it shall add the following data to the application file:

▼B

1. status information indicating that the examination of the application has been discontinued;

2. the authority that discontinued the examination of the application, including its location;

3. place and date of the decision to discontinue the examination;

4. the Member State competent to examine the application.

Article 12

Data to be added for a visa refusal

1. Where a decision has been taken to refuse a visa, the visa authority which refused the visa shall add the following data to the application file:

▼M1

(a) status information indicating that the visa has been refused and whether that authority refused it on behalf of another Member State;

▼B

(b) the authority that refused the visa, including its location;

(c) place and date of the decision to refuse the visa.

▼M1

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;

▼M2

(iv) has already stayed for 90 days during the current 180-day period on the territory of the Member States on the basis of a uniform visa or a visa with limited territorial validity;

▼M1

(v) is a person for whom an alert has been issued in the SIS for the purpose of refusing entry;

▼M1

(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.

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;

(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.

▼B

Article 14

Data to be added for a visa extended

▼M1

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:

▼B

(a) status information indicating that the visa has been extended;

(b) the authority that extended the visa, including its location;

(c) place and date of the decision;

▼M1

(d) the number of the visa sticker of the extended visa;

▼B

(e) the commencement and expiry dates of the extended period;

(f) period of the extension of the authorised duration of the stay;

▼M1

(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

(h) the type of the visa extended.

2. The application file shall also indicate the grounds for extending the visa, which shall be one or more of the following:

(a) force majeure;

(b) humanitarian reasons;

▼M1

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▼B

(d) serious personal reasons.

Article 15

Use of the VIS for examining applications

1. The competent visa authority shall consult the VIS for the purposes of the examination of applications and the decisions relating to those applications, including the decision whether to annul, revoke, ►M1 or extend the visa ◄ in accordance with the relevant provisions.

2. For the purposes referred to in paragraph 1, the competent visa authority shall be given access to search with one or several of the following data:

(a) the application number;

(b) the data referred to in Article 9(4)(a);

(c) the data on the travel document, referred to in Article 9(4)(c);

(d) the surname, first name and address of the natural person or the name and address of the company/other organisation, referred to in Article 9(4)(f);

(e) fingerprints;

(f) the number of the visa sticker and date of issue of any previous visa.

3. If the search with one or several of the data listed in paragraph 2 indicates that data on the applicant are recorded in the VIS, the competent visa authority shall be given access to the application file(s) and the linked application file(s) pursuant to Article 8(3) and (4), solely for the purposes referred to in paragraph 1.

▼B

Article 16

Use of the VIS for consultation and requests for documents

1. For the purposes of consultation between central visa authorities on applications according to Article 17(2) of the Schengen Convention, the consultation request and the responses thereto shall be transmitted in accordance with paragraph 2 of this Article.

2. The Member State which is responsible for examining the application shall transmit the consultation request with the application number to the VIS, indicating the Member State or the Member States to be consulted.

The VIS shall transmit the request to the Member State or the Member States indicated.

The Member State or the Member States consulted shall transmit their response to the VIS, which shall transmit that response to the Member State which initiated the request.

3. The procedure set out in paragraph 2 may also apply to the transmission of information on the issue of visas with limited territorial validity and other messages related to consular cooperation as well as to the transmission of requests to the competent visa authority to forward copies of travel documents and other documents supporting the application and to the transmission of electronic copies of those documents. The competent visa authorities shall respond to the request without delay.

4. The personal data transmitted pursuant to this Article shall be used solely for the consultation of central visa authorities and consular cooperation.

Article 17

Use of data for reporting and statistics

The competent visa authorities shall have access to consult the following data, solely for the purposes of reporting and statistics without allowing the identification of individual applicants:

1. status information;

2. the competent visa authority, including its location;

3. current nationality of the applicant;

▼M1

4. Member State of first entry;

▼B

5. date and place of the application or the decision concerning the visa;

▼M1

6. the type of visa issued;

▼B

7. the type of the travel document;

▼B

8. the grounds indicated for any decision concerning the visa or visa application;

9. the competent visa authority, including its location, which refused the visa application and the date of the refusal;

10. the cases in which the same applicant applied for a visa from more than one visa authority, indicating these visa authorities, their location and the dates of refusals;

▼M1

11. main purpose(s) of the journey;

▼B

12. the cases in which the data referred to in Article 9(6) could factually not be provided, in accordance with the second sentence of Article 8(5);

13. the cases in which the data referred to in Article 9(6) was not required to be provided for legal reasons, in accordance with the second sentence of Article 8(5);

14. the cases in which a person who could factually not provide the data referred to in Article 9(6) was refused a visa, in accordance with the second sentence of Article 8(5).

CHAPTER III

ACCESS TO DATA BY OTHER AUTHORITIES

Article 18

Access to data for verification at external border crossing points

1. For the sole purpose of verifying the identity of the visa holder and/or the authenticity of the visa and/or whether the conditions for entry to the territory of the Member States in accordance with Article 5 of the Schengen Borders Code are fulfilled, the competent authorities for carrying out checks at external border crossing points in accordance with the Schengen Borders Code shall, subject to paragraphs 2 and 3, have access to search using the number of the visa sticker in combination with verification of fingerprints of the visa holder.

2. For a maximum period of three years after the VIS has started operations, the search may be carried out using only the number of the visa sticker. As from one year after the start of operations, the period of three years may be reduced in the case of air borders in accordance with the procedure referred to in Article 49(3).

3. For visa holders whose fingerprints cannot be used, the search shall be carried out only with the number of the visa sticker.

▼B

4. If the search with the data listed in paragraph 1 indicates that data on the visa holder are recorded in the VIS, the competent border control authority shall be given access to consult the following data of the application file as well as of linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:

(a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);

(b) photographs;

(c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended ►M1 ——————— ◄, referred to in Articles 10, 13 and 14.

5. In circumstances where verification of the visa holder or of the visa fails or where there are doubts as to the identity of the visa holder, the authenticity of the visa and/or the travel document, the duly authorised staff of those competent authorities shall have access to data in accordance with Article 20(1) and (2).

Article 19

Access to data for verification within the territory of the Member States

1. For the sole purpose of verifying the identity of the visa holder and/or the authenticity of the visa and/or whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, the authorities competent for carrying out checks within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, shall have access to search with the number of the visa sticker in combination with verification of fingerprints of the visa holder, or the number of the visa sticker.

For visa holders whose fingerprints cannot be used, the search shall be carried out only with the number of the visa sticker.

2. If the search with the data listed in paragraph 1 indicates that data on the visa holder are recorded in the VIS, the competent authority shall be given access to consult the following data of the application file as well as of linked application file(s) pursuant to Article 8(4), solely for the purposes referred to in paragraph 1:

(a) the status information and the data taken from the application form, referred to in Article 9(2) and (4);

(b) photographs;

(c) the data entered in respect of the visa(s) issued, annulled, revoked or whose validity is extended ►M1 ——————— ◄, referred to in Articles 10, 13 and 14.

▼B

3. In circumstances where verification of the visa holder or of the visa fails or where there are doubts as to the identity of the visa holder, the authenticity of the visa and/or the travel document, the duly authorised staff of the competent authorities shall have access to data in accordance with Article 20(1) and (2).

Article 20

Access to data for identification

1. Solely for the purpose of the identification of any person who may not, or may no longer, fulfil the conditions for the entry to, stay or residence on the territory of the Member States, the authorities competent for carrying out checks at external border crossing points in accordance with the Schengen Borders Code or within the territory of the Member States as to whether the conditions for entry to, stay or residence on the territory of the Member States are fulfilled, shall have access to search with the fingerprints of that person.

Where the fingerprints of that person cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 9(4)(a) and/or (c); this search may be carried out in combination with the data referred to in Article 9(4)(b).

2. If the search with the data listed in paragraph 1 indicates that data on the applicant are recorded in the VIS, the competent authority shall be given access to consult the following data of the application file and the linked application file(s), pursuant to Article 8(3) and (4), solely for the purposes referred to in paragraph 1:

(a) the application number, the status information and the authority to which the application was lodged;

(b) the data taken from the application form, referred to in Article 9(4);

(c) photographs;

(d) the data entered in respect of any visa issued, refused, annulled, revoked or whose validity is extended ►M1 ——————— ◄, or of applications where examination has been discontinued, referred to in Articles 10 to 14.

3. Where the person holds a visa, the competent authorities shall access the VIS first in accordance with Articles 18 or 19.

Article 21

Access to data for determining the responsibility for asylum applications

1. For the sole purpose of determining the Member State responsible for examining an asylum application according to Articles 9 and 21 of Regulation (EC) No 343/2003, the competent asylum authorities shall have access to search with the fingerprints of the asylum seeker.

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Where the fingerprints of the asylum seeker cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 9(4)(a) and/or (c); this search may be carried out in combination with the data referred to in Article 9(4)(b).

2. If the search with the data listed in paragraph 1 indicates that a visa issued with an expiry date of no more than six months before the date of the asylum application, and/or a visa extended to an expiry date of no more than six months before the date of the asylum application, is recorded in the VIS, the competent asylum authority shall be given access to consult the following data of the application file, and as regards the data listed in point (g) of the spouse and children, pursuant to Article 8(4), for the sole purpose referred to in paragraph 1:

(a) the application number and the authority that issued or extended the visa, and whether the authority issued it on behalf of another Member State;

(b) the data taken from the application form referred to in Article 9(4)(a) and (b);

(c) the type of visa;

(d) the period of validity of the visa;

(e) the duration of the intended stay;

(f) photographs;

(g) the data referred to in Article 9(4)(a) and (b) of the linked application file(s) on the spouse and children.

3. The consultation of the VIS pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 21(6) of Regulation (EC) No 343/2003.

Article 22

Access to data for examining the application for asylum

1. For the sole purpose of examining an application for asylum, the competent asylum authorities shall have access in accordance with Article 21 of Regulation (EC) No 343/2003 to search with the fingerprints of the asylum seeker.

Where the fingerprints of the asylum seeker cannot be used or the search with the fingerprints fails, the search shall be carried out with the data referred to in Article 9(4)(a) and/or (c); this search may be carried out in combination with the data referred to in Article 9(4)(b).

2. If the search with the data listed in paragraph 1 indicates that a visa issued is recorded in the VIS, the competent asylum authority shall have access to consult the following data of the application file and linked application file(s) of the applicant pursuant to Article 8(3), and, as regards the data listed in point (e) of the spouse and children, pursuant to Article 8(4), for the sole purpose referred to in paragraph 1:

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(a) the application number;

(b) the data taken from the application form, referred to in Article 9(4)(a), (b) and (c);

(c) photographs;

(d) the data entered in respect of any visa issued, annulled, revoked, or whose validity is extended ►M1 ——————— ◄, referred to in Articles 10, 13 and 14;

(e) the data referred to in Article 9(4)(a) and (b) of the linked application file(s) on the spouse and children.

3. The consultation of the VIS pursuant to paragraphs 1 and 2 of this Article shall be carried out only by the designated national authorities referred to in Article 21(6) of Regulation (EC) No 343/2003.

CHAPTER IV

RETENTION AND AMENDMENT OF THE DATA

Article 23

Retention period for data storage

1. Each application file shall be stored in the VIS for a maximum of five years, without prejudice to the deletion referred to in Articles 24 and 25 and to the keeping of records referred to in Article 34.

That period shall start:

(a) on the expiry date of the visa, if a visa has been issued;

(b) on the new expiry date of the visa, if a visa has been extended;

(c) on the date of the creation of the application file in the VIS, if the application has been withdrawn, closed or discontinued;

(d) on the date of the decision of the visa authority if a visa has been refused, annulled ►M1 ——————— ◄ or revoked.

2. Upon expiry of the period referred to in paragraph 1, the VIS shall automatically delete the application file and the link(s) to this file as referred to in Article 8(3) and (4).

Article 24

Amendment of data

1. Only the Member State responsible shall have the right to amend data which it has transmitted to the VIS, by correcting or deleting such data.

2. If a Member State has evidence to suggest that data processed in the VIS are inaccurate or that data were processed in the VIS contrary to this Regulation, it shall inform the Member State responsible immediately. Such message may be transmitted by the infrastructure of the VIS.

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3. The Member State responsible shall check the data concerned and, if necessary, correct or delete them immediately.

Article 25

Advance data deletion

1. Where, before expiry of the period referred to in Article 23(1), an applicant has acquired the nationality of a Member State, the application files and the links referred to in Article 8(3) and (4) relating to him or her shall be deleted without delay from the VIS by the Member State which created the respective application file(s) and links.

2. Each Member State shall inform the Member State(s) responsible without delay if an applicant has acquired its nationality. Such message may be transmitted by the infrastructure of the VIS.

3. If the refusal of a visa has been annulled by a court or an appeal body, the Member State which refused the visa shall delete the data referred to in Article 12 without delay as soon as the decision to annul the refusal of the visa becomes final.

CHAPTER V

OPERATION AND RESPONSIBILITIES

Article 26

Operational management

1. After a transitional period, a management authority (the Management Authority), funded from the general budget of the European Union, shall be responsible for the operational management of the central VIS and the national interfaces. The Management Authority shall ensure, in cooperation with the Member States, that at all times the best available technology, subject to a cost-benefit analysis, is used for the central VIS and the national interfaces.

2. The Management Authority shall also be responsible for the following tasks relating to the communication infrastructure between the central VIS and the national interfaces:

(a) supervision;

(b) security;

(c) the coordination of relations between the Member States and the provider.

3. The Commission shall be responsible for all other tasks relating to the Communication Infrastructure between the central VIS and the national interfaces, in particular:

(a) tasks relating to implementation of the budget;

(b) acquisition and renewal;

(c) contractual matters.

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4. During a transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for the operational management of the VIS. The Commission may delegate that task and tasks relating to implementation of the budget, in accordance with 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], to national public-sector bodies in two different Member States.

5. Each national public-sector body referred to in paragraph 4 shall meet the following selection criteria:

(a) it must demonstrate that it has extensive experience in operating a large-scale information system;

(b) it must have considerable expertise in the service and security requirements of a large-scale information system;

(c) it must have sufficient and experienced staff with the appropriate professional expertise and linguistic skills to work in an international cooperation environment such as that required by the VIS;

(d) it must have a secure and custom-built facility infrastructure able, in particular, to back up and guarantee the continuous functioning of large-scale IT systems; and

(e) its administrative environment must allow it to implement its tasks properly and avoid any conflict of interests.

6. Prior to any delegation as referred to in paragraph 4 and at regular intervals thereafter, the Commission shall inform the European Parliament and the Council of the terms of the delegation, its precise scope, and the bodies to which tasks are delegated.

7. Where the Commission delegates its responsibility during the transitional period pursuant to paragraph 4, it shall ensure that the delegation fully respects the limits set by the institutional system laid out in the Treaty. It shall ensure, in particular, that the delegation does not adversely affect any effective control mechanism under Community law, whether by the Court of Justice, the Court of Auditors or the European Data Protection Supervisor.

8. Operational management of the VIS shall consist of all the tasks necessary to keep the VIS functioning 24 hours a day, seven days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the time required for interrogation of the central database by consular posts, which should be as short as possible.

[1] OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

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9. Without prejudice to Article 17 of the Staff Regulations of officials of the European Communities, laid down in Regulation (EEC, Euratom, ECSC) No 259/68 ([1]), the Management Authority shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to all its staff required to work with VIS data. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.

Article 27

Location of the central Visa Information System

The principal central VIS, which performs technical supervision and administration functions, shall be located in Strasbourg (France) and a back-up central VIS, capable of ensuring all functionalities of the principal central VIS in the event of failure of the system, shall be located in Sankt Johann im Pongau (Austria).

Article 28

Relation to the national systems

1. The VIS shall be connected to the national system of each Member State via the national interface in the Member State concerned.

2. Each Member State shall designate a national authority, which shall provide the access of the competent authorities referred to in Article 6(1) and (2) to the VIS, and connect that national authority to the national interface.

3. Each Member State shall observe automated procedures for processing the data.

4. Each Member State shall be responsible for:

(a) the development of the national system and/or its adaptation to the VIS according to Article 2(2) of Decision 2004/512/EC;

(b) the organisation, management, operation and maintenance of its national system;

(c) the management and arrangements for access of the duly authorised staff of the competent national authorities to the VIS in accordance with this Regulation and to establish and regularly update a list of such staff and their profiles;

(d) bearing the costs incurred by the national system and the costs of their connection to the national interface, including the investment and operational costs of the communication infrastructure between the national interface and the national system.

5. Before being authorised to process data stored in the VIS, the staff of the authorities having a right to access the VIS shall receive appropriate training about data security and data protection rules and shall be informed of any relevant criminal offences and penalties.

([1]) OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 337/2007 (OJ L 90, 30.3.2007, p. 1).

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Article 29

Responsibility for the use of data

1. Each Member State shall ensure that the data are processed lawfully, and in particular that only duly authorised staff have access to data processed in the VIS for the performance of their tasks in accordance with this Regulation. The Member State responsible shall ensure in particular that:

(a) the data are collected lawfully;

(b) the data are transmitted lawfully to the VIS;

(c) the data are accurate and up-to-date when they are transmitted to the VIS.

2. The management authority shall ensure that the VIS is operated in accordance with this Regulation and its implementing rules referred to in Article 45(2). In particular, the management authority shall:

(a) take the necessary measures to ensure the security of the central VIS and the communication infrastructure between the central VIS and the national interfaces, without prejudice to the responsibilities of each Member State;

(b) ensure that only duly authorised staff have access to data processed in the VIS for the performance of the tasks of the management authority in accordance with this Regulation.

3. The management authority shall inform the European Parliament, the Council and the Commission of the measures which it takes pursuant to paragraph 2.

Article 30

Keeping of VIS data in national files

1. Data retrieved from the VIS may be kept in national files only when necessary in an individual case, in accordance with the purpose of the VIS and in accordance with the relevant legal provisions, including those concerning data protection, and for no longer than necessary in that individual case.

2. Paragraph 1 shall be without prejudice to the right of a Member State to keep in its national files data which that Member State entered in the VIS.

3. Any use of data which does not comply with paragraphs 1 and 2 shall be considered a misuse under the national law of each Member State.

Article 31

Communication of data to third countries or international organisations

1. Data processed in the VIS pursuant to this Regulation shall not be transferred or made available to a third country or to an international organisation.

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2. By way of derogation from paragraph 1, the data referred to in Article 9(4)(a), (b), (c), (k) and (m) may be transferred or made available to a third country or to an international organisation listed in the Annex if necessary in individual cases for the purpose of proving the identity of third-country nationals, including for the purpose of return, only where the following conditions are satisfied:

(a) the Commission has adopted a decision on the adequate protection of personal data in that third country in accordance with Article 25(6) of Directive 95/46/EC, or a readmission agreement is in force between the Community and that third country, or the provisions of Article 26(1)(d) of Directive 95/46/EC apply;

(b) the third country or international organisation agrees to use the data only for the purpose for which they were provided;

(c) the data are transferred or made available in accordance with the relevant provisions of Community law, in particular readmission agreements, and the national law of the Member State which transferred or made the data available, including the legal provisions relevant to data security and data protection; and

(d) the Member State(s) which entered the data in the VIS has given its consent.

3. Such transfers of personal data to third countries or international organisations shall not prejudice the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.

Article 32

Data security

1. The Member State responsible shall ensure the security of the data before and during transmission to the national interface. Each Member State shall ensure the security of the data which it receives from the VIS.

2. Each Member State shall, in relation to its national system, adopt the necessary measures, including a security plan, in order to:

(a) physically protect data, including by making contingency plans for the protection of critical infrastructure;

(b) deny unauthorised persons access to national installations in which the Member State carries out operations in accordance with the purposes of the VIS (checks at entrance to the installation);

(c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);

(d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

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(e) prevent the unauthorised processing of data in the VIS and any unauthorised modification or deletion of data processed in the VIS (control of data entry);

(f) ensure that persons authorised to access the VIS have access only to the data covered by their access authorisation, by means of individual and unique user identities and confidential access modes only (data access control);

(g) ensure that all authorities with a right of access to the VIS create profiles describing the functions and responsibilities of persons who are authorised to access, enter, update, delete and search the data and make these profiles available to the National Supervisory Authorities referred to in Article 41 without delay at their request (personnel profiles);

(h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);

(i) ensure that it is possible to verify and establish what data have been processed in the VIS, when, by whom and for what purpose (control of data recording);

(j) prevent the unauthorised reading, copying, modification or deletion of personal data during the transmission of personal data to or from the VIS or during the transport of data media, in particular by means of appropriate encryption techniques (transport control);

(k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation (self-auditing).

3. The Management Authority shall take the necessary measures in order to achieve the objectives set out in paragraph 2 as regards the operation of the VIS, including the adoption of a security plan.

Article 33

Liability

1. Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with this Regulation shall be entitled to receive compensation from the Member State which is responsible for the damage suffered. That Member State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.

2. If any failure of a Member State to comply with its obligations under this Regulation causes damage to the VIS, that Member State shall be held liable for such damage, unless and insofar as the Management Authority or another Member State failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the defendant Member State.

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Article 34

Keeping of records

1. Each Member State and the Management Authority shall keep records of all data processing operations within the VIS. These records shall show the purpose of access referred to in Article 6(1) and in Articles 15 to 22, the date and time, the type of data transmitted as referred to in Articles 9 to 14, the type of data used for interrogation as referred to in Articles 15(2), 17, 18(1) to (3), 19(1), 20(1), 21(1) and 22(1) and the name of the authority entering or retrieving the data. In addition, each Member State shall keep records of the staff duly authorised to enter or retrieve the data.

2. Such records may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security. The records shall be protected by appropriate measures against unauthorised access and deleted after a period of one year after the retention period referred to in Article 23(1) has expired, if they are not required for monitoring procedures which have already begun.

Article 35

Self-monitoring

Member States shall ensure that each authority entitled to access VIS data takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the National Supervisory Authority.

Article 36

Penalties

Member States shall take the necessary measures to ensure that any misuse of data entered in the VIS is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

CHAPTER VI

RIGHTS AND SUPERVISION ON DATA PROTECTION

Article 37

Right of information

1. Applicants and the persons referred to in Article 9(4)(f) shall be informed of the following by the Member State responsible:

(a) the identity of the controller referred to in Article 41(4), including his contact details;

(b) the purposes for which the data will be processed within the VIS;

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(c) the categories of recipients of the data, including the authorities referred to in Article 3;

(d) the data retention period;

(e) that the collection of the data is mandatory for the examination of the application;

(f) the existence of the right of access to data relating to them, and the right to request that inaccurate data relating to them be corrected or that unlawfully processed data relating to them be deleted, including the right to receive information on the procedures for exercising those rights and the contact details of the National Supervisory Authorities referred to in Article 41(1), which shall hear claims concerning the protection of personal data.

2. The information referred to in paragraph 1 shall be provided in writing to the applicant when the data from the application form, the photograph and the fingerprint data as referred to in Article 9(4), (5) and (6) are collected.

3. The information referred to in paragraph 1 shall be provided to the persons referred to in Article 9(4)(f) on the forms to be signed by those persons providing proof of invitation, sponsorship and accommodation.

In the absence of such a form signed by those persons, this information shall be provided in accordance with Article 11 of Directive 95/46/EC.

Article 38

Right of access, correction and deletion

1. Without prejudice to the obligation to provide other information in accordance with Article 12(a) of Directive 95/46/EC, any person shall have the right to obtain communication of the data relating to him recorded in the VIS and of the Member State which transmitted them to the VIS. Such access to data may be granted only by a Member State. Each Member State shall record any requests for such access.

2. Any person may request that data relating to him which are inaccurate be corrected and that data recorded unlawfully be deleted. The correction and deletion shall be carried out without delay by the Member State responsible, in accordance with its laws, regulations and procedures.

3. If the request as provided for in paragraph 2 is made to a Member State other than the Member State responsible, the authorities of the Member State with which the request was lodged shall contact the authorities of the Member State responsible within a period of 14 days. The Member State responsible shall check the accuracy of the data and the lawfulness of their processing in the VIS within a period of one month.

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4. If it emerges that data recorded in the VIS are inaccurate or have been recorded unlawfully, the Member State responsible shall correct or delete the data in accordance with Article 24(3). The Member State responsible shall confirm in writing to the person concerned without delay that it has taken action to correct or delete data relating to him.

5. If the Member State responsible does not agree that data recorded in the VIS are inaccurate or have been recorded unlawfully, it shall explain in writing to the person concerned without delay why it is not prepared to correct or delete data relating to him.

6. The Member State responsible shall also provide the person concerned with information explaining the steps which he can take if he does not accept the explanation provided. This shall include information on how to bring an action or a complaint before the competent authorities or courts of that Member State and on any assistance, including from the national supervisory authorities referred to in Article 41(1), that is available in accordance with the laws, regulations and procedures of that Member State.

Article 39

Cooperation to ensure the rights on data protection

1. The Member States shall cooperate actively to enforce the rights laid down in Article 38(2), (3) and (4).

2. In each Member State, the national supervisory authority shall, upon request, assist and advise the person concerned in exercising his right to correct or delete data relating to him in accordance with Article 28(4) of Directive 95/46/EC.

3. The National Supervisory Authority of the Member State responsible which transmitted the data and the National Supervisory Authorities of the Member States with which the request was lodged shall cooperate to this end.

Article 40

Remedies

1. In each Member State any person shall have the right to bring an action or a complaint before the competent authorities or courts of that Member State which refused the right of access to or the right of correction or deletion of data relating to him, provided for in Article 38(1) and (2).

2. The assistance of the National Supervisory Authorities referred to in Article 39(2) shall remain available throughout the proceedings.

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Article 41

Supervision by the National Supervisory Authority

1. The authority or authorities designated in each Member State and endowed with the powers referred to in Article 28 of Directive 95/46/EC (the National Supervisory Authority) shall monitor independently the lawfulness of the processing of personal data referred to in Article 5(1) by the Member State in question, including their transmission to and from the VIS.

2. The National Supervisory Authority shall ensure that an audit of the data processing operations in the national system is carried out in accordance with relevant international auditing standards at least every four years.

3. Member States shall ensure that their National Supervisory Authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation.

4. In relation to the processing of personal data in the VIS, each Member State shall designate the authority which is to be considered as controller in accordance with Article 2(d) of Directive 95/46/EC and which shall have central responsibility for the processing of data by that Member State. Each Member State shall communicate the details of that authority to the Commission.

5. Each Member State shall supply any information requested by the National Supervisory Authorities and shall, in particular, provide them with information on the activities carried out in accordance with Articles 28 and 29(1), grant them access to the lists referred to in Article 28(4)(c) and to its records as referred to in Article 34 and allow them access at all times to all their premises.

Article 42

Supervision by the European Data Protection Supervisor

1. The European Data Protection Supervisor shall check that the personal data processing activities of the Management Authority are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly.

2. The European Data Protection Supervisor shall ensure that an audit of the Management Authority's personal data processing activities is carried out in accordance with relevant international auditing standards at least every four years. A report of such audit shall be sent to the European Parliament, the Council, the Management Authority, the Commission and the National Supervisory Authorities. The Management Authority shall be given an opportunity to make comments before the report is adopted.

3. The Management Authority shall supply information requested by the European Data Protection Supervisor, give him access to all documents and to its records referred to in Article 34(1) and allow him access to all its premises, at any time.

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Article 43

Cooperation between National Supervisory Authorities and the European Data Protection Supervisor

1. The National Supervisory Authorities and the European Data Protection Supervisor, each acting within the scope of their respective competences, shall cooperate actively within the framework of their responsibilities and shall ensure coordinated supervision of the VIS and the national systems.

2. They shall, each acting within the scope of their respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems with the exercise of independent supervision or with the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.

3. The National Supervisory Authorities and the European Data Protection Supervisor shall meet for that purpose at least twice a year. The costs and servicing of these meetings shall be b for the account of the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary.

4. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and the Management Authority every two years. This report shall include a chapter of each Member State prepared by the National Supervisory Authority of that Member State.

Article 44

Data protection during the transitional period

Where the Commission delegates its responsibilities during the transitional period to another body or bodies, pursuant to Article 26(4) of this Regulation, it shall ensure that the European Data Protection Supervisor has the right and is able to exercise his tasks fully, including the carrying out of on-the-spot checks, and to exercise any other powers conferred on him by Article 47 of Regulation (EC) No 45/2001.

CHAPTER VII

FINAL PROVISIONS

Article 45

Implementation by the Commission

1. The central VIS, the national interface in each Member State and the communication infrastructure between the central VIS and the national interfaces shall be implemented by the Commission as soon as possible after the entry into force of this Regulation, including the functionalities for processing the biometric data referred to in Article 5(1)(c).

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2. The measures necessary for the technical implementation of the central VIS, the national interfaces and the communication infrastructure between the central VIS and the national interfaces shall be adopted in accordance with the procedure referred to in Article 49(2), in particular:

(a) for entering the data and linking applications in accordance with Article 8;

(b) for accessing the data in accordance with Article 15 and Articles 17 to 22;

(c) for amending, deleting and advance deleting of data in accordance with Articles 23 to 25;

(d) for keeping and accessing the records in accordance with Article 34;

(e) for the consultation mechanism and the procedures referred to in Article 16.

Article 46

Integration of the technical functionalities of the Schengen Consultation Network

The consultation mechanism referred to in Article 16 shall replace the Schengen Consultation Network from the date determined in accordance with the procedure referred to in Article 49(3) when all those Member States which use the Schengen Consultation Network at the date of entry into force of this Regulation have notified the legal and technical arrangements for the use of the VIS for the purpose of consultation between central visa authorities on visa applications according to Article 17(2) of the Schengen Convention.

Article 47

Start of transmission

Each Member State shall notify the Commission that it has made the necessary technical and legal arrangements to transmit the data referred to in Article 5(1) to the central VIS via the national interface.

Article 48

Start of operations

1. The Commission shall determine the date from which the VIS is to start operations, when:

(a) the measures referred to in Article 45(2) have been adopted;

(b) the Commission has declared the successful completion of a comprehensive test of the VIS, which shall be conducted by the Commission together with Member States;

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(c) following validation of technical arrangements, the Member States have notified the Commission that they have made the necessary technical and legal arrangements to collect and transmit the data referred to in Article 5(1) to the VIS for all applications in the first region determined according to paragraph 4, including arrangements for the collection and/or transmission of the data on behalf of another Member State.

2. The Commission shall inform the European Parliament of the results of the test carried out in accordance with paragraph 1(b).

3. In every other region, the Commission shall determine the date from which the transmission of the data in Article 5(1) becomes mandatory when Member States have notified the Commission that they have made the necessary technical and legal arrangements to collect and transmit the data referred to in Article 5(1) to the VIS for all applications in the region concerned, including arrangements for the collection and/or transmission of the data on behalf of another Member State. Before that date, each Member State may start operations in any of these regions, as soon as it has notified to the Commission that it has made the necessary technical and legal arrangements to collect and transmit at least the data referred to in Article 5(1)(a) and (b) to the VIS.

4. The regions referred to in paragraphs 1 and 3 shall be determined in accordance with the procedure referred to in Article 49(3). The criteria for the determination of these regions shall be the risk of illegal immigration, threats to the internal security of the Member States and the feasibility of collecting biometrics from all locations in this region.

5. The Commission shall publish the dates for the start of operations in each region in the *Official Journal of the European Union*.

6. No Member State shall consult the data transmitted by other Member States to the VIS before it or another Member State representing this Member State starts entering data in accordance with paragraphs 1 and 3.

Article 49

Committee

1. The Commission shall be assisted by the committee set up by Article 51(1) of 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) [1].

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be two months.

[1] OJ L 381, 28.12.2006, p. 4.

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3. Where reference is made to this paragraph, Article 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 two months.

Article 50

Monitoring and evaluation

1. The Management Authority shall ensure that procedures are in place to monitor the functioning of the VIS against objectives relating to output, cost-effectiveness, security and quality of service.

2. For the purposes of technical maintenance, the Management Authority shall have access to the necessary information relating to the processing operations performed in the VIS.

3. Two years after the VIS is brought into operation and every two years thereafter, the Management Authority shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of the VIS, including the security thereof.

4. Three years after the VIS is brought into operation and every four years thereafter, the Commission shall produce an overall evaluation of the VIS. This overall evaluation shall include an examination of results achieved against objectives and an assessment of the continuing validity of the underlying rationale, the application of this Regulation in respect of the VIS, the security of the VIS, the use made of the provisions referred to in Article 31 and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.

5. Before the end of the periods referred to in Article 18(2) the Commission shall report on the technical progress made regarding the use of fingerprints at external borders and its implications for the duration of searches using the number of the visa sticker in combination with verification of the fingerprints of the visa holder, including whether the expected duration of such a search entails excessive waiting time at border crossing points. The Commission shall transmit the evaluation to the European Parliament and the Council. On the basis of that evaluation, the European Parliament or the Council may invite the Commission to propose, if necessary, appropriate amendments to this Regulation.

6. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraph 3, 4 and 5.

7. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 4.

8. During the transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for producing and submitting the reports referred to in paragraph 3.

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Article 51

Entry into force and application

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 the date referred to in Article 48(1).

3. Articles 26, 27, 32, 45, 48(1), (2) and (4) and Article 49 shall apply as from 2 September 2008.

4. During the transitional period referred to in Article 26(4), references in this Regulation to the Management Authority shall be construed as references to the Commission.

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

List of international organisations referred to in Article 31(2)

1. UN organisations (such as UNHCR);
2. International Organization for Migration (IOM);
3. The International Committee of the Red Cross.

►**B**

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

▼B

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.

▼B

(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.

▼B

(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.

▼B

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.

▼B

(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.

▼M2

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).

▼M2

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.

▼M1

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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;

▼M1

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).

▼B

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;

▼M2

(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).

▼M2

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.

▼B

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.

▼M2

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.

▼M2

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.

▼B

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

▼M2

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.

▼M1

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.

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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

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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.

▼B

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.

▼M2

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;

▼M2

(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.

▼M2

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.

▼B

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.

▼B

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.

▼B

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.

▼M2

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).

▼B

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.

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(2)(a), 63(3)(b) and 66 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 Schengen Information System ('SIS') set up pursuant to the provisions of Title IV of the Convention of 19 June 1990 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] (the 'Schengen Convention'), and its development, SIS 1+, constitute an essential tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.

(2) The development of the second generation of SIS ('SIS II') has been entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001 [3] and Council Decision 2001/886/JHA [4] of 6 December 2001 on the development of the second generation Schengen Information System (SIS II). SIS II will replace SIS as created pursuant to the Schengen Convention.

(3) This Regulation constitutes the necessary legislative basis for governing SIS II in respect of matters falling within the scope of the Treaty establishing the European Community (the 'Treaty'). Council Decision 2006/000/JHA of … on the establishment, operation and use of the second generation Schengen Information System (SIS II) [5] constitutes the necessary legislative basis for governing SIS II in respect of matters falling within the scope of the Treaty on European Union.

(4) The fact that the legislative basis necessary for governing SIS II consists of separate instruments does not affect the principle that SIS II constitutes one single information system that should operate as such. Certain provisions of these instruments should therefore be identical.

(5) SIS II should constitute a compensatory measure contributing to maintaining a high level of security within the area of freedom, security and justice of the European Union by supporting the implementation of policies linked to the movement of persons that are part of the Schengen acquis, as integrated into Title IV of Part Three of the Treaty.

(6) It is necessary to specify the objectives of SIS II, its technical architecture and financing, to lay down rules concerning its operation and use and to define responsibilities, the categories of data to be entered into the system, the purposes for which the data are to be entered, the criteria for their entry, the authorities authorised to access the data, the interlinking of alerts and further rules on data processing and the protection of personal data.

(7) SIS II is to include a central system (Central SIS II) and national applications. The expenditure involved in the operation of Central SIS II and related communication infrastructure should be charged to the general budget of the European Union.

(8) It is necessary to establish a manual setting out the detailed rules for the exchange of certain supplementary information concerning the action called for by alerts. National authorities in each Member State should ensure the exchange of this information.

(9) For a transitional period, the Commission should be responsible for the operational management of Central SIS II and of parts of the communication infrastructure. However, in order to ensure a smooth transition to SIS II, it may delegate some or all of these responsibilities to two national public sector bodies. In the long term, and following an impact assessment containing a substantive analysis of alternatives from a financial, operational and organisational perspective, and legislative proposals from the Commission, a management authority with responsibility for these tasks should be established. The transitional period should last for no more than five years from the date from which this Regulation applies.

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[1] Opinion of the European Parliament of 25 October 2006 (not yet published in the Official Journal) and Council Decision of 19 December 2006 (not yet published in the Official Journal).

[2] OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1160/2005 (OJ L 191, 22.7.2005, p. 18).

[3] OJ L 328, 13.12.2001, p. 4.

[4] OJ L 328, 13.12.2001, p. 1.

[5] OJ L …

(10) SIS II is to contain alerts for the purpose of refusing entry or stay. It is necessary to further consider harmonising the provisions on the grounds for issuing alerts concerning third-country nationals for the purpose of refusing entry or stay and to clarifying their use in the framework of asylum, immigration and return policies. Therefore, the Commission should review, three years after the date from which this Regulation applies, the provisions on the objectives of and conditions for issuing alerts for the purpose of refusing entry or stay.

(11) Alerts for the purpose of refusing entry or stay should not be kept longer in SIS II than the time required to fulfil the purposes for which they were supplied. As a general principle, they should be automatically erased from SIS II after a period of three years. Any decision to keep an alert for a longer period should be based on a comprehensive individual assessment. Member States should review these alerts within this three-year period and keep statistics about the number of alerts the retention period of which has been extended.

(12) SIS II should permit the processing of biometric data in order to assist in the reliable identification of the individuals concerned. In the same perspective SIS II should also allow for the processing of data concerning individuals whose identity has been misused in order to avoid inconveniences caused by their misidentification, subject to suitable safeguards, in particular the consent of the individual concerned and a strict limitation of the purposes for which such data can be lawfully processed.

(13) It should be possible for Member States to establish links between alerts in SIS II. The establishment by a Member State of links between two or more alerts should have no impact on the action to be taken, their retention period or the access rights to the alerts.

(14) Data processed in SIS II in application of this Regulation should not be transferred or made available to third countries or to international organisations.

(15) 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] applies to the processing of personal data carried out in application of this Regulation. This includes the designation of the controller and the possibility for Member States to provide for exemptions and restrictions to some of the rights and obligations provided for in that Directive including the rights of access and information of the individual concerned. The principles set out in Directive 95/46/EC should be supplemented or clarified in this Regulation, where necessary.

(16) 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 [2], and in particular the provisions thereof concerning confidentiality and security of processing, apply to the processing of personal data by the Community institutions or bodies when carrying out their responsibilities in the operational management of SIS II. The principles set out in Regulation (EC) No 45/2001 should be supplemented or clarified in this Regulation, where necessary.

(17) Insofar as confidentiality is concerned, the relevant provisions of the Staff Regulations of Officials of the European Communities and the conditions of employment of other servants of the European Communities should apply to officials or other servants employed and working in connection with SIS II.

(18) It is appropriate that national supervisory authorities monitor the lawfulness of the processing of personal data by the Member States, whilst the European Data Protection Supervisor, appointed pursuant to Decision 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty [3], should monitor the activities of the Community institutions and bodies in relation to the processing of personal data in view of the limited tasks of the Community institutions and bodies with regard to the data themselves.

(19) Both the Member States and the Commission should draw up a security plan in order to facilitate the implementation of security obligations and should cooperate with each other in order to address security issues from a common perspective.

(20) In order to ensure transparency, a report on the technical functioning of Central SIS II and the communication infrastructure, including its security, and on the exchange of supplementary information should be produced every two years by the Commission or, when it is established, the management authority. An overall evaluation should be issued by the Commission every four years.

[1] OJ L 281, 23.11.1995, p. 31.

[2] OJ L 8, 12.1.2001, p. 1.

[3] OJ L 12, 17.1.2004, p. 47.

(21) Certain aspects of SIS II, such as technical rules on entering data, including data required for entering an alert, updating, deleting and searching data, rules on compatibility and priority of alerts, links between alerts and the exchange of supplementary information cannot, owing to their technical nature, level of detail and need for regular updating, be covered exhaustively by the provisions of this Regulation. Implementing powers in respect of those aspects should therefore be delegated to the Commission. Technical rules on searching alerts should take into account the smooth operation of national applications. Subject to an impact assessment by the Commission, it should be decided to what extent the implementing measures could be the responsibility of the management authority, once it is set up.

(22) 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].

(23) It is appropriate to lay down transitional provisions in respect of alerts issued in SIS 1+ which are to be transferred to SIS II. Some provisions of the Schengen acquis should continue to apply for a limited period of time until the Member States have examined the compatibility of those alerts with the new legal framework. The compatibility of alerts on persons should be examined as a matter of priority. Furthermore, any modification, addition, correction or update of an alert transferred from SIS 1+ to SIS II, as well as any hit on such an alert, should trigger an immediate examination of its compatibility with the provisions of this Regulation.

(24) It is necessary to lay down specific provisions regarding the part of the budget earmarked for operations of SIS which is not part of the general budget of the European Union.

(25) Since the objectives of the action to be taken, namely the establishment and regulation of a joint information system, 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 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 to achieve those objectives.

(26) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(27) 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 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, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after date of the adoption of this Regulation whether it will transpose it in its national law.

(28) 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.

(29) 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.

(30) This Regulation is without prejudice to the arrangements for the United Kingdom's and Ireland's partial participation in the Schengen acquis as defined in Decision 2000/365/EC and Decision 2002/192/EC respectively.

(31) 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 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, point G, of Council Decision 1999/437/EC of 17 May 1999 [5] on certain arrangements for the application of that Agreement.

[1] OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

[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. 36.

[5] OJ L 176, 10.7.1999, p. 31.

(32) 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. 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 [1], annexed to the abovementioned Agreement.

(33) 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 G, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC [2] and 2004/860/EC [3].

(34) An arrangement should 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 abovementioned Agreement.

(35) This Regulation constitutes an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.

(36) This Regulation should apply to the United Kingdom and Ireland on dates determined in accordance with the procedures set out in the relevant instruments concerning the application of the Schengen acquis to those States,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Establishment and general purpose of SIS II

1. A second generation Schengen Information System ('SIS II') is hereby established.

2. The purpose of SIS II shall be, in accordance with this Regulation, to ensure a high level of security within the area of freedom, security and justice of the European Union, including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States, and to apply the provisions of Title IV of Part Three of the Treaty relating to the movement of persons in their territories, using information communicated via this system.

Article 2

Scope

1. This Regulation establishes the conditions and procedures for the entry and processing in SIS II of alerts in respect of third-country nationals, the exchange of supplementary information and additional data for the purpose of refusing entry into, or a stay in, a Member State.

2. This Regulation also lays down provisions on the technical architecture of SIS II, the responsibilities of the Member States and of the management authority referred to in Article 15, general data processing, the rights of the persons concerned and liability.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'alert' means a set of data entered in SIS II allowing the competent authorities to identify a person with a view to taking specific action;

(b) 'supplementary information' means information not stored in SIS II, but connected to SIS II alerts, which is to be exchanged:

(i) in order to allow Member States to consult or inform each other when entering an alert;

[1] OJ L 176, 10.7.1999, p. 53.

[2] Council Decision 2004/849/ECof 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).

[3] 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).

(ii) following a hit, in order to allow the appropriate action to be taken;

(iii) when the required action cannot be taken;

(iv) when dealing with the quality of SIS II data;

(v) when dealing with the compatibility and priority of alerts;

(vi) when dealing with rights of access;

(c) 'additional data' means the data stored in SIS II and connected with SIS II alerts which are to be immediately available to the competent authorities where a person in respect of whom data has been entered in SIS II is located as a result of searches made therein;

(d) 'third-country national' means any individual who is neither:

(i) a citizen of the European Union within the meaning of Article 17(1) of the Treaty;

nor

(ii) a national of a third country who, under agreements between the Community and its Member States on the one hand, and these countries, on the other, enjoys rights of free movement equivalent to those of citizens of the European Union;

(e) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly;

(f) 'processing of personal data' ('processing') means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Article 4

Technical architecture and ways of operating SIS II

1. SIS II shall be composed of:

(a) a central system ('Central SIS II') composed of:

— a technical support function ('CS-SIS') containing a database, the 'SIS II database';

— a uniform national interface ('NI-SIS');

(b) a national system (the 'N.SIS II') in each of the Member States, consisting of the national data systems which communicate with Central SIS II. An N.SIS II may contain a data file (a 'national copy'), containing a complete or partial copy of the SIS II database;

(c) a communication infrastructure between CS-SIS and NI-SIS (the 'Communication Infrastructure') that provides an encrypted virtual network dedicated to SIS II data and the exchange of data between SIRENE Bureaux as referred to in Article 7(2).

2. SIS II data shall be entered, updated, deleted and searched via the various N.SIS II systems. A national copy shall be available for the purpose of carrying out automated searches in the territory of each of the Member States using such a copy. It shall not be possible to search the data files of other Member States' N.SIS II.

3. CS-SIS, which performs technical supervision and administration functions, shall be located in Strasbourg (France) and a backup CS-SIS, capable of ensuring all functionalities of the principal CS-SIS in the event of failure of this system, shall be located in Sankt Johann im Pongau (Austria).

4. CS-SIS shall provide the services necessary for the entry and processing of SIS II data, including searches in the SIS II database. For the Member States which use a national copy, CS-SIS shall:

(a) provide the on-line update of the national copies;

(b) ensure the synchronisation of and consistency between the national copies and the SIS II database;

(c) provide the operations for initialisation and restoration of the national copies.

Article 5

Costs

1. The costs of setting up, operating and maintaining Central SIS II and the Communication Infrastructure shall be borne by the general budget of the European Union.

2. These costs shall include work done with respect to CS-SIS that ensures the provision of the services referred to in Article 4(4).

3. The costs of setting up, operating and maintaining each N.SIS II shall be borne by the Member State concerned.

CHAPTER II

RESPONSIBILITIES OF THE MEMBER STATES

Article 6

National systems

Each Member State shall be responsible for setting up, operating and maintaining its N.SIS II and connecting its N.SIS II to NI-SIS.

Article 7

N.SIS II Office and SIRENE Bureau

1. Each Member State shall designate an authority (the 'N.SIS II Office'), which shall have central responsibility for its N.SIS II. That authority shall be responsible for the smooth operation and security of the N.SIS II, shall ensure the access of the competent authorities to SIS II and shall take the necessary measures to ensure compliance with the provisions of this Regulation. Each Member State shall transmit its alerts via its N.SIS II Office.

2. Each Member State shall designate the authority which shall ensure the exchange of all supplementary information (the 'SIRENE Bureau') in accordance with the provisions of the SIRENE Manual, as referred to in Article 8.

Those Bureaux shall also coordinate the verification of the quality of the information entered in the SIS II. For those purposes, they shall have access to the data processed in SIS II.

3. The Member States shall inform the management authority of their N.SIS II Office and of their SIRENE Bureau. The management authority shall publish the list of them together with the list referred to in Article 31(8).

Article 8

Exchange of supplementary information

1. Supplementary information shall be exchanged in accordance with the provisions of the 'SIRENE Manual' and using the communication infrastructure. Should the communication infrastructure be unavailable, Member States may use other adequately secured technical means for exchanging supplementary information.

2. Supplementary information shall be used only for the purpose for which it was transmitted.

3. Requests for supplementary information made by a Member State shall be answered as soon as possible.

4. Detailed rules for the exchange of supplementary information shall be adopted in accordance with the procedure referred to in Article 51(2) in the form of the SIRENE Manual, without prejudice to the provisions of the instrument setting up the management authority.

Article 9

Technical compliance

1. To ensure the prompt and effective transmission of data, each Member State shall observe, when setting up its N.SIS II, the protocols and technical procedures established to ensure the compatibility of its N.SIS II with CS-SIS. Those protocols and technical procedures shall be established in accordance with the procedure referred to in Article 51(2), without prejudice to the provisions of the instrument setting up the management authority.

2. If a Member State uses a national copy it shall ensure, by means of the services provided by CS-SIS, that data stored in the national copy are, by means of the automatic updates referred to in Article 4(4), identical to and consistent with the SIS II database, and that a search in its national copy produces a result equivalent to that of a search in the SIS II database.

Article 10

Security – Member States

1. Each Member State shall, in relation to its N.SIS II, adopt the necessary measures, including a security plan, in order to:

(a) physically protect data, including by making contingency plans for the protection of critical infrastructure;

(b) deny unauthorised persons access to data-processing facilities used for processing personal data (facilities access control);

(c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);

(d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

(e) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);

(f) ensure that persons authorised to use an automated data-processing system have access only to the data covered by their access authorisation, by means of individual and unique user identities and confidential access modes only (data access control);

(g) ensure that all authorities with a right of access to SIS II or to the data processing facilities create profiles describing the functions and responsibilities of persons who are authorised to access, enter, update, delete and search the data and make these profiles available to the national supervisory authorities referred to in Article 44(1) without delay upon their request (personnel profiles);

(h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);

(i) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems, when, by whom and for what purpose the data were input (input control);

(j) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media, in particular by means of appropriate encryption techniques (transport control);

(k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation (self-auditing).

2. Member States shall take measures equivalent to those referred to in paragraph 1 as regards security in respect of the exchange of supplementary information.

Article 11

Confidentiality – Member States

Each Member State shall apply its rules of professional secrecy or other equivalent duties of confidentiality to all persons and bodies required to work with SIS II data and supplementary information, in accordance with its national legislation. This obligation shall also apply after those people leave office or employment or after the termination of the activities of those bodies.

Article 12

Keeping of records at national level

1. Member States not using national copies shall ensure that every access to and all exchanges of personal data within CS-SIS are recorded in their N.SIS II for the purposes of checking whether or not a search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of N.SIS II, data integrity and security.

2. Member States using national copies shall ensure that every access to and all exchanges of SIS II data are recorded for the purposes mentioned in paragraph 1. This does not apply to the processes referred to in Article 4(4).

3. The records shall show, in particular, the history of the alerts, the date and time of the data transmission, the data used to perform a search, a reference to the data transmitted and the name of both the competent authority and the person responsible for processing the data.

4. The records may be used only for the purpose mentioned in paragraph 1 and 2 and shall be deleted at the earliest one year, and at the latest three years, after their creation. The records which include the history of alerts shall be erased one to three years after deletion of the alerts.

5. Records may be kept longer if they are required for monitoring procedures that are already under way.

6. The competent national authorities in charge of checking whether or not searches are lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of N.SIS II, data integrity and security, shall have access, within the limits of their competence and at their request, to these records for the purpose of fulfilling their duties.

Article 13

Self-monitoring

Member States shall ensure that each authority entitled to access SIS II data takes the measures necessary to comply with this Regulation and cooperates, where necessary, with the national supervisory authority.

Article 14

Staff training

Before being authorised to process data stored in SIS II, the staff of the authorities having a right to access SIS II shall receive appropriate training about data-security and data-protection rules and shall be informed of any relevant criminal offences and penalties.

CHAPTER III

RESPONSIBILITIES OF THE MANAGEMENT AUTHORITY

Article 15

Operational management

1. After a transitional period, a management authority (the 'Management Authority'), funded from the general budget of the European Union, shall be responsible for the operational management of Central SIS II. The Management Authority shall ensure, in cooperation with the Member States, that at all times the best available technology, subject to a cost-benefit analysis, is used for Central SIS II.

2. The Management Authority shall also be responsible for the following tasks relating to the Communication Infrastructure:

(a) supervision;

(b) security;

(c) the coordination of relations between the Member States and the provider.

3. The Commission shall be responsible for all other tasks relating to the Communication Infrastructure, in particular:

(a) tasks relating to implementation of the budget;

(b) acquisition and renewal;

(c) contractual matters.

4. During a transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for the operational management of Central SIS II. The Commission may delegate that task and tasks relating to implementation of the budget, in accordance with the 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], to national public-sector bodies, in two different countries.

5. Each national public-sector body referred to in paragraph 4 shall meet the following selection criteria:

(a) it must demonstrate that it has lengthy experience in operating a large-scale information system with the functionalities referred to in Article 4(4);

(b) it must have considerable expertise in the service and security requirements of an information system with functionalities comparable to those referred to in Article 4(4);

(c) it must have sufficient and experienced staff with the appropriate professional expertise and linguistic skills to work in an international cooperation environment such as that required by SIS II;

(d) it must have a secure and custom-built facility infrastructure able, in particular, to back-up and guarantee the continuous functioning of large-scale IT systems;

and

(e) its administrative environment must allow it to implement its tasks properly and avoid any conflict of interests.

6. Prior to any delegation as referred to in paragraph 4 and at regular intervals thereafter, the Commission shall inform the European Parliament and the Council of the terms of the delegation, its precise scope, and the bodies to which tasks are delegated.

7. Where the Commission delegates its responsibility during the transitional period pursuant to paragraph 4, it shall ensure that this delegation fully respects the limits set by the institutional system laid out in the Treaty. It shall ensure, in particular, that this delegation does not adversely affect any effective control mechanism under Community law, whether of the Court of Justice, the Court of Auditors or the European Data Protection Supervisor.

8. Operational management of Central SIS II shall consist of all the tasks necessary to keep Central SIS II functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary for the smooth running of the system.

[1] OJ L 248, 16.9.2002, p. 1.

Article 16

Security

1. The Management Authority, in relation to Central SIS II, and the Commission, in relation to the Communication Infrastructure, shall adopt the necessary measures, including a security plan, in order to:

(a) physically protect data, including by making contingency plans for the protection of critical infrastructure;

(b) deny unauthorised persons access to data-processing facilities used for processing personal data (facilities access control);

(c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);

(d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

(e) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);

(f) ensure that persons authorised to use an automated data-processing system have access only to the data covered by their access authorisation by means of individual and unique user identities and confidential access modes only (data access control);

(g) create profiles describing the functions and responsibilities of persons who are authorised to access the data or the data processing facilities and make these profiles available to the European Data Protection Supervisor referred to in Article 45 without delay upon its request (personnel profiles);

(h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);

(i) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems, when and by whom the data were input (input control);

(j) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media in particular by means of appropriate encryption techniques (transport control);

(k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation (self-auditing).

2. The Management Authority shall take measures equivalent to those referred to in paragraph 1 as regards security in respect of the exchange of supplementary information through the Communication Infrastructure.

Article 17

Confidentiality – Management Authority

1. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Communities, the Management Authority shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality of a comparable standard to those provided in Article 11 of this Regulation to all its staff required to work with SIS II data. This obligation shall also apply after those people leave office or employment or after the termination of their activities.

2. The Management Authority shall take measures equivalent to those referred to in paragraph 1 as regards confidentiality in respect of the exchange of supplementary information through the Communication Infrastructure.

Article 18

Keeping of records at central level

1. The Management Authority shall ensure that every access to and all exchanges of personal data within CS-SIS are recorded for the purposes mentioned in Article 12(1) and (2).

2. The records shall show, in particular, the history of the alerts, the date and time of the data transmitted, the data used to perform searches, the reference to the data transmitted and the name of the competent authority responsible for processing the data.

3. The records may only be used for the purpose mentioned in paragraph 1 and shall be deleted at the earliest one year, and at the latest three years, after their creation. The records which include the history of alerts shall be erased one to three years after deletion of the alerts.

4. Records may be kept longer if they are required for monitoring procedures that are already under way.

5. The competent authorities in charge of checking whether a search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of CS-SIS, data integrity and security, shall have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

Article 19

Information campaign

The Commission shall, in cooperation with the national supervisory authorities and the European Data Protection Supervisor, accompany the start of the operation of SIS II with an information campaign informing the public about the objectives, the data stored, the authorities having access and the rights of persons. After its establishment, the Management Authority, in cooperation with the national supervisory authorities and the European Data Protection Supervisor, shall repeat such campaigns regularly. Member States shall, in cooperation with their national supervisory authorities, devise and implement the necessary policies to inform their citizens about SIS II generally.

CHAPTER IV

ALERTS ISSUED IN RESPECT OF THIRD-COUNTRY NATIONALS FOR THE PURPOSE OF REFUSING ENTRY AND STAY

Article 20

Categories of data

1. Without prejudice to Article 8(1) or the provisions of this Regulation providing for the storage of additional data, SIS II shall contain only those categories of data which are supplied by each of the Member States, as required for the purposes laid down in Article 24.

2. The information on persons in relation to whom an alert has been issued shall be no more than the following:

(a) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;

(b) any specific, objective, physical characteristics not subject to change;

(c) place and date of birth;

(d) sex;

(e) photographs;

(f) fingerprints;

(g) nationality(ies);

(h) whether the person concerned is armed, violent or has escaped;

(i) reason for the alert;

(j) authority issuing the alert;

(k) a reference to the decision giving rise to the alert;

(l) action to be taken;

(m) link(s) to other alerts issued in SIS II in accordance with Article 37.

3. The technical rules necessary for entering, updating, deleting and searching the data referred to in paragraph 2 shall be established in accordance with the procedure referred to in Article 51(2), without prejudice to the provisions of the instrument setting up the Management Authority.

4. The technical rules necessary for searching the data referred to in paragraph 2 shall be similar for searches in CS-SIS, in national copies and in technical copies, as referred to in Article 31(2).

Article 21

Proportionality

Before issuing an alert, Member States shall determine whether the case is adequate, relevant and important enough to warrant entry of the alert in SIS II.

Article 22

Specific rules for photographs and fingerprints

The use of photographs and fingerprints as referred to in Article 20(2)(e) and (f) shall be subject to the following provisions:

(a) photographs and fingerprints shall only be entered following a special quality check to ascertain the fulfilment of a minimum data quality standard. The specification of the special quality check shall be established in accordance with the procedure referred to in Article 51(2), without prejudice to the provisions of the instrument setting up the Management Authority;

(b) photographs and fingerprints shall only be used to confirm the identity of a third-country national who has been located as a result of an alphanumeric search made in SIS II;

(c) as soon as this becomes technically possible, fingerprints may also be used to identify a third-country national on the basis of his biometric identifier. Before this functionality is implemented in SIS II, the Commission shall present a report on the availability and readiness of the required technology, on which the European Parliament shall be consulted.

Article 23

Requirement for an alert to be entered

1. An alert may not be entered without the data referred to in Article 20(2)(a), (d), (k) and (l).

2. When available, all other data listed in Article 20(2) shall also be entered.

Article 24

Conditions for issuing alerts on refusal of entry or stay

1. Data on third-country nationals in respect of whom an alert has been issued for the purposes of refusing entry or stay shall be entered on the basis of a national alert resulting from a decision taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law taken on the basis of an individual assessment. Appeals against these decisions shall lie in accordance with national legislation.

2. An alert shall be entered where the decision referred to in paragraph 1 is based on a threat to public policy or public security or to national security which the presence of the third-country national in question in the territory of a Member State may pose. This situation shall arise in particular in the case of:

(a) a third-country national who has been convicted in a Member State of an offence carrying a penalty involving deprivation of liberty of at least one year;

(b) a third-country national in respect of whom there are serious grounds for believing that he has committed a serious criminal offence or in respect of whom there are clear indications of an intention to commit such an offence in the territory of a Member State.

3. An alert may also be entered when the decision referred to in paragraph 1 is based on the fact that the third-country national has been subject to a measure involving expulsion, refusal of entry or removal which has not been rescinded or suspended, that includes or is accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of third-country nationals.

4. This Article shall not apply in respect of the persons referred to in Article 26.

5. The Commission shall review the application of this Article three years after the date referred to in Article 55(2). On the basis of that review, the Commission shall, using its right of initiative in accordance with the Treaty, make the necessary proposals to modify the provisions of this Article to achieve a greater level of harmonisation of the criteria for entering alerts.

Article 25

Conditions for entering alerts on third-country nationals who are beneficiaries of the right of free movement within the Community

1. An alert concerning a third-country national who is a beneficiary of the right of free movement within the Community, within the meaning of 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] shall be in conformity with the rules adopted in implementation of that Directive.

2. Where there is a hit on an alert pursuant to Article 24 concerning a third-country national who is a beneficiary of the right of free movement within the Community, the Member State executing the alert shall consult immediately the issuing Member State, through its SIRENE Bureau and in accordance with the provisions of the SIRENE Manual, in order to decide without delay on the action to be taken.

[1] OJ L 158, 30.4.2004, p. 77.

Article 26

Conditions for issuing alerts on third-country nationals subject to a restrictive measure taken in accordance with Article 15 of the Treaty on European Union

1. Without prejudice to Article 25, alerts relating to third-country nationals who are the subject of a restrictive measure intended to prevent entry into or transit through the territory of Member States, taken in accordance with Article 15 of the Treaty on European Union, including measures implementing a travel ban issued by the Security Council of the United Nations, shall, insofar as data-quality requirements are satisfied, be entered in SIS II for the purpose of refusing entry or stay.

2. Article 23 shall not apply in respect of alerts entered on the basis of paragraph 1 of this Article.

3. The Member State responsible for entering, updating and deleting these alerts on behalf of all Member States shall be designated at the moment of the adoption of the relevant measure taken in accordance with Article 15 of the Treaty on European Union.

Article 27

Authorities having a right to access alerts

1. Access to data entered in SIS II and the right to search such data directly or in a copy of SIS II data shall be reserved exclusively to the authorities responsible for the identification of third-country nationals for the purposes of:

(a) border control, in accordance with Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) [1];

(b) other police and customs checks carried out within the Member State concerned, and the coordination of such checks by designated authorities.

2. However, the right to access data entered in SIS II and the right to search such data directly may also be exercised by national judicial authorities, including those responsible for the initiation of public prosecutions in criminal proceedings and for judicial inquiries prior to charge, in the performance of their tasks, as provided for in national legislation, and by their coordinating authorities.

3. In addition, the right to access data entered in SIS II and the data concerning documents relating to persons entered in accordance with Article 38(2)(d) and (e) of Decision 2006/000/JHA and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation relating to third-country nationals in the context of the application of the Community acquis relating to the movement of persons. Access to data by these authorities shall be governed by the law of each Member State.

4. The authorities referred to in this Article shall be included in the list referred to in Article 31(8).

Article 28

Scope of access

Users may only access data which they require for the performance of their tasks.

Article 29

Retention period of alerts

1. Alerts entered in SIS II pursuant to this Regulation shall be kept only for the time required to achieve the purposes for which they were entered.

2. A Member State issuing an alert shall, within three years of its entry in SIS II, review the need to keep it.

3. Each Member State shall, where appropriate, set shorter review periods in accordance with its national law.

4. Within the review period, a Member State issuing an alert may, following a comprehensive individual assessment, which shall be recorded, decide to keep the alert longer, should this prove necessary for the purposes for which the alert was issued. In such a case, paragraph 2 shall apply also to the extension. Any extension of an alert shall be communicated to CS-SIS.

5. Alerts shall automatically be erased after the review period referred to in paragraph 2 except where the Member State issuing the alert has communicated the extension of the alert to CS-SIS pursuant to paragraph 4. CS-SIS shall automatically inform the Member States of the scheduled deletion of data from the system four months in advance.

[1] OJ L 105, 13.4.2006, p. 1.

6. Member States shall keep statistics about the number of alerts the retention period of which has been extended in accordance with paragraph 4.

Article 30

Acquisition of citizenship and alerts

Alerts issued in respect of a person who has acquired citizenship of any State whose nationals are beneficiaries of the right of free movement within the Community shall be erased as soon as the Member State which issued the alert becomes aware, or is informed pursuant to Article 34, that the person in question has acquired such citizenship.

CHAPTER V

GENERAL DATA-PROCESSING RULES

Article 31

Processing of SIS II data

1. The Member States may process the data referred to in Article 20 for the purposes of refusing entry into or a stay in their territories.

2. Data may only be copied for technical purposes, provided that such copying is necessary in order for the authorities referred to in Article 27 to carry out a direct search. The provisions of this Regulation shall apply to such copies. Alerts issued by one Member State may not be copied from its N.SIS II into other national data files.

3. Technical copies, as referred to in paragraph 2, which lead to off-line databases may be retained for a period not exceeding 48 hours. That period may be extended in an emergency until the emergency comes to an end.

Notwithstanding the first subparagraph, technical copies which lead to off-line databases to be used by visa issuing authorities shall no longer be permitted one year after the authority in question has been connected successfully to the Communication Infrastructure for the Visa Information System to be provided for in a future Regulation concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay visas except for copies made to be used only in an emergency following the unavailability of the network for more than 24 hours.

Member States shall keep an up-to-date inventory of such copies, make this inventory available to their national supervisory authority and ensure that the provisions of this Regulation, in particular those of Article 10, are applied in respect of such copies.

4. Access to data shall only be authorised within the limits of the competence of the national authorities referred to in Article 27 and to duly authorised staff.

5. Data may not be used for administrative purposes. By way of derogation, data entered in accordance with this Regulation may be used in accordance with the laws of each Member State by the authorities referred to in Article 27(3) in the performance of their duties.

6. Data entered in accordance with Article 24 of this Regulation and data concerning documents relating to persons entered under Article 38(2)(d) and (e) of Decision 2006/000/JHA may be used in accordance with the laws of each Member State for the purposes referred to in Article 27(3) of this Regulation.

7. Any use of data which does not comply with paragraphs 1 to 6 shall be considered as misuse under the national law of each Member State.

8. Each Member State shall send to the Management Authority a list of its competent authorities authorised to search directly the data contained in SIS II pursuant to this Regulation as well as any changes to the list. That list shall specify, for each authority, which data it may search and for what purposes. The Management Authority shall ensure the annual publication of the list in the *Official Journal of the European Union*.

9. Insofar as Community law does not lay down specific provisions, the law of each Member State shall apply to data entered in its N.SIS II.

Article 32

SIS II data and national files

1. Article 31(2) shall not prejudice the right of a Member State to keep in its national files SIS II data in connection with which action has been taken on its territory. Such data shall be kept in national files for a maximum period of three years, except if specific provisions of national law provide for a longer retention period.

2. Article 31(2) shall not prejudice the right of a Member State to keep in its national files data contained in a particular alert issued in SIS II by that Member State.

Article 33

Information in the event of non-execution of an alert

If a requested action cannot be performed, the requested Member State shall immediately inform the Member State issuing the alert.

Article 34

Quality of the data processed in SIS II

1. A Member State issuing an alert shall be responsible for ensuring that the data are accurate, up-to-date and entered in SIS II lawfully.

2. Only the Member State issuing an alert shall be authorised to modify, add to, correct, update or delete data which it has entered.

3. If a Member State other than that which issued an alert has evidence suggesting that an item of data is factually incorrect or has been unlawfully stored, it shall, through the exchange of supplementary information, inform the Member State that issued the alert thereof at the earliest opportunity and not later than ten days after the said evidence has come to its attention. The Member State that issued the alert shall check the communication and, if necessary, correct or delete the item in question without delay.

4. If the Member States are unable to reach agreement within two months, the Member State which did not issue the alert shall submit the matter to the European Data Protection Supervisor, who shall, jointly with the national supervisory authorities concerned, act as mediator.

5. The Member States shall exchange supplementary information if a person complains that he is not the person wanted by an alert. If the outcome of the check is that there are in fact two different persons the complainant shall be informed of the provisions of Article 36.

6. Where a person is already the subject of an alert in SIS II, a Member State which enters a further alert shall reach agreement on the entry of the alert with the Member State which entered the first alert. The agreement shall be reached on the basis of the exchange of supplementary information.

Article 35

Distinguishing between persons with similar characteristics

Where it becomes apparent, when a new alert is entered, that there is already a person in SIS II with the same identity description element, the following procedure shall be followed:

(a) the SIRENE Bureau shall contact the requesting authority to clarify whether or not the alert is on the same person;

(b) if the cross-check reveals that the subject of the new alert and the person already in SIS II are indeed one and the same, the SIRENE Bureau shall apply the procedure for entering multiple alerts as referred to in Article 34(6). If the outcome of the check is that there are in fact two different persons, the SIRENE Bureau shall approve the request for entering the second alert by adding the necessary elements to avoid any misidentification.

Article 36

Additional data for the purpose of dealing with misused identity

1. Where confusion may arise between the person actually intended as the subject of an alert and a person whose identity has been misused, the Member State which entered the alert shall, subject to that person's explicit consent, add data relating to the latter to the alert in order to avoid the negative consequences of misidentification.

2. Data relating to a person whose identity has been misused shall be used only for the following purposes:

(a) to allow the competent authority to distinguish the person whose identity has been misused from the person actually intended as the subject of the alert;

(b) to allow the person whose identity has been misused to prove his identity and to establish that his identity has been misused.

3. For the purpose of this Article, no more than the following personal data may be entered and further processed in SIS II:

(a) surname(s) and forename(s), name(s) at birth and previously used names and any aliases possibly entered separately;

(b) any specific objective and physical characteristic not subject to change;

(c) place and date of birth;

(d) sex;

(e) photographs;

(f) fingerprints;

(g) nationality(ies);

(h) number(s) of identity paper(s) and date of issue.

4. The technical rules necessary for entering and further processing the data referred to in paragraph 3 shall be established in accordance with the procedure referred to in Article 51(2), without prejudice to the provisions of the instrument setting up the Management Authority.

5. The data referred to in paragraph 3 shall be erased at the same time as the corresponding alert or earlier if the person so requests.

6. Only the authorities having a right of access to the corresponding alert may access the data referred to in paragraph 3. They may do so for the sole purpose of avoiding misidentification.

Article 37

Links between alerts

1. A Member State may create a link between alerts it enters in SIS II. The effect of such a link shall be to establish a relationship between two or more alerts.

2. The creation of a link shall not affect the specific action to be taken on the basis of each linked alert or the retention period of each of the linked alerts.

3. The creation of a link shall not affect the rights of access provided for in this Regulation. Authorities with no right of access to certain categories of alert shall not be able to see the link to an alert to which they do not have access.

4. A Member State shall create a link between alerts only when there is a clear operational need.

5. Links may be created by a Member State in accordance with its national legislation provided that the principles outlined in the present Article are respected.

6. Where a Member State considers that the creation by another Member State of a link between alerts is incompatible with its national law or international obligations, it may take the necessary measures to ensure that there can be no access to the link from its national territory or by its authorities located outside its territory.

7. The technical rules for linking alerts shall be adopted in accordance with the procedure referred to in Article 51(2), without prejudice to the provisions of the instrument setting up the Management Authority.

Article 38

Purpose and retention period of supplementary information

1. Member States shall keep a reference to the decisions giving rise to an alert at the SIRENE Bureau to support the exchange of supplementary information.

2. Personal data held in files by the SIRENE Bureau as a result of information exchanged, shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted at the latest one year after the related alert has been deleted from SIS II.

3. Paragraph 2 shall not prejudice the right of a Member State to keep in national files data relating to a particular alert which that Member State has issued or to an alert in connection with which action has been taken on its territory. The period for which such data may be held in such files shall be governed by national law.

Article 39

Transfer of personal data to third parties

Data processed in SIS II pursuant to this Regulation shall not be transferred or made available to third countries or to international organisations.

CHAPTER VI

DATA PROTECTION

Article 40

Processing of sensitive categories of data

Processing of the categories of data listed in Article 8(1) of Directive 95/46/EC shall be prohibited.

Article 41

Right of access, correction of inaccurate data and deletion of unlawfully stored data

1. The right of persons to have access to data relating to them entered in SIS II in accordance with this Regulation shall be exercised in accordance with the law of the Member State before which they invoke that right.

2. If national law so provides, the national supervisory authority shall decide whether information is to be communicated and by what procedures.

3. A Member State other than that which has issued an alert may communicate information concerning such data only if it first gives the Member State issuing the alert an opportunity to state its position. This shall be done through the exchange of supplementary information.

4. Information shall not be communicated to the data subject if this is indispensable for the performance of a lawful task in connection with an alert or for the protection of the rights and freedoms of third parties.

5. Any person has the right to have factually inaccurate data relating to him corrected or unlawfully stored data relating to him deleted.

6. The individual concerned shall be informed as soon as possible and in any event not later than 60 days from the date on which he applies for access or sooner, if national law so provides.

7. The individual shall be informed about the follow-up given to the exercise of his rights of correction and deletion as soon as possible and in any event not later than three months from the date on which he applies for correction or deletion or sooner, if national law so provides.

Article 42

Right of information

1. Third-country nationals who are the subject of an alert issued in accordance with this Regulation shall be informed in accordance with Articles 10 and 11 of Directive 95/46/EC. This information shall be provided in writing, together with a copy of or a reference to the national decision giving rise to the alert, as referred to in Article 24(1).

2. This information shall not be provided:

(a) where

(i) the personal data have not been obtained from the third-country national in question;

and

(ii) the provision of the information proves impossible or would involve a disproportionate effort;

(b) where the third country national in question already has the information;

(c) where national law allows for the right of information to be restricted, in particular in order to safeguard national security, defence, public security and the prevention, investigation, detection and prosecution of criminal offences.

Article 43

Remedies

1. Any person may bring an action before the courts or the authority competent under the law of any Member State to access, correct, delete or obtain information or to obtain compensation in connection with an alert relating to him.

2. The Member States undertake mutually to enforce final decisions handed down by the courts or authorities referred to in paragraph 1, without prejudice to the provisions of Article 48.

3. The rules on remedies provided for in this Article shall be evaluated by the Commission by 17 January 2009.

Article 44

Supervision of N.SIS II

1. The authority or authorities designated in each Member State and endowed with the powers referred to in Article 28 of Directive 95/46/EC (the 'National Supervisory Authority') shall monitor independently the lawfulness of the processing of SIS II personal data on their territory and its transmission from that territory, and the exchange and further processing of supplementary information.

2. The National Supervisory Authority shall ensure that an audit of the data processing operations in its N.SIS II is carried out in accordance with international auditing standards at least every four years.

3. Member States shall ensure that their National Supervisory Authority has sufficient resources to fulfil the tasks entrusted to it under this Regulation.

Article 45

Supervision of the Management Authority

1. The European Data Protection Supervisor shall check that the personal data processing activities of the Management Authority are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly.

2. The European Data Protection Supervisor shall ensure that an audit of the Management Authority's personal data processing activities is carried out in accordance with international auditing standards at least every four years. A report of such audit shall be sent to the European Parliament, the Council, the Management Authority, the Commission and the National Supervisory Authorities. The Management Authority shall be given an opportunity to make comments before the report is adopted.

Article 46

Cooperation between National Supervisory Authorities and the European Data Protection Supervisor

1. The National Supervisory Authorities and the European Data Protection Supervisor, each acting within the scope of its respective competences, shall cooperate actively in the framework of their responsibilities and shall ensure coordinated supervision of SIS II.

2. They shall, each acting within the scope of its respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems with the exercise of independent supervision or in the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.

3. The National Supervisory Authorities and the European Data Protection Supervisor shall meet for that purpose at least twice a year. The costs and servicing of these meetings shall be for the account of the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and the Management Authority every two years.

Article 47

Data protection during the transitional period

Where the Commission delegates its responsibilities during the transitional period to another body or bodies, pursuant to Article 15(4), it shall ensure that the European Data Protection Supervisor has the right and is able to fully exercise his tasks, including carrying out on-the-spot checks, and to exercise any other powers conferred on him by Article 47 of Regulation (EC) No 45/2001.

CHAPTER VII

LIABILITY AND PENALTIES

Article 48

Liability

1. Each Member State shall be liable in accordance with its national law for any damage caused to a person through the use of N.SIS II. This shall also apply to damage caused by the Member State which issued the alert, where the latter entered factually inaccurate data or stored data unlawfully.

2. If the Member State against which an action is brought is not the Member State issuing the alert, the latter shall be required to reimburse, on request, the sums paid out as compensation unless the use of the data by the Member State requesting reimbursement infringes this Regulation.

3. If any failure of a Member State to comply with its obligations under this Regulation causes damage to SIS II, that Member State shall be held liable for such damage, unless and insofar as the Management Authority or another Member State participating in SIS II failed to take reasonable steps to prevent the damage from occurring or to minimise its impact.

Article 49

Penalties

Member States shall ensure that any misuse of data entered in SIS II or any exchange of supplementary information contrary to this Regulation is subject to effective, proportionate and dissuasive penalties in accordance with national law.

CHAPTER VIII

FINAL PROVISIONS

Article 50

Monitoring and statistics

1. The Management Authority shall ensure that procedures are in place to monitor the functioning of SIS II against objectives relating to output, cost-effectiveness, security and quality of service.

2. For the purposes of technical maintenance, reporting and statistics, the Management Authority shall have access to the necessary information relating to the processing operations performed in Central SIS II.

3. Each year the Management Authority shall publish statistics showing the number of records per category of alert, the number of hits per category of alert and how many times SIS II was accessed, in total and for each Member State.

4. Two years after SIS II is brought into operation and every two years thereafter, the Management Authority shall submit to the European Parliament and the Council a report on the technical functioning of Central SIS II and the Communication Infrastructure, including the security thereof and the bilateral and multilateral exchange of supplementary information between Member States.

5. Three years after SIS II is brought into operation and every four years thereafter, the Commission shall produce an overall evaluation of Central SIS II and the bilateral and multilateral exchange of supplementary information between Member States. This overall evaluation shall include an examination of results achieved against objectives and an assessment of the continuing validity of the underlying rationale, the application of this Regulation in respect of Central SIS II, the security of Central SIS II and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.

6. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraphs 3, 4 and 5.

7. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.

8. During a transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for producing and submitting the reports referred to in paragraphs 3 and 4.

Article 51

Committee

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, having regard to the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The Committee shall exercise its function from the date of entry into force of this Regulation.

Article 52

Amendment of the provisions of the Schengen Acquis

1. For the purposes of matters falling within the scope of the Treaty, this Regulation shall replace, on the date referred to in Article 55(2), the provisions of Articles 92 to 119 of the Schengen Convention, with the exception of Article 102 A thereof.

2. It shall also replace, on the date referred to in Article 55(2), the following provisions of the Schengen acquis implementing those articles ([1]):

(a) Decision of the Executive Committee of 14 December 1993 on the Financial Regulation on the costs of installing and operating the Schengen Information System (C.SIS) (SCH/Com-ex (93) 16);

(b) Decision of the Executive Committee of 7 October 1997 on the development of the SIS (SCH/Com-ex (97) 24);

(c) Decision of the Executive Committee of 15 December 1997 amending the Financial Regulation on C.SIS (SCH/Com-ex (97) 35);

(d) Decision of the Executive Committee of 21 April 1998 on C.SIS with 15/18 connections (SCH/Com-ex (98) 11);

(e) Decision of the Executive Committee of 28 April 1999 on C.SIS installation expenditure (SCH/Com-ex (99) 4);

(f) Decision of the Executive Committee of 28 April 1999 on updating the SIRENE Manual (SCH/Com-ex (99) 5);

(g) Declaration of the Executive Committee of 18 April 1996 defining the concept of alien (SCH/Com-ex (96) decl. 5);

(h) Declaration of the Executive Committee of 28 April 1999 on the structure of SIS (SCH/Com-ex (99) decl. 2 rev.);

(i) Decision of the Executive Committee of 7 October 1997 on contributions from Norway and Iceland to the costs of installing and operating of the C.SIS (SCH/Com-ex (97) 18).

3. For the purposes of matters falling within the scope of the Treaty, references to the replaced Articles of the Schengen Convention and relevant provisions of the Schengen acquis implementing those Articles shall be construed as references to this Regulation.

([1]) OJ L 239, 22.9.2000, p. 439.

Article 53

Repeal

Regulation (EC) No 378/2004, Regulation (EC) No 871/2004, Decision 2005/451/JHA, Decision 2005/728/JHA and Decision 2006/628/EC are repealed on the date referred to in Article 55(2).

Article 54

Transitional period and budget

1. Alerts shall be transferred from SIS 1+ to SIS II. The Member States shall ensure, giving priority to alerts on persons, that the contents of the alerts that are transferred from SIS 1+ to SIS II satisfy the provisions of this Regulation as soon as possible and within three years after the date referred to in Article 55(2) at the latest. During this transitional period, the Member States may continue to apply the provisions of Articles 94 and 96 of the Schengen Convention to the contents of the alerts that are transferred from SIS 1+ to SIS II, subject to the following rules:

(a) in the event of a modification of, an addition to, or a correction or update of the content of an alert transferred from SIS 1+ to SIS II, the Member States shall ensure that the alert satisfies the provisions of this Regulation as from the time of that modification, addition, correction or update;

(b) in the event of a hit on an alert transferred from SIS 1+ to SIS II, the Member States shall examine the compatibility of that alert with the provisions of this Regulation immediately, but without delaying the action to be taken on the basis of that alert.

2. The remainder of the budget at the date set in accordance with Article 55(2), which has been approved in accordance with the provisions of Article 119 of the Schengen Convention, shall be paid back to the Member States. The amounts to be repaid shall be calculated on the basis of the contributions from the Member States as laid down in the Decision of the Executive Committee of 14 December 1993 on the financial regulation on the costs of installing and operating the Schengen Information System.

3. During the transitional period referred to in Article 15(4), references in this Regulation to the Management Authority shall be construed as a reference to the Commission.

Article 55

Entry into force, applicability and migration

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

2. It shall apply to the Member States participating in SIS 1+ from dates to be fixed by the Council, acting by the unanimity of its Members representing the governments of the Member States participating in SIS 1+.

3. The dates referred to in paragraph 2 shall be fixed after:

(a) the necessary implementing measures have been adopted;

(b) all Member States fully participating in SIS 1+ have notified the Commission that they have made the necessary technical and legal arrangements to process SIS II data and exchange supplementary information;

(c) the Commission has declared the successful completion of a comprehensive test of SIS II, which shall be conducted by the Commission together with the Member States, and the preparatory bodies of the Council have validated the proposed test result and confirmed that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+;

(d) the Commission has made the necessary technical arrangements for allowing Central SIS II to be connected to the N.SIS II of the Member States concerned.

4. The Commission shall inform the European Parliament of the results of the tests carried out in accordance with paragraph 3(c).

5. Any Decision of the Council taken in accordance with paragraph 2 shall be published 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.

Done at Brussels, 20 December 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
J. KORKEAOJA

REGULATION (EU) No 1052/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 October 2013

establishing the European Border Surveillance System (Eurosur)

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 77(2)(d) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure [1],

Whereas:

(1) The establishment of a European Border Surveillance System ('EUROSUR') is necessary in order to strengthen the exchange of information and the operational cooperation between national authorities of Member States as well as with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Council Regulation (EC) No 2007/2004 [2] ('the Agency'). EUROSUR will provide those authorities and the Agency with the infrastructure and tools needed to improve their situational awareness and reaction capability at the external borders of the Member States of the Union ('external borders') for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

(2) The practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders. EUROSUR should considerably improve the operational and technical ability of the Agency and the Member States to detect such small vessels and to improve the reaction capability of the Member States, thereby contributing to reducing the loss of lives of migrants.

(3) It is recognised in this Regulation that migratory routes are also taken by persons in need of international protection.

(4) Member States should establish national coordination centres to improve the exchange of information and the cooperation for border surveillance between them and with the Agency. It is essential for the proper functioning of EUROSUR that all national authorities with a responsibility for external border surveillance under national law cooperate via national coordination centres.

(5) This Regulation should not hinder Member States from making their national coordination centres also responsible for coordinating the exchange of information and for cooperation with regard to the surveillance of air borders and for checks at border crossing points.

(6) The Agency should improve the exchange of information and the cooperation with other Union bodies, offices and agencies, such as the European Maritime Safety Agency and the European Union Satellite Centre, in order to make best use of information, capabilities and systems which are already available at European level, such as the European Earth monitoring programme.

(7) This Regulation forms part of the European model of integrated border management of the external borders and of the Internal Security Strategy of the European Union. EUROSUR will also contribute to the development of the Common Information Sharing Environment (CISE) for the surveillance of the maritime domain of the Union providing a wider framework for maritime situational awareness through information exchange amongst public authorities across sectors in the Union.

(8) In order to ensure that the information contained in EUROSUR is as complete and updated as possible, in particular with regard to the situation in third countries, the Agency should cooperate with the European External Action Service. For those purposes, Union delegations and offices should provide all information which may be relevant for EUROSUR.

[1] Position of the European Parliament of 10 October 2013 (not yet published in the Official Journal) and decision of the Council of 22 October 2013.

[2] 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).

(9) The Agency should provide the necessary assistance for the development and operation of EUROSUR and, as appropriate, for the development of CISE, including the interoperability of systems, in particular by establishing, maintaining and coordinating the EUROSUR framework.

(10) The Agency should be provided with the appropriate financial and human resources in order to adequately fulfil the additional tasks assigned to it under this Regulation.

(11) This Regulation respects the fundamental rights and observes the principles recognised by Articles 2 and 6 of the Treaty on European Union (TEU) and by the Charter of Fundamental Rights of the European Union, in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child. This Regulation should be applied by Member States and the Agency in accordance with those rights and principles.

(12) In accordance with Regulation (EC) No 2007/2004, the Fundamental Rights Officer and the Consultative Forum established by that Regulation should have access to all information concerning respect for fundamental rights in relation to all the activities of the Agency within the framework of EUROSUR.

(13) Any exchange of personal data in the European situational picture and the common pre-frontier intelligence picture should constitute an exception. It should be conducted on the basis of existing national and Union law and should respect their specific data protection requirements. Directive 95/46/EC of the European Parliament and of the Council [1], Regulation (EC) No 45/2001 of the European Parliament and of the Council [2] and Council Framework Decision 2008/977/JHA [3] are applicable in cases in which more specific instruments, such as Regulation (EC) No 2007/2004, do not provide a full data protection regime.

(14) In order to implement a gradual geographical roll-out of EUROSUR, the obligation to designate and operate national coordination centres should apply in two successive stages: first to the Member States located at the southern and eastern external borders and, at a second stage, to the remaining Member States.

(15) This Regulation includes provisions on cooperation with neighbouring third countries, because well-structured and permanent exchange of information and cooperation with those countries, in particular in the Mediterranean region, are key factors for achieving the objectives of EUROSUR. It is essential that any exchange of information and any cooperation between Member States and neighbouring third countries be carried out in full compliance with fundamental rights and in particular with the principle of non-refoulement.

(16) This Regulation includes provisions on the possibility of close cooperation with Ireland and the United Kingdom which may assist in better achieving the objectives of EUROSUR.

(17) The Agency and the Member States, when implementing this Regulation, should make the best possible use of existing capabilities in terms of human resources as well as technical equipment, both at Union and national level.

(18) The Commission should regularly assess the results of the implementation of this Regulation to determine the extent to which the objectives of EUROSUR have been achieved.

(19) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, 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*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(20) This Regulation constitutes a development of the provisions of the *Schengen acquis* in which the United Kingdom does not take part, in accordance with

[1] 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 (OJ L 281, 23.11.1995, p. 31).

[2] 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 (OJ L 8, 12.1.2001, p. 1).

[3] Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

Council Decision 2000/365/EC [1]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(21) 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 [2]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(22) As regards Iceland and Norway, this Regulation constitutes a development of the 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* [3] which fall within the area referred to in point A of Article 1 of Council Decision 1999/437/EC [4]. Norway should establish a national coordination centre in accordance with this Regulation as from 2 December 2013.

(23) 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* [5] which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC [6].

(24) As regards Liechtenstein, this Regulation constitutes a development of the 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* [7] which fall within the area referred to in point A of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU [8].

(25) The implementation of this Regulation does not affect the division of competence between the Union and the Member States or the obligations of Member States under the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, the International Convention on Maritime Search and Rescue, the United Nations Convention against Transnational Organized Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air, the Convention Relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms and other relevant international instruments.

(26) The implementation of this Regulation does not affect Regulation (EC) No 562/2006 of the European Parliament and of the Council [9] or the rules for the surveillance of sea external borders in the context of operational cooperation coordinated by the Agency.

(27) Since the objective of this Regulation, namely to establish EUROSUR, cannot be sufficiently achieved by Member States alone but can rather, by virtue of its scale and effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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 that objective,

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[1] 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* (OJ L 131, 1.6.2000, p. 43).

[2] 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* (OJ L 64, 7.3.2002, p. 20).

[3] OJ L 176, 10.7.1999, p. 36.

[4] Council 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* (OJ L 176, 10.7.1999, p. 31).

[5] OJ L 53, 27.2.2008, p. 52.

[6] Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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* (OJ L 53, 27.2.2008, p. 1).

[7] OJ L 160, 18.6.2011, p. 21.

[8] Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

[9] 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).

HAVE ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a common framework for the exchange of information and for the cooperation between Member States and the Agency in order to improve situational awareness and to increase reaction capability at the external borders of the Member States of the Union ('external borders') for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants ('EUROSUR').

Article 2

Scope

1. This Regulation shall apply to the surveillance of external land and sea borders, including the monitoring, detection, identification, tracking, prevention and interception of unauthorised border crossings for the purpose of detecting, preventing and combating illegal immigration and cross-border crime and contributing to ensuring the protection and saving the lives of migrants.

2. This Regulation may also apply to the surveillance of air borders as well as to checks at border crossing points if Member States voluntarily provide such information to EUROSUR.

3. This Regulation shall not apply to any legal or administrative measure taken once the responsible authorities of a Member State have intercepted cross-border criminal activities or unauthorised crossings by persons of the external borders.

4. Member States and the Agency shall comply with fundamental rights, in particular the principles of non-refoulement and respect for human dignity and data protection requirements, when applying this Regulation. They shall give priority to the special needs of children, unaccompanied minors, victims of human trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

(a) 'Agency' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established by Regulation (EC) No 2007/2004;

(b) 'situational awareness' means the ability to monitor, detect, identify, track and understand illegal cross-border activities in order to find reasoned grounds for reaction measures on the basis of combining new information with existing knowledge, and to be better able to reduce loss of lives of migrants at, along or in the proximity of, the external borders;

(c) 'reaction capability' means the ability to perform actions aimed at countering illegal cross-border activities at, along or in the proximity of, the external borders, including the means and timelines to react adequately;

(d) 'situational picture' means a graphical interface to present near-real-time data and information received from different authorities, sensors, platforms and other sources, which is shared across communication and information channels with other authorities in order to achieve situational awareness and support the reaction capability along the external borders and the pre-frontier area;

(e) 'cross-border crime' means any serious crime with a cross-border dimension committed at, along or in the proximity of, the external borders;

(f) 'external border section' means the whole or a part of the external land or sea border of a Member State, as defined by national law or as determined by the national coordination centre or any other responsible national authority;

(g) 'pre-frontier area' means the geographical area beyond the external borders;

(h) 'crisis situation' means any natural or man-made disaster, accident, humanitarian or political crisis or any other serious situation occurring at, along or in the proximity of, the external borders, which may have a significant impact on the control of the external borders;

(i) 'incident' means a situation relating to illegal immigration, cross-border crime or a risk to the lives of migrants at, along or in the proximity of, the external borders.

TITLE II

FRAMEWORK

CHAPTER I

Components

Article 4

EUROSUR framework

1. For the exchange of information and for the cooperation in the field of border surveillance, and taking into account existing information exchange and cooperation mechanisms, Member States and the Agency shall use the EUROSUR framework, consisting of the following components:

(a) national coordination centres;

(b) national situational pictures;

(c) a communication network;

(d) a European situational picture;

(e) a common pre-frontier intelligence picture;

(f) a common application of surveillance tools.

2. The national coordination centres shall provide the Agency, via the communication network, with information from their national situational pictures which is required for the establishment and maintenance of the European situational picture and of the common pre-frontier intelligence picture.

3. The Agency shall give the national coordination centres, via the communication network, unlimited access to the European situational picture and to the common pre-frontier intelligence picture.

4. The components listed in paragraph 1 shall be established and maintained in line with the principles outlined in the Annex.

Article 5

National coordination centre

1. Each Member State shall designate, operate and maintain a national coordination centre which shall coordinate, and exchange information among, all authorities with a responsibility for external border surveillance at national level, as well as with the other national coordination centres and the Agency. Each Member State shall notify the establishment of its national coordination centre to the Commission, which shall forthwith inform the other Member States and the Agency thereof.

2. Without prejudice to Article 17 and within the framework of EUROSUR, the national coordination centre shall be the single point of contact for the exchange of information and for the cooperation with other national coordination centres and with the Agency.

3. The national coordination centre shall:

(a) ensure the timely exchange of information and timely cooperation between all national authorities with a responsibility for external border surveillance, as well as with other national coordination centres and the Agency;

(b) ensure the timely exchange of information with search and rescue, law enforcement, asylum and immigration authorities at national level;

(c) contribute to an effective and efficient management of resources and personnel;

(d) establish and maintain the national situational picture in accordance with Article 9;

(e) support the planning and implementation of national border surveillance activities;

(f) coordinate the national border surveillance system, in accordance with national law;

(g) contribute to regularly measuring the effects of national border surveillance activities for the purposes of this Regulation;

(h) coordinate operational measures with other Member States, without prejudice to the competences of the Agency and of Member States.

4. The national coordination centre shall operate twenty-four hours a day and seven days a week.

Article 6

The Agency

1. The Agency shall:

(a) establish and maintain the communication network for EUROSUR in accordance with Article 7;

(b) establish and maintain the European situational picture in accordance with Article 10;

(c) establish and maintain the common pre-frontier intelligence picture in accordance with Article 11;

(d) coordinate the common application of surveillance tools in accordance with Article 12.

2. For the purposes of paragraph 1, the Agency shall operate twenty four hours a day and seven days a week.

Article 7

Communication network

1. The Agency shall establish and maintain a communication network in order to provide communication and analytical tools and allow for the exchange of non-classified sensitive and classified information in a secure manner and in near-real-time with, and among, the national coordination centres. The network shall be operational twenty four hours a day and seven days a week and shall allow for:

(a) bilateral and multilateral information exchange in near-real-time;

(b) audio and video conferencing;

(c) secure handling, storing, transmission and processing of non-classified sensitive information;

(d) secure handling, storing, transmission and processing of EU classified information up to the level of RESTREINT UE/EU RESTRICTED or equivalent national classification levels, ensuring that classified information is handled, stored, transmitted and processed in a separate and duly accredited part of the communication network.

2. The Agency shall provide technical support and ensure that the communication network is interoperable with any other relevant communication and information system managed by the Agency.

3. The Agency shall exchange, process and store non-classified sensitive and classified information in the communication network in accordance with Article 11d of Regulation (EC) No 2007/2004.

4. The national coordination centres shall exchange, process and store non-classified sensitive and classified information in the communication network in compliance with rules and standards which are equivalent to those set out in the Rules of Procedure of the Commission [1].

5. Member States' authorities, agencies and other bodies using the communication network shall ensure that equivalent security rules and standards as those applied by the Agency are complied with for the handling of classified information.

CHAPTER II

Situational awareness

Article 8

Situational pictures

1. The national situational pictures, the European situational picture and the common pre-frontier intelligence picture shall be produced through the collection, evaluation, collation, analysis, interpretation, generation, visualisation and dissemination of information.

2. The pictures referred to in paragraph 1 shall consist of the following layers:

(a) an events layer;

(b) an operational layer;

(c) an analysis layer.

Article 9

National situational picture

1. The national coordination centre shall establish and maintain a national situational picture, in order to provide all authorities with responsibilities for the control and, in particular, surveillance of external borders at national level, with effective, accurate and timely information.

2. The national situational picture shall be composed of information collected from the following sources:

(a) the national border surveillance system in accordance with national law;

(b) stationary and mobile sensors operated by national authorities with a responsibility for external border surveillance;

(c) patrols on border surveillance and other monitoring missions;

(d) local, regional and other coordination centres;

[1] OJ L 308, 8.12.2000, p. 26.

(e) other relevant national authorities and systems, including liaison officers, operational centres and contact points;

(f) the Agency;

(g) national coordination centres in other Member States;

(h) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 20;

(i) ship reporting systems in accordance with their respective legal bases;

(j) other relevant European and international organisations;

(k) other sources.

3. The events layer of the national situational picture shall consist of the following sub-layers:

(a) a sub-layer on unauthorised border crossings, including information available to the national coordination centre on incidents relating to a risk to the lives of migrants;

(b) a sub-layer on cross-border crime;

(c) a sub-layer on crisis situations;

(d) a sub-layer on other events, which contains information on unidentified and suspect vehicles, vessels and other craft and persons present at, along or in the proximity of, the external borders of the Member State concerned, as well as any other event which may have a significant impact on the control of the external borders.

4. The national coordination centre shall attribute a single indicative impact level, ranging from 'low' and 'medium' to 'high', to each incident in the events layer of the national situational picture. All incidents shall be shared with the Agency.

5. The operational layer of the national situational picture shall consist of the following sub-layers:

(a) a sub-layer on own assets, including military assets assisting a law enforcement mission, and operational areas, which contains information on the position, status and type of own assets and on the authorities involved. With regard to military assets assisting a law enforcement mission, the national coordination centre may decide, at the request of the national authority responsible for such assets, to restrict access to such information on a need-to-know basis;

(b) a sub-layer on environmental information, which contains or gives access to information on terrain and weather conditions at the external borders of the Member State concerned.

6. The information on own assets in the operational layer shall be classified as RESTREINT UE/EU RESTRICTED.

7. The analysis layer of the national situational picture shall consist of the following sub-layers:

(a) an information sub-layer, which contains key developments and indicators which are relevant for the purposes of this Regulation;

(b) an analytical sub-layer, which includes analytical reports, risk rating trends, regional monitors and briefing notes which are relevant for the purposes of this Regulation;

(c) an intelligence sub-layer, which contains analysed information which is relevant for the purposes of this Regulation and, in particular, for the attribution of the impact levels to the external border sections;

(d) an imagery and geo-data sub-layer, which includes reference imagery, background maps, validation of analysed information and change analysis (Earth observation imagery), as well as change detection, geo-referenced data and external border permeability maps.

8. The information contained in the analysis layer and on environmental information in the operational layer of the national situational picture may be based on the information provided in the European situational picture and in the common pre-frontier intelligence picture.

9. The national coordination centres of neighbouring Member States shall share with each other, directly and in near-real-time, the situational picture of neighbouring external border sections relating to:

(a) incidents and other significant events contained in the events layer;

(b) tactical risk analysis reports as contained in the analysis layer.

10. The national coordination centres of neighbouring Member States may share with each other, directly and in near-real-time, the situational picture of neighbouring external border sections relating to the positions, status and type of own assets operating in the neighbouring external border sections as contained in the operational layer.

Article 10

European situational picture

1. The Agency shall establish and maintain a European situational picture in order to provide the national coordination centres with effective, accurate and timely information and analysis.

2. The European situational picture shall be composed of information collected from the following sources:

(a) national situational pictures, to the extent required by this Article;

(b) the Agency;

(c) the Commission, providing strategic information on border control, including shortcomings in the carrying-out of external border control;

(d) Union delegations and offices;

(e) other relevant Union bodies, offices and agencies and international organisations as referred to in Article 18;

(f) other sources.

3. The events layer of the European situational picture shall include information relating to:

(a) incidents and other events contained in the events layer of the national situational picture;

(b) incidents and other events contained in the common pre-frontier intelligence picture;

(c) incidents in the operational area of a joint operation, pilot project or rapid intervention coordinated by the Agency.

4. In the European situational picture, the Agency shall take into account the impact level that was assigned to a specific incident in the national situational picture by the national coordination centre.

5. The operational layer of the European situational picture shall consist of the following sub-layers:

(a) a sub-layer on own assets, which contains information on the position, time, status and type of assets participating in the Agency joint operations, pilot projects and rapid interventions or at the disposal of the Agency, and the deployment plan, including the area of operation, patrol schedules and communication codes;

(b) a sub-layer on operations, which contains information on the joint operations, pilot projects and rapid interventions coordinated by the Agency, including the mission statement, location, status, duration, information on the Member States and other actors involved, daily and weekly situational reports, statistical data and information packages for the media;

(c) a sub-layer on environmental information, which includes information on terrain and weather conditions at the external borders.

6. The information on own assets in the operational layer of the European situational picture shall be classified as RESTREINT UE/EU RESTRICTED.

7. The analysis layer of the European situational picture shall be structured in the same manner as that of the national situational picture set out in Article 9(7).

Article 11

Common pre-frontier intelligence picture

1. The Agency shall establish and maintain a common pre-frontier intelligence picture in order to provide the national coordination centres with effective, accurate and timely information and analysis on the pre-frontier area.

2. The common pre-frontier intelligence picture shall be composed of information collected from the following sources:

(a) national coordination centres, including information and reports received from Member States' liaison officers via the competent national authorities;

(b) Union delegations and offices;

(c) the Agency, including information and reports provided by its liaison officers;

(d) other relevant Union bodies, offices and agencies and international organisations as referred to in Article 18;

(e) authorities of third countries, on the basis of bilateral or multilateral agreements and regional networks as referred to in Article 20, via the national coordination centres;

(f) other sources.

3. The common pre-frontier intelligence picture may contain information which is relevant for air border surveillance and checks at external border crossing points.

4. The events, operational and analysis layers of the common pre-frontier intelligence picture shall be structured in the same manner as those of the European situational picture set out in Article 10.

5. The Agency shall assign a single indicative impact level to each incident in the events layer of the common pre-frontier intelligence picture. The Agency shall inform the national coordination centres of any incident in the pre-frontier area.

Article 12

Common application of surveillance tools

1. The Agency shall coordinate the common application of surveillance tools in order to supply the national coordination centres and itself with surveillance information on the external borders and on the pre-frontier area on a regular, reliable and cost-efficient basis.

2. The Agency shall provide a national coordination centre, at its request, with information on the external borders of the requesting Member State and on the pre-frontier area which may be derived from:

(a) selective monitoring of designated third-country ports and coasts which have been identified through risk analysis and information as being embarkation or transit points for vessels or other craft used for illegal immigration or cross-border crime;

(b) tracking of vessels or other craft over high seas which are suspected of, or have been identified as, being used for illegal immigration or cross-border crime;

(c) monitoring of designated areas in the maritime domain in order to detect, identify and track vessels and other craft being used for, or suspected of being used for, illegal immigration or cross-border crime;

(d) environmental assessment of designated areas in the maritime domain and at the external land border in order to optimise monitoring and patrolling activities;

(e) selective monitoring of designated pre-frontier areas at the external borders which have been identified through risk analysis and information as being potential departure or transit areas for illegal immigration or cross-border crime.

3. The Agency shall provide the information referred to in paragraph 1 by combining and analysing data which may be collected from the following systems, sensors and platforms:

(a) ship reporting systems in accordance with their respective legal bases;

(b) satellite imagery;

(c) sensors mounted on any vehicle, vessel or other craft.

4. The Agency may refuse a request from a national coordination centre for technical, financial or operational reasons. The Agency shall notify the national coordination centre in due time of the reasons for such a refusal.

5. The Agency may use on its own initiative the surveillance tools referred to in paragraph 2 for collecting information which is relevant for the common pre-frontier intelligence picture.

Article 13

Processing of personal data

1. Where the national situational picture is used for the processing of personal data, those data shall be processed in accordance with Directive 95/46/EC, Framework Decision 2008/977/JHA and the relevant national provisions on data protection.

2. The European situational picture and the common pre-frontier intelligence picture may be used only for the processing of personal data concerning ship identification numbers.

Those data shall be processed in accordance with Article 11ca of Regulation (EC) No 2007/2004. They shall be processed only for the purposes of detecting, identifying and tracking vessels, as well as for the purposes referred to in Article 11c(3) of that Regulation. They shall automatically be deleted within seven days of receipt by the Agency or, where additional time is needed in order to track a vessel, within two months of receipt by the Agency.

CHAPTER III

Reaction capability

Article 14

Determination of external border sections

For the purposes of this Regulation, each Member State shall divide its external land and sea borders into border sections, and shall notify them to the Agency.

Article 15

Attribution of impact levels to external border sections

1. Based on the Agency's risk analysis and in agreement with the Member State concerned, the Agency shall attribute the following impact levels to each of the external land and sea border sections of Member States or change such levels:

(a) low impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have an insignificant impact on border security;

(b) medium impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a moderate impact on border security;

(c) high impact level where the incidents related to illegal immigration or cross-border crime occurring at the relevant border section have a significant impact on border security.

2. The national coordination centre shall regularly assess whether there is a need to change the impact level of any of the border sections by taking into account the information contained in the national situational picture.

3. The Agency shall visualise the impact levels attributed to the external borders in the European situational picture.

Article 16

Reaction corresponding to impact levels

1. The Member States shall ensure that the surveillance activities carried out at the external border sections correspond to the attributed impact levels in the following manner:

(a) where a low impact level is attributed to an external border section, the national authorities with a responsibility for external border surveillance shall organise regular surveillance on the basis of risk analysis and ensure that sufficient personnel and resources are being kept in the border area in readiness for tracking, identification and interception;

(b) where a medium impact level is attributed to an external border section, the national authorities with a responsibility for external border surveillance shall, in addition to the measures taken under point (a), ensure that appropriate surveillance measures are being taken at that border section. When such surveillance measures are taken, the national coordination centre shall be notified accordingly. The national coordination centre shall coordinate any support given in accordance with Article 5(3);

(c) where a high impact level is attributed to an external border section, the Member State concerned shall, in addition to the measures taken under point (b), ensure, through the national coordination centre, that the national authorities operating at that border section are given the necessary support and that reinforced surveillance measures are taken. That Member State may request support from the Agency subject to the conditions for initiating joint operations or rapid interventions, as laid down in Regulation (EC) No 2007/2004.

2. The national coordination centre shall regularly inform the Agency of the measures taken at national level pursuant to point (c) of paragraph 1.

3. Where a medium or high impact level is attributed to an external border section which is adjacent to the border section of another Member State or of a country with which agreements or regional networks, as referred to in Articles 19 and 20, are in place, the national coordination centre shall contact the national coordination centre of the neighbouring Member State or the competent authority of the neighbouring country and shall endeavour to coordinate the necessary cross-border measures.

4. Where a Member State submits a request in accordance with point (c) of paragraph 1, the Agency, when responding to that request, may support that Member State in particular by:

(a) giving priority treatment to the common application of surveillance tools;

(b) coordinating the deployment of European Border Guard Teams in accordance with Regulation (EC) No 2007/2004;

(c) ensuring the deployment of technical equipment at the disposal of the Agency in accordance with Regulation (EC) No 2007/2004;

(d) coordinating any additional support offered by other Member States.

5. The Agency shall, together with the Member State concerned, evaluate the attribution of impact levels and the corresponding measures taken at national and Union level in its risk analysis reports.

TITLE III

SPECIFIC AND FINAL PROVISIONS

Article 17

Allocation of tasks to other authorities in the Member States

1. Member States may charge regional, local, functional or other authorities which are in a position to take operational decisions, with ensuring situational awareness and reaction capability in their respective areas of competence, including the tasks and competences referred to in points (c), (e) and (f) of Article 5(3).

2. The decision of Member States to allocate tasks in accordance with paragraph 1 shall not affect the national coordination centre in its ability to cooperate and exchange information with other national coordination centres and the Agency.

3. In pre-defined cases, as determined at national level, the national coordination centre may authorise an authority referred to in paragraph 1 to communicate and exchange information with the regional authorities or the national coordination centre of another Member State or the competent authorities of a third country on condition that such authority regularly informs its own national coordination centre of such communication and information exchange.

Article 18

Cooperation of the Agency with third parties

1. The Agency shall make use of existing information, capabilities and systems available in other Union institutions, bodies, offices and agencies, and international organisations, within their respective legal frameworks.

2. In accordance with paragraph 1, the Agency shall cooperate in particular with the following Union institutions, bodies, offices and agencies, and international organisations:

(a) European Police Office (Europol) in order to exchange information on cross-border crime to be included in the European situational picture;

(b) the European Union Satellite Centre, the European Maritime Safety Agency and the European Fisheries Control Agency when providing the common application of surveillance tools;

(c) the Commission, the European External Action Service and Union bodies, offices and agencies including the European Asylum Support Office, which may provide the Agency with information that is relevant for maintaining the European situational picture and the common pre-frontier intelligence picture;

(d) international organisations which may provide the Agency with information relevant for maintaining the European situational picture and the common pre-frontier intelligence picture.

3. In accordance with paragraph 1, the Agency may cooperate with the Maritime Analysis and Operations Centre - Narcotics (MAOC-N) and the Centre de Coordination pour la lutte antidrogue en Méditerranée (CeCLAD-M) in order to exchange information on cross-border crime to be included in the European situational picture.

4. Information between the Agency and the Union bodies, offices and agencies, and international organisations, referred to in paragraphs 2 and 3, shall be exchanged via the communication network referred to in Article 7 or other communication networks which fulfil the criteria of availability, confidentiality and integrity.

5. The cooperation between the Agency and the Union bodies, offices and agencies, and international organisations, referred to in paragraphs 2 and 3, shall be regulated as part of working arrangements in accordance with Regulation (EC) No 2007/2004 and the respective legal basis of the Union body, office or agency, or international organisation, concerned. As regards the handling of classified information, those arrangements shall provide that the Union body, office or agency or international organisation concerned comply with security rules and standards equivalent to those applied by the Agency.

6. The Union bodies, offices and agencies, and international organisations, referred to in paragraphs 2 and 3, shall use information received in the context of EUROSUR only within the limits of their legal framework and in compliance with fundamental rights, including data protection requirements.

Article 19

Cooperation with Ireland and the United Kingdom

1. For the purposes of this Regulation, the exchange of information and the cooperation with Ireland and the United Kingdom may take place on the basis of bilateral or multilateral agreements between Ireland or the United Kingdom respectively and one or several neighbouring Member States or through regional networks based on those agreements. The national coordination centres of the Member States shall be the contact points for the exchange of information with the corresponding authorities of Ireland and the United Kingdom within EUROSUR. Once those agreements are concluded, they shall be notified to the Commission.

2. The agreements referred to in paragraph 1 shall be limited to the following exchange of information between the national coordination centre of a Member State and the corresponding authority of Ireland or the United Kingdom:

(a) information contained in the national situational picture of a Member State to the extent transmitted to the Agency for the purposes of the European situational picture and the common pre-frontier intelligence picture;

(b) information collected by Ireland and the United Kingdom which is relevant for the purposes of the European situational picture and the common pre-frontier intelligence picture;

(c) information as referred to in Article 9(9).

3. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 shall not be shared with Ireland or the United Kingdom without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with Ireland or the United Kingdom.

4. Onward transmission or other communication of information exchanged under this Article to third countries or to third parties shall be prohibited.

5. The agreements referred to in paragraph 1 shall include provisions on the financial costs arising from the participation of Ireland and the United Kingdom in the implementation of those agreements.

Article 20

Cooperation with neighbouring third countries

1. For the purposes of this Regulation, Member States may exchange information and cooperate with one or several neighbouring third countries. Such exchange of information and such cooperation shall take place on the basis of bilateral or multilateral agreements or through regional networks established on the basis of those agreements. The national coordination centres of the Member States shall be the contact points for the exchange of information with neighbouring third countries.

2. Before any agreement referred to in paragraph 1 is concluded, the Member States concerned shall notify the agreement to the Commission, which shall verify that its provisions which are relevant for EUROSUR comply with this Regulation. Once the agreement is concluded, the Member State concerned shall notify it to the Commission which shall inform the European Parliament, the Council and the Agency thereof.

3. The agreements referred to in paragraph 1 shall comply with the relevant Union and international law on fundamental rights and on international protection, including the Charter of Fundamental Rights of the European Union and the Convention Relating to the Status of Refugees, in particular the principle of non-refoulement.

4. Any exchange of personal data with third countries in the framework of EUROSUR shall be strictly limited to what is absolutely necessary for the purposes of this Regulation. It shall be carried out in accordance with Directive 95/46/EC, Framework Decision 2008/977/JHA and the relevant national provisions on data protection.

5. Any exchange of information under paragraph 1, which provides a third country with information that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights, shall be prohibited.

6. Any exchange of information under paragraph 1 shall comply with the conditions of the bilateral and multilateral agreements concluded with neighbouring third countries.

7. Information provided in the context of EUROSUR by the Agency or by a Member State which is not party to an agreement as referred to in paragraph 1 shall not be shared with a third country under that agreement without the prior approval of the Agency or of that Member State. The Member States and the Agency shall be bound by the refusal to share that information with the third country concerned.

8. Onward transmission or other communication of information exchanged under this Article to other third countries or to third parties shall be prohibited.

9. Any exchange of information with third countries acquired via the common application of surveillance tools shall be subject to the laws and rules governing those tools as well as to the relevant provisions of Directive 95/46/EC, Regulation (EC) No 45/2001 and Framework Decision 2008/977/JHA.

Article 21

Handbook

1. The Commission shall, in close cooperation with the Member States, the Agency and any other relevant Union body, office or agency, make available a practical handbook for the implementation and management of EUROSUR ('Handbook'). The Handbook shall provide technical and operational guidelines, recommendations and best practices, including on cooperation with third countries. The Commission shall adopt the Handbook in the form of a recommendation.

2. The Commission may decide, after consultation with Member States and the Agency, to classify parts of the Handbook as RESTREINT UE/EU RESTRICTED in compliance with the rules laid down in the Rules of Procedure of the Commission.

Article 22

Monitoring and evaluation

1. For the purposes of this Regulation, the Agency and the Member States shall ensure that procedures are in place to monitor the technical and operational functioning of EUROSUR against the objectives of achieving an adequate situational awareness and reaction capability at the external borders and respect for fundamental rights, including the principle of non-refoulement.

2. The Agency shall submit a report to the European Parliament and to the Council on the functioning of EUROSUR by 1 December 2015 and every two years thereafter.

3. The Commission shall provide an overall evaluation of EUROSUR to the European Parliament and the Council by 1 December 2016 and every four years thereafter. That evaluation shall include an assessment of the results achieved against the objectives set, of the continuing validity of the underlying rationale, of the application of this Regulation in the Member States and by the Agency and of the compliance with and impact on fundamental rights. It shall also include a cost benefit evaluation. That evaluation shall be accompanied, where necessary, by appropriate proposals to amend this Regulation.

4. Member States shall provide the Agency with the information necessary to draft the report referred to in paragraph 2.

The Agency shall provide the Commission with the information necessary to produce the evaluation referred to in paragraph 3.

Article 23

Amendments to Regulation (EC) No 2007/2004

Regulation (EC) No 2007/2004 is hereby amended as follows:

(1) in Article 2(1), point (i) is replaced by the following:

'(i) provide the necessary assistance for 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, in particular by establishing, maintaining and coordinating the EUROSUR framework in accordance with Regulation (EU) No 1052/2013 of the European Parliament and of the Council (*).

(*) Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR) (OJ L 295, 6.11.2013, p. 11).';

(2) the following Article is inserted:

'Article 11ca

Processing of personal data in the framework of EUROSUR

The Agency may process personal data as set out in Article 13(2) of Regulation (EU) No 1052/2013, which shall be applied in accordance with the measures referred to in Article 11a of this Regulation. In particular, the processing of such data shall respect the principles of necessity and proportionality and the onward transmission or other communication of such personal data processed by the Agency to third countries shall be prohibited.'.

Article 24

Entry into force and applicability

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

2. This Regulation shall apply from 2 December 2013.

3. Bulgaria, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania, Slovenia, Slovakia and Finland shall establish a national coordination centre in accordance with Article 5 as from 2 December 2013.

The remaining Member States shall establish a national coordination centre in accordance with Article 5 as from 1 December 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 22 October 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	V. LEŠKEVIČIUS

ANNEX

The following principles shall be taken into account when setting, operating and maintaining the different components of the EUROSUR framework:

(a) Principle of communities of interest: the national coordination centres and the Agency shall form particular communities of interest for sharing information and for cooperation in the framework of EUROSUR. Communities of interest shall be used to organise different national coordination centres and the Agency to exchange information in pursuit of shared objectives, requirements and interests.

(b) Principles of consistent management and of using existing structures: the Agency shall ensure consistency between the different components of the EUROSUR framework, including by providing guidance and support to the national coordination centres and promoting the interoperability of information and technology. To the extent possible, the EUROSUR framework shall make use of existing systems and capabilities, in order to optimise the use of the general budget of the Union and to avoid duplication. In this context, EUROSUR shall be established in full compatibility with CISE, thereby contributing to and benefitting from a coordinated and cost-efficient approach to cross-sectoral information exchange in the Union.

(c) Principles of information sharing and of information assurance: information made available in the EUROSUR framework shall be available to all national coordination centres and the Agency, unless specific restrictions have been laid down or agreed. The national coordination centres shall ensure the availability, confidentiality and integrity of the information to be exchanged at national, European and international level. The Agency shall ensure the availability, confidentiality and integrity of the information to be exchanged at European and international level.

(d) Principles of service-orientation and of standardisation: the different EUROSUR capabilities shall be implemented using a service-oriented approach. The Agency shall ensure that, to the extent possible, the EUROSUR framework is based on internationally agreed standards.

(e) Principle of flexibility: organisation, information and technology shall be designed to enable the EUROSUR stakeholders to react to changing situations in a flexible and structured manner.

Statement by the Council

EUROSUR will contribute to improving the protection and the saving of lives of migrants. The Council recalls that search and rescue at sea is a competence of the Member States which they exercise in the framework of international conventions.

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* [(*)]

3. *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers* [(*)]

4. *Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer* [(*)]

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

DIRECTIVE 2014/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 February 2014

on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

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,

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

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 TFEU provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals staying legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and stay of third-country nationals and on the definition of their rights.

(3) The Hague Programme, adopted by the European Council on 4 November 2004, recognised that legal migration will play an important role in advancing economic development and asked 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.

(4) The European Council of 14 and 15 December 2006 agreed on a series of steps for 2007. Those steps include the development of well-managed legal immigration policies that fully respect national competences in order to assist Member States in meeting existing and future labour needs. It also called for means to be explored to facilitate temporary migration.

(5) The European Pact on Immigration and Asylum, adopted by the European Council on 16 October 2008, expresses the commitment of the Union and its Member States to conduct a fair, effective and consistent policy for dealing with the challenges and opportunities of migration. The Pact forms the basis of a common immigration policy guided by a spirit of solidarity between Member States and cooperation with third countries and founded on proper management of migratory flows, in the interests not only of the host countries but also of the countries of origin and of the migrants themselves.

(6) The Stockholm Programme, adopted by the European Council on 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the long term. It also highlights the importance of ensuring fair treatment of third-country nationals staying legally on the territory of the Member States and of optimising the link between migration and development. It invites the Commission and the European Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's communication of 21 December 2005.

(7) This Directive should contribute to the effective management of migration flows for the specific category of seasonal temporary migration and to ensuring decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent. In addition, the rules laid down in Directive 2009/52/EC of the European Parliament and of the Council [4] will contribute to avoiding such temporary stay turning into unauthorised stay.

[1] OJ C 218, 23.7.2011, p. 97.
[2] OJ C 166, 7.6.2011, p. 59.
[3] Position of the European Parliament of 5 February 2014 (not yet published in the Official Journal) and decision of the Council of 17 February 2014.
[4] 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 (OJ L 168, 30.6.2009, p. 24).

(8) Member States should give effect to 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, disability, age or sexual orientation in accordance, in particular, with Council Directive 2000/43/EC [1] and Council Directive 2000/78/EC [2].

(9) This Directive should be without prejudice to the principle of preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of the relevant Acts of Accession.

(10) This Directive should be without prejudice to the right of the Member States to determine the volumes of admission of third-country nationals coming from third countries to their territory for the purposes of seasonal work as specified in the TFEU.

(11) This Directive should not affect the conditions of the provision of services in the framework of Article 56 TFEU. In particular, this Directive should not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC of the European Parliament and of the Council [3], apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State.

(12) This Directive should cover direct working relationships between seasonal workers and employers. However, where a Member State's national law allows admission of third-country nationals as seasonal workers through employment or temporary work agencies established on its territory and which have a direct contract with the seasonal worker, such agencies should not be excluded from the scope of this Directive.

(13) When transposing this Directive, Member States should, where appropriate in consultation with social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. Activities dependent on the passing of the seasons are typically to be found in sectors such as agriculture and horticulture, in particular during the planting or harvesting period, or tourism, in particular during the holiday period.

(14) If so provided under national law and in accordance with the principle of non-discrimination as set out in Article 10 TFEU, Member States are allowed to apply more favourable treatment to nationals of specific third countries when compared to the nationals of other third countries when implementing the optional provisions of this Directive.

(15) It should only be possible to apply for admission as a seasonal worker while the third-country national is residing outside the territory of the Member States.

(16) It should be possible to refuse admission for the purposes of this Directive on duly justified grounds. In particular, it should be possible to refuse admission if a Member State considers, on the basis of an assessment of the facts, that the third-country national concerned is a potential threat to public policy, public security or public health.

(17) This Directive should be without prejudice to the application of Directive 2008/115/EC of the European Parliament and of the Council [4].

(18) This Directive should not adversely affect the rights that have been granted to third-country nationals who are already legally staying in a Member State for the purpose of work.

(19) In the case of Member States applying the Schengen *acquis* in full, Regulation (EC) No 810/2009 of the European Parliament and of the Council [5] (Visa Code), Regulation (EC) No 562/2006 of the European Parliament and of the Council [6] (Schengen Borders Code), and Council Regulation (EC) No 539/2001 [7] apply in their entirety. Accordingly, for stays not exceeding 90 days, the conditions for admission of seasonal workers to the territory of the Member States applying the Schengen *acquis* in full are regulated by those instruments, while this Directive should only regulate the criteria and requirements for access to employment. In the case of Member States not applying the Schengen *acquis* in full, with the exception of the United Kingdom and Ireland, only the Schengen Borders Code applies. The provisions of the Schengen *acquis* referred to in this Directive belong to that part of the Schengen *acquis* in which Ireland and the United Kingdom do not take part and therefore those provisions do not apply to them.

(1) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

(2) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

(3) 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 (OJ L 18, 21.1.1997, p. 1).

(4) 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 (OJ L 348, 24.12.2008, p. 98).

(5) 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).

(6) 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).

(7) Council Regulation (EC) No 539/2001 of 15 March 2001 listing third countries whose nationals must be in possession of visas when crossing the external borders and those nationals exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

(20) Criteria and requirements for admission as well as grounds for refusal and withdrawal or non-extension/non-renewal for stays not exceeding 90 days should be defined in this Directive as far as employment as a seasonal worker is concerned. When short-stay visas are issued for the purpose of seasonal work, the relevant provisions of the Schengen *acquis* concerning the conditions of entry and stay in the territory of Member States as well as grounds for refusal, extension, annulment or revocation of those visas apply accordingly. In particular, any decision on refusal, annulment or revocation of a visa and the reasons on which it is based should be notified, in accordance with Articles 32(2) and 34(6) of the Visa Code, to the applicant by means of the standard form set out in Annex VI to the Visa Code.

(21) For seasonal workers who are admitted for stays of longer than 90 days, this Directive should define both the conditions for admission to and stay in the territory and the criteria and requirements for access to employment in the Member States.

(22) This Directive should provide for a flexible entry system based on demand and objective criteria, such as a valid work contract or a binding job offer that specifies the essential aspects of the contract or employment relationship.

(23) Member States should have the possibility to apply a test demonstrating that a post cannot be filled from within the domestic labour market.

(24) Member States should be able to reject an application for admission in particular when the third-country national has not complied with the obligation arising from a previous admission decision as a seasonal worker to leave the territory of the Member State concerned on the expiry of an authorisation for the purpose of seasonal work.

(25) Member States should be able to require the employer to cooperate with the competent authorities and to provide all relevant information needed in order to prevent possible abuse and misuse of the procedure set out in this Directive.

(26) Provision for a single procedure leading to one combined permit, encompassing both stay and work, should contribute to simplifying the rules currently applicable in Member States. That should not affect the right of Member States to designate the competent authorities and the way in which they should be involved in the single procedure, in accordance with national specificities of administrative organisation and practice.

(27) The designation of the competent authorities under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, in accordance with national law and/or practice, with regard to the examination of, and the decision on, the application.

(28) This Directive should provide for a degree of flexibility for Member States regarding the authorisations to be issued for the admission (entry, stay and work) of seasonal workers. The issuing of a long-stay visa in accordance with point (a) of Article 12(2) should be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned. Nevertheless, in order to ensure that the conditions of employment as provided for by this Directive have been checked and are met, it should be made clear on those authorisations that they were issued for the purpose of seasonal work. Where only short-stay visas are issued, Member States should make use of the 'remarks' heading of the visa sticker for that purpose.

(29) For all stays not exceeding 90 days, Member States should choose to issue either a short-stay visa or a short-stay visa accompanied by a work permit in cases where the third-country national requires a visa in accordance with Regulation (EC) No 539/2001. Where the third-country national is not subject to the visa requirement and where the Member State did not apply Article 4(3) of that Regulation, the Member States should issue a work permit to him or her as an authorisation for the purpose of seasonal work. For all stays exceeding 90 days, Member States should choose to issue one of the following authorisations: a long-stay visa; a seasonal worker permit; or a seasonal worker permit accompanied by a long-stay visa, if the long-stay visa is required under national law for entering the territory. Nothing in this Directive should preclude Member States from delivering a work permit directly to the employer.

(30) Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued a seasonal worker permit, the Member State concerned should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.

(31) The maximum duration of stay should be fixed by Member States and limited to a period of between five and nine months which, together with the definition of seasonal work, should ensure that the work is of genuinely seasonal nature. Provision should be made to the effect that within that maximum duration of stay, an extension of the contract or change of employer is possible, provided that the admission criteria continue to be met. That should serve to reduce the risk of abuse that seasonal workers may face if tied to a single employer and at the same time provide for a flexible response to employers' actual workforce needs. The possibility for the seasonal worker to be employed by a different employer under the conditions laid down in this Directive should not entail the possibility for the seasonal worker to seek employment on the territory of the Member States while being unemployed.

(32) When deciding on the extension of stay or the renewal of the authorisation for the purpose of seasonal work, Member States should be able to take into consideration the labour market situation.

(33) In cases where a seasonal worker has been admitted for a stay not exceeding 90 days and where the Member State has decided to extend the stay beyond 90 days, the short-stay visa should be replaced either by a long-stay visa or by a seasonal worker permit.

(34) Taking into account certain aspects of circular migration as well as the employment prospects of third-country seasonal workers beyond a single season and the interests of Union employers in being able to rely on a more stable and already trained workforce, the possibility of facilitated admission procedures should be provided for in respect of bona fide third-country nationals who have been admitted as seasonal workers in a Member State at least once within the previous five years, and who have always respected all criteria and conditions provided under this Directive for entry and stay in the Member State concerned. Such procedures should not affect, or circumvent, the requirement that the employment be of a seasonal nature.

(35) Member States should do their best to ensure that information on conditions of entry and stay, including the rights and obligations and the procedural safeguards as laid down in this Directive and all documentary evidence needed for an application to stay and work in the territory of a Member State as a seasonal worker, is made available to applicants.

(36) Member States should provide for effective, proportionate and dissuasive sanctions against employers in the event of breaches of their obligations under this Directive. Those sanctions could consist of measures as provided for in Article 7 of Directive 2009/52/EC and should include, if appropriate, liability of the employer to pay compensation to seasonal workers. The necessary mechanisms should be in place to enable seasonal workers to obtain the compensation to which they are entitled even if they are no longer on the territory of the Member State in question.

(37) A set of rules governing the procedure for examining applications for admission as a seasonal worker should be laid down. That procedure should be effective and manageable, taking account of the normal workload of Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(38) In the case of short-stay visas, the procedural safeguards are governed by the relevant provisions of the Schengen *acquis*.

(39) The competent authorities of the Member States should decide on applications for an authorisation for the purpose of seasonal work as soon as possible after they are submitted. In relation to applications for an extension or renewal, where submitted within the period of validity of the authorisation, Member States should take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employers, due to on-going administrative procedures. Applicants should submit their application for extension or renewal as soon as possible. In any event, the seasonal worker should be allowed to stay on the territory of the Member State concerned, and where appropriate to continue working, until a final decision on the application for an extension or renewal has been taken by the competent authorities.

(40) Given the nature of seasonal work, Member States should be encouraged not to charge a fee for the handling of applications. In the event that a Member State nevertheless decides to charge a fee, such a fee should not be disproportionate or excessive.

(41) Seasonal workers should all benefit from accommodation that ensures an adequate standard of living. The competent authority should be informed of any change of accommodation. Where the accommodation is arranged by or through the employer the rent should not be excessive compared with the net remuneration of the seasonal worker and compared with the quality of that accommodation, the seasonal worker's rent should not be automatically deducted from his or her wage, the employer should provide the seasonal worker with a rental contract or equivalent document stating the rental conditions for the accommodation, and the employer should ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.

(42) Third-country nationals who are in possession of a valid travel document and an authorisation for the purpose of seasonal work issued under this Directive by a Member State applying the Schengen *acquis* in full are 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 90 days in any 180-day period in accordance with the Schengen Borders Code 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 [1] (Schengen Implementing Convention).

(43) Considering the specially vulnerable situation of third-country national seasonal workers and the temporary nature of their assignment, there is a need to provide effective protection of the rights of third-country national seasonal workers, also in the social security field, to check regularly for compliance and to fully guarantee respect for the principle of equal treatment with workers who are nationals of the host Member State, abiding by the concept of the same pay for the same work in the same workplace, by applying collective agreements and other arrangements on working conditions which have been concluded at any level or for which there is statutory provision, in accordance with national law and practice, under the same terms as to nationals of the host Member State.

(44) This Directive should apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and, where relevant, the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

(45) In addition to the legislative, administrative and regulatory provisions applicable to workers who are nationals of the host Member State, arbitration decisions and collective agreements and contracts concluded at any level, in accordance with the host Member State's national law and practice, should also apply to third-country national seasonal workers under the same terms as to nationals of the host Member State.

(46) Third-country national seasonal workers should be granted equal treatment in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council [2]. This Directive does not harmonise the social security legislation of Member States and does not cover social assistance. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its scope. This Directive should not confer more rights than those already provided in existing Union legislation in the field of social security for third-country nationals who have cross-border interests between Member States.

Due to the temporary nature of the stay of seasonal workers and without prejudice to Regulation (EU) No 1231/2010 of the European Parliament and of the Council [3], Member States should be able to exclude family benefits and unemployment benefits from equal treatment between seasonal workers and their own nationals and should be able to limit the application of equal treatment in relation to education and vocational training, as well as tax benefits.

This Directive does not provide for family reunification. Furthermore, this Directive does not grant rights in relation to situations which lie outside the scope of Union law such as, for example, situations where family members reside in a third country. That should not, however, affect the right of survivors who derive rights from the seasonal worker to receive survivor's pensions when residing in a third country. This should be without prejudice to the non-discriminatory application by Member States of national law providing for *de minimis* rules on contributions to pension systems. Mechanisms should be in place in order to ensure effective social security coverage during the stay and the exporting of acquired rights of the seasonal workers, where applicable.

(47) 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.

[1] OJ L 239, 22.9.2000, p. 19.

[2] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

[3] 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 (OJ L 344, 29.12.2010, p. 1).

(48) Any restrictions on equal treatment in the field of social security under this Directive should be without prejudice to the rights conferred in application of Regulation (EU) No 1231/2010.

(49) To ensure the proper enforcement of this Directive, and in particular the provisions regarding rights, working conditions and accommodation, Member States should ensure that appropriate mechanisms are in place for the monitoring of employers and that, where appropriate, effective and adequate inspections are carried out on their respective territories. The selection of employers to be inspected should be based primarily on a risk assessment to be carried out by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.

(50) To facilitate enforcement of this Directive, Member States should put in place effective mechanisms through which seasonal workers may seek legal redress and lodge complaints directly or through relevant third parties such as trade unions or other associations. That is considered necessary to address situations where seasonal workers are unaware of the existence of enforcement mechanisms or hesitant to use them in their own name, out of fear of possible consequences. Seasonal workers should have access to judicial protection against victimisation as a result of a complaint being made.

(51) Since the objectives of this Directive, namely the introduction of a special admission procedure, the adoption of conditions on entry and stay for the purpose of seasonal work by third-country nationals and the definition of their rights as seasonal workers, cannot be sufficiently achieved by the Member States but can rather 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), taking account of immigration and employment policies at European and national level. 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.

(52) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular, Articles 7, 15(3), 17, 27, 28, 31 and 33(2) thereof, in accordance with Article 6 TEU.

(53) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 [1], 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.

(54) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, 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.

(55) In accordance with Articles 1 and 2 of 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 determines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and defines the rights of seasonal workers.

2. For stays not exceeding 90 days, this Directive shall apply without prejudice to the Schengen *acquis*, in particular the Visa Code, the Schengen Borders Code and Regulation (EC) No 539/2001.

Article 2

Scope

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States and who apply to be admitted, or who have been admitted under the terms of this Directive, to the territory of a Member State for the purpose of employment as seasonal workers.

This Directive shall not apply to third-country nationals who at the time of application reside in the territory of a Member State with the exception of cases referred to in Article 15.

[1] OJ C 369, 17.12.2011, p. 14.

2. When transposing this Directive the Member States shall, where appropriate in consultation with the social partners, list those sectors of employment which include activities that are dependent on the passing of the seasons. The Member States may modify that list, where appropriate in consultation with the social partners. The Member States shall inform the Commission of such modifications.

3. This Directive shall not apply to third-country nationals who:

(a) are carrying out activities on behalf of undertakings established in another Member State in the framework of the provision of services within the meaning of Article 56 TFEU, including third-country nationals posted by undertakings established in a Member State in the framework of the provision of services in accordance with Directive 96/71/EC;

(b) are family members of Union citizens who have exercised their right to free movement within the Union, in conformity with Directive 2004/38/EC of the European Parliament and of the Council [1];

(c) together with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and the Member States or between the Union and third countries.

Article 3

Definitions

For the purposes of this Directive the following definitions apply:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;

(b) 'seasonal worker' means a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State;

(c) 'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations;

(d) 'seasonal worker permit' means an authorisation issued using the format laid down in Council Regulation (EC) No 1030/2002 [2] bearing a reference to seasonal work and entitling its holder to stay and work in the territory of a Member State for a stay exceeding 90 days under the terms of this Directive;

(e) 'short-stay visa' means an authorisation issued by a Member State as provided for in point (2)(a) of Article 2 of the Visa Code or issued in accordance with the national law of a Member State not applying the Schengen *acquis* in full;

(f) 'long-stay visa' means an authorisation issued by a Member State as provided for in Article 18 of the Schengen Implementing Convention or issued in accordance with the national law of a Member State not applying the Schengen *acquis* in full;

(g) 'single application procedure' means a procedure leading, on the basis of one application for the authorisation of a third-country national's stay and work in the territory of a Member State, to a decision on the application for a seasonal worker permit;

(h) 'authorisation for the purpose of seasonal work' means any of the authorisations referred to in Article 12 entitling their holder to stay and work on the territory of the Member State that issued the authorisation under this Directive;

(i) 'work permit' means any authorisation issued by a Member State in accordance with national law for the purpose of work in the territory of that Member State.

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:

(a) Union law, including bilateral and multilateral agreements concluded between the Union or between the Union 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 third-country nationals to whom it applies in respect of Articles 18, 19, 20, 23 and 25.

[1] 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 (OJ L 158, 30.4.2004, p. 77).

[2] Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

Criteria and requirements for admission for employment as a seasonal worker for stays not exceeding 90 days

1. Applications for admission to a Member State under the terms of this Directive for a stay not exceeding 90 days shall be accompanied by:

(a) a valid work contract or, if provided for by national law, administrative regulations, or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in that Member State which specifies:

(i) the place and type of the work;

(ii) the duration of employment;

(iii) the remuneration;

(iv) the working hours per week or month;

(v) the amount of any paid leave;

(vi) where applicable other relevant working conditions; and

(vii) if possible, the date of commencement of employment;

(b) evidence of having or, if provided for by national law, having applied for 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 as a result of, the work carried out in that Member State;

(c) evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided in accordance with Article 20.

2. Member States shall require that the conditions referred to in point (a) of paragraph 1 comply with applicable law, collective agreements and/or practice.

3. On the basis of the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will have no recourse to their social assistance systems.

4. In cases where the work contract or binding job offer specifies that the third-country national will exercise a regulated profession, as defined in Directive 2005/36/EC of the European Parliament and of the Council [1], the Member State may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of that regulated profession.

5. When examining an application for an authorisation referred to in Article 12(1), Member States not applying the Schengen *acquis* in full shall verify that the third-country national:

(a) does not present a risk of illegal immigration;

(b) intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.

Article 6

Criteria and requirements for admission as a seasonal worker for stays exceeding 90 days

1. Applications for admission to a Member State under the terms of this Directive for a stay exceeding 90 days shall be accompanied by:

(a) a valid work contract or, if provided for by national law, administrative regulations, or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in that Member State which specifies:

(i) the place and type of the work;

(ii) the duration of employment;

(iii) the remuneration;

(iv) the working hours per week or month;

(v) the amount of any paid leave;

(vi) where applicable, other relevant working conditions; and

(vii) if possible, the date of commencement of employment;

(b) evidence of having or, if provided for by national law, having applied for, 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 as a result of, the work carried out in that Member State;

[1] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

(c) evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, in accordance with Article 20.

2. Member States shall require that the conditions referred to in point (a) of paragraph 1 comply with applicable law, collective agreements and/or practice.

3. On the basis of the documentation provided pursuant to paragraph 1, Member States shall require that the seasonal worker will have sufficient resources during his or her stay to maintain him/herself without having recourse to their social assistance systems.

4. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted.

5. When examining an application for an authorisation referred to in Article 12(2), Member States shall verify that the third-country national does not present a risk of illegal immigration and that he or she intends to leave the territory of the Member States at the latest on the date of expiry of the authorisation.

6. In cases where the work contract or binding job offer specifies that the third-country national will exercise a regulated profession, as defined in Directive 2005/36/EC, the Member State may require the applicant to present documentation attesting that the third-country national fulfils the conditions laid down under national law for the exercise of that regulated profession.

7. Member States shall require third-country nationals to be in possession of a valid travel document, as determined by national law. Member States shall require the period of validity of the travel document to cover at least the period of validity of the authorisation for the purpose of seasonal work.

In addition, Member States may require:

(a) the period of validity to exceed the intended duration of stay by a maximum of three months;

(b) the travel document to have been issued within the last 10 years; and

(c) the travel document to contain at least two blank pages.

Article 7

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals entering its territory for the purpose of seasonal work. On this basis, an application for an authorisation for the purpose of seasonal work may be either considered inadmissible or be rejected.

Article 8

Grounds for rejection

1. Member States shall reject an application for authorisation for the purpose of seasonal work where:

(a) Articles 5 or 6 are not complied with; or

(b) the documents presented for the purpose of Articles 5 or 6 were fraudulently acquired, or falsified, or tampered with.

2. Member States shall, if appropriate, reject an application for authorisation for the purpose of seasonal work where:

(a) the employer has been sanctioned in accordance with national law for undeclared work and/or illegal employment;

(b) the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or

(c) the employer has been sanctioned under Article 17.

3. Member States may verify whether the vacancy in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in that Member State, in which case they may reject the application. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

4. Member States may reject an application for authorisation for the purpose of seasonal work where:

(a) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements;

(b) within the 12 months immediately preceding the date of the application, the employer has abolished a full-time position in order to create the vacancy that the employer is trying to fill by use of this Directive; or

(c) the third-country national has not complied with the obligations arising from a previous decision on admission as a seasonal worker.

5. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.

6. Grounds for refusing the issuing of a short-stay visa are regulated in the relevant provisions of the Visa Code.

Article 9

Withdrawal of the authorisation for the purpose of seasonal work

1. Member States shall withdraw the authorisation for the purpose of seasonal work where:

(a) the documents presented for the purpose of Articles 5 or 6 were fraudulently acquired, or falsified, or tampered with; or

(b) the holder is staying for purposes other than those for which he or she was authorised to stay.

2. Member States shall, if appropriate, withdraw the authorisation for the purpose of seasonal work where:

(a) the employer has been sanctioned in accordance with national law for undeclared work and/or illegal employment;

(b) the employer's business is being or has been wound up under national insolvency laws or no economic activity is taking place; or

(c) the employer has been sanctioned under Article 17.

3. Member States may withdraw the authorisation for the purpose of seasonal work where:

(a) Articles 5 or 6 are not or are no longer complied with;

(b) the employer has failed to meet its legal obligations regarding social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements;

(c) the employer has not fulfilled its obligations under the work contract; or

(d) within the 12 months immediately preceding the date of the application, the employer has abolished a full-time position in order to create the vacancy that the employer is trying to fill by use of this Directive.

4. Member States may withdraw the authorisation for the purpose of seasonal work if the third-country national applies for international protection under Directive 2011/95/EU of the European Parliament and of the Council [1] or for protection in accordance with national law, international obligations or practice of the Member State concerned.

5. Without prejudice to paragraph 1, any decision to withdraw the authorisation shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.

6. Grounds for annulment or revocation of a short-stay visa are regulated in the relevant provisions of the Visa Code.

Article 10

Obligation of cooperation

Member States may require the employer to provide all relevant information needed for issuing, extending or renewing the authorisation for the purpose of seasonal work.

CHAPTER III

PROCEDURE AND AUTHORISATIONS FOR THE PURPOSE OF SEASONAL WORK

Article 11

Access to information

1. Member States shall make easily accessible to applicants the information on all documentary evidence needed for an application and information on entry and stay, including the rights and obligations and the procedural safeguards of the seasonal worker.

2. When Member States issue third-country nationals with an authorisation for the purpose of seasonal work, they shall also provide them with information in writing about their rights and obligations under this Directive, including complaint procedures.

Article 12

Authorisations for the purpose of seasonal work

1. For stays not exceeding 90 days, Member States shall issue third-country nationals who comply with Article 5 and do not fall within the grounds set out in Article 8 one of the following authorisations for the purpose of seasonal work, without prejudice to the rules on the issuing of short-stay visas as laid down in the Visa Code and in Council Regulation (EC) No 1683/95 [2]:

[1] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

[2] Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1).

(a) a short-stay visa, indicating that it is issued for the purpose of seasonal work;

(b) a short-stay visa and a work permit indicating that they are issued for the purpose of seasonal work; or

(c) a work permit indicating that it is issued for the purpose of seasonal work, where the third-country national is exempted from the visa requirement in accordance with Annex II of Regulation (EC) No 539/2001 and the Member State concerned does not apply Article 4(3) of that Regulation to him or her.

When transposing this Directive, Member States shall provide for either the authorisations referred to in points (a) and (c) or the authorisations referred to in points (b) and (c).

2. For stays exceeding 90 days, Member States shall issue third-country nationals who comply with Article 6 and do not fall within the grounds set out in Article 8, one of the following authorisations for the purpose of seasonal work:

(a) a long-stay visa, indicating that it is issued for the purpose of seasonal work;

(b) a seasonal worker permit; or

(c) a seasonal worker permit and a long-stay visa, if the long-stay visa is required under national law for entering the territory.

When transposing this Directive, Member States shall provide for only one of the authorisations referred to in points (a), (b) and (c).

3. Without prejudice to the Schengen *acquis*, Member States shall determine whether an application is to be submitted by the third-country national and/or by the employer.

The obligation on the Member States to determine whether the application is to be submitted by a third-country national and/or by the employer shall be without prejudice to any arrangements requiring both to be involved in the procedure.

4. The seasonal worker permit referred to in points (b) and (c) of the first subparagraph of paragraph 2 shall be issued by the competent authorities of the Member States using the format laid down in Regulation (EC) No 1030/2002. Member States shall enter a reference on the permit stating that it is issued for the purpose of seasonal work.

5. In the case of long-stay visas, Member States shall enter a reference stating that it is issued for the purpose of seasonal work under the heading 'remarks' on the visa sticker in accordance with point 12 of the Annex to Regulation (EC) No 1683/95.

6. Member States may indicate additional information relating to the employment relationship of the seasonal worker 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.

7. Where a visa is required for the sole purpose of entering the territory of a Member State and the third-country national fulfils the conditions for being issued with a seasonal worker permit under point (c) of the first subparagraph of paragraph 2, the Member State concerned shall grant the third-country national every facility to obtain the requisite visa.

8. The issuing of a long-stay visa referred to in point (a) of the first subparagraph of paragraph 2 shall be without prejudice to the possibility for Member States to issue a prior authorisation to work in the Member State concerned.

Article 13

Applications for a seasonal worker permit

1. Member States shall designate the authorities competent to receive and decide on applications for and to issue seasonal worker permits.

2. An application for a seasonal worker permit shall be submitted in a single application procedure.

Article 14

Duration of stay

1. Member States shall determine a maximum period of stay for seasonal workers which shall be not less than five months and not more than nine months in any 12-month period. After the expiry of that period, the third-country national shall leave the territory of the Member State unless the Member State concerned has issued a residence permit under national or Union law for purposes other than seasonal work.

2. Member States may determine a maximum period of time within any 12-month period, during which an employer is allowed to hire seasonal workers. That period shall be not less than the maximum period of stay determined pursuant to paragraph 1.

Article 15

Extension of stay or renewal of the authorisation for the purposes of seasonal work

1. Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay, where seasonal workers extend their contract with the same employer.

2. Member States may decide, in accordance with their national law, to allow seasonal workers to extend their contract with the same employer and their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.

3. Within the maximum period referred to in Article 14(1) and provided that Articles 5 or 6 are complied with and the grounds set out in point (b) of Article 8(1), Article 8(2) and, if applicable, Article 8(4) are not met, Member States shall allow seasonal workers one extension of their stay to be employed with a different employer.

4. Member States may decide, in accordance with their national law, to allow seasonal workers to be employed by a different employer and to extend their stay more than once, provided that the maximum period referred to in Article 14(1) is not exceeded.

5. For the purposes of paragraphs 1 to 4, Member States shall accept the submission of an application when the seasonal worker admitted under this Directive is on the territory of the Member State concerned.

6. Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work when the vacancy in question could be filled by nationals of the Member State concerned or by other Union citizens, or by third-country nationals lawfully residing in the Member State. This paragraph shall apply without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession.

7. Member States shall refuse to extend the stay or renew the authorisation for the purpose of seasonal work where the maximum duration of stay as defined in Article 14(1) has been reached.

8. Member States may refuse to extend the stay or renew the authorisation for the purpose of seasonal work if the third-country national applies for international protection under Directive 2011/95/EU or if the third-country national applies for protection in accordance with national law, international obligations or practice of the Member State concerned.

9. Article 9(2) and points (b), (c) and (d) of Article 9(3) shall not apply to a seasonal worker who applies to be employed by a different employer in accordance with paragraph 3 of this Article when those provisions apply to the previous employer.

10. Grounds for extension of a short-stay visa are regulated in the relevant provisions of the Visa Code.

11. Without prejudice to Article 8(1), any decision on an application for an extension or renewal shall take account of the specific circumstances of the case, including the interests of the seasonal worker, and respect the principle of proportionality.

Article 16

Facilitation of re-entry

1. Member States shall facilitate re-entry of third-country nationals who were admitted to that Member State as seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays.

2. The facilitation referred to in paragraph 1 may include one or more measures such as:

(a) the grant of an exemption from the requirement to submit one or more of the documents referred to in Articles 5 or 6;

(b) the issuing of several seasonal worker permits in a single administrative act;

(c) an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa;

(d) priority in examining applications for admission as a seasonal worker, including taking into account previous admissions when deciding on applications with regard to the exhaustion of volumes of admission.

Article 17

Sanctions against employers

1. Member States shall provide for sanctions against employers who have not fulfilled their obligations under this Directive, including the exclusion of employers who are in serious breach of their obligations under this Directive from employing seasonal workers. Those sanctions shall be effective, proportionate and dissuasive.

2. Member States shall ensure that, if the authorisation for the purpose of seasonal work is withdrawn pursuant to Article 9(2) and points (b), (c) and (d) of Article 9(3), the employer shall be liable to pay compensation to the seasonal worker in accordance with procedures under national law. Any liability shall cover any outstanding obligations which the employer would have to respect if the authorisation for the purpose of seasonal work had not been withdrawn.

3. Where the employer is a subcontractor who has infringed this Directive and where the main contractor and any intermediate subcontractor have not undertaken due diligence obligations as defined by national law, the main contractor and any intermediate subcontractor may:

(a) be subject to the sanctions referred to in paragraph 1;

(b) in addition to or in place of the employer, be liable to pay any compensation due to the seasonal worker in accordance with paragraph 2;

(c) in addition to or in place of the employer, be liable to pay any back payments due to the seasonal worker under national law.

Member States may provide for more stringent liability rules under national law.

Article 18

Procedural safeguards

1. The competent authorities of the Member State shall adopt a decision on the application for authorisation for the purpose of seasonal work. The competent authorities shall notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2. In the case of an application for an extension of stay or for the renewal of the authorisation pursuant to Article 15, Member States shall take all reasonable steps to ensure that the seasonal worker is not obliged to interrupt his or her employment relationship with the same employer, or prevented from changing employer, due to on-going administrative procedures.

Where the validity of the authorisation for the purpose of seasonal work expires during the procedure for extension or renewal, in accordance with their national law, Member States shall allow the seasonal worker to stay on their territory until the competent authorities have taken a decision on the application, provided that the application was submitted within the period of validity of that authorisation and that the time period referred to in Article 14(1) has not expired.

Where the second subparagraph applies, Member States may, inter alia, decide to:

(a) issue national temporary residence permits or equivalent authorisations until a decision is taken;

(b) allow the seasonal worker to work until that decision is taken.

During the period of examination of the application for extension or renewal, the relevant provisions of this Directive shall apply.

3. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period 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 competent authorities have received the additional information required.

4. Reasons for a decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting an application for authorisation for the purpose of seasonal work or refusing an extension of stay or renewal of the authorisation for the purpose of seasonal work shall be given in writing to the applicant. Reasons for a decision withdrawing the authorisation for the purpose of seasonal work shall be given in writing to both the seasonal worker and, if provided for in national law, the employer.

5. Any decision declaring inadmissible an application for authorisation for the purpose of seasonal work or rejecting the application, refusing an extension of stay or renewal of an authorisation for the purpose of seasonal work or withdrawing an authorisation for the purpose of seasonal work shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.

6. Procedural safeguards concerning short-stay visas are regulated in the relevant provisions of the Visa Code.

Article 19

Fees and costs

1. Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive. Fees for short-stay visas are regulated in the relevant provisions of the Schengen *acquis*. Where those fees are paid by the third-country national, Member States may provide that they are entitled to be reimbursed by the employer in accordance with national law.

2. Member States may require employers of seasonal workers to pay for:

(a) the cost of travel from the seasonal workers' place of origin to the place of work in the Member State concerned and the return journey;

(b) the cost of sickness insurance referred to in point (b) of Article 5(1) and point (b) of Article 6(1).

When paid by the employers, such costs shall not be recoverable from the seasonal workers.

Article 20

Accommodation

1. Member States shall require evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.

2. Where accommodation is arranged by or through the employer:

(a) the seasonal worker may be required to pay a rent which shall not be excessive compared with his or her net remuneration and compared with the quality of the accommodation. The rent shall not be automatically deducted from the wage of the seasonal worker;

(b) the employer shall provide the seasonal worker with a rental contract or equivalent document in which the rental conditions of the accommodation are clearly stated;

(c) the employer shall ensure that the accommodation meets the general health and safety standards in force in the Member State concerned.

Article 21

Placement by public employment services

Member States may determine that the placement of seasonal workers shall only be carried out by public employment services.

CHAPTER IV

RIGHTS

Article 22

Rights on the basis of the authorisation for the purpose of seasonal work

During the period of validity of the authorisation referred to in Article 12, the holder shall enjoy at least the following rights:

(a) the right to enter and stay in the territory of the Member State that issued the authorisation;

(b) free access to the entire territory of the Member State that issued the authorisation in accordance with national law;

(c) the right to exercise the concrete employment activity authorised under the authorisation in accordance with national law.

Article 23

Right to equal treatment

1. Seasonal workers shall be entitled to equal treatment with nationals of the host Member State at least with regard to:

(a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;

(b) the right to strike and take industrial action, in accordance with the host Member State's national law and practice, and freedom of association and affiliation and membership of an organisation representing workers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations, including the right to negotiate and conclude collective agreements, without prejudice to the national provisions on public policy and public security;

(c) back payments to be made by the employers, concerning any outstanding remuneration to the third-country national;

(d) branches of social security, as defined in Article 3 of Regulation (EC) No 883/2004;

(e) access to goods and services and the supply of goods and services made available to the public, except housing, without prejudice to the freedom of contract in accordance with Union and national law;

(f) advice services on seasonal work afforded by employment offices;

(g) education and vocational training;

(h) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

(i) tax benefits, in so far as the seasonal worker is deemed to be resident for tax purposes in the Member State concerned.

Seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out 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.

2. Member States may restrict equal treatment:

(i) under point (d) of the first subparagraph of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Regulation (EU) No 1231/2010;

(ii) under point (g) of the first subparagraph of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans;

(iii) under point (i) of the first subparagraph 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 seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

3. The right to equal treatment provided for in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to extend or renew the authorisation for the purpose of seasonal work in accordance with Articles 9 and 15.

Article 24

Monitoring, assessment and inspections

1. Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.

2. Member States shall ensure that services in charge of inspection of labour or competent authorities and, where provided for under national law for national workers, organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation.

Article 25

Facilitation of complaints

1. Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or through a competent authority of the Member State when provided for by national law.

2. Member States shall ensure that third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of a seasonal worker, with his or her approval, in any administrative or civil proceedings, excluding the procedures and decisions concerning short-stay visas, provided for with the objective of implementing this Directive.

3. Member States shall ensure that seasonal workers have the same access as other workers in a similar position to measures protecting against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with this Directive.

CHAPTER V

FINAL PROVISIONS

Article 26

Statistics

1. Member States shall communicate to the Commission statistics on the number of authorisations for the purpose of seasonal work issued for the first time and, as far as possible, on the number of third-country nationals whose authorisation for the purpose of seasonal work has been extended, renewed or withdrawn. Those statistics shall be disaggregated by citizenship, and as far as possible by the period of validity of the authorisation and the economic sector.

2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2017.

3. The statistics referred to in paragraph 1 shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council [1].

[1] 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 and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, 31.7.2007, p. 23).

Article 27

Reporting

Every three years, and for the first time no later than 30 September 2019, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary.

Article 28

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 September 2016. They shall forthwith communicate the text of those measures to the Commission.

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 29

Entry into force

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

Article 30

Addressees

This Directive is addressed to the Member States, in accordance with the Treaties.

Done at Strasbourg, 26 February 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	D. KOURKOULAS

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2014/66/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 May 2014

on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

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,

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

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 field of immigration which are fair towards third-country nationals.

(2) The TFEU provides that the Union is to develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows and fair treatment of third-country nationals residing legally in Member States. To that end, the European Parliament and the Council are to adopt measures on the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, as well as 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.

(3) The Commission's Communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth' sets the objective of the Union becoming an economy based on knowledge and innovation, reducing the administrative burden on companies and better matching labour supply with demand. Measures to make it easier for third-country managers, specialists and trainee employees to enter the Union in the framework of an intra-corporate transfer have to be seen in that broader context.

([1]) OJ C 218, 23.7.2011, p. 101.
([2]) OJ C 166, 7.6.2011, p. 59.
([3]) Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of 13 May 2014.

(4) The Stockholm Programme, adopted by the European Council on 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges that will face the Union in the future and, consequently, an increased demand for labour, flexible immigration policies will make an important contribution to the Union's economic development and performance in the longer term. The Stockholm Programme thus invites the Commission and the Council to continue implementing the Policy Plan on Legal Migration set out in the Commission's Communication of 21 December 2005.

(5) As a result of the globalisation of business, increasing trade and the growth and spread of multinational groups, in recent years movements of managers, specialists and trainee employees of branches and subsidiaries of multinationals, temporarily relocated for short assignments to other units of the company, have gained momentum.

(6) Such intra-corporate transfers of key personnel result in new skills and knowledge, innovation and enhanced economic opportunities for the host entities, thus advancing the knowledge-based economy in the Union while fostering investment flows across the Union. Intra-corporate transfers from third countries also have the potential to facilitate intra-corporate transfers from the Union to third-country companies and to put the Union in a stronger position in its relationship with international partners. Facilitation of intra-corporate transfers enables multinational groups to tap their human resources best.

(7) The set of rules established by this Directive may also benefit the migrants' countries of origin as this temporary migration may, under its well-established rules, foster transfers of skills, knowledge, technology and know-how.

(8) This Directive should be without prejudice to the principle of preference for Union citizens as regards access to Member States' labour market as expressed in the relevant provisions of the relevant Acts of Accession.

(9) This Directive should be without prejudice to the right of Member States to issue permits other than intra-corporate transferee permits for any purpose of employment if a third-country national does not fall within the scope of this Directive.

(10) This Directive should establish a transparent and simplified procedure for admission of intra-corporate transferees, based on common definitions and harmonised criteria.

(11) Member States should ensure that appropriate checks and effective inspections are carried out in order to guarantee the proper enforcement of this Directive. The fact that an intra-corporate transferee permit has been issued should not affect or prevent the Member States from applying, during the intra-corporate transfer, their labour law provisions having — in accordance with Union law — as their objective checking compliance with the working conditions as set out in Article 18(1).

(12) The possibility for a Member State to impose, on the basis of national law, sanctions against an intra-corporate transferee's employer established in a third country should remain unaffected.

(13) For the purpose of this Directive, intra-corporate transferees should encompass managers, specialists and trainee employees. Their definition should build on specific commitments of the Union under the General Agreement on Trade in Services (GATS) and bilateral trade agreements. Since those commitments undertaken under GATS do not cover conditions of entry, stay and work, this Directive should complement and facilitate the application of those commitments. However, the scope of the intra-corporate transfers covered by this Directive should be broader than that implied by trade commitments, as the transfers do not necessarily take place within the services sector and may originate in a third country which is not party to a trade agreement.

(14) To assess the qualifications of intra-corporate transferees, Member States should make use of the European Qualifications Framework (EQF) for lifelong learning, as appropriate, for the assessment of qualifications in a comparable and transparent manner. EQF National Coordination Points may provide information and guidance on how national qualifications levels relate to the EQF.

(15) Intra-corporate transferees should benefit from at least the same terms and conditions of employment as posted workers whose employer is established on the territory of the Union, as defined by Directive 96/71/EC of the European Parliament and of the Council ([1]). Member States should require that intra-corporate transferees enjoy equal treatment with nationals occupying comparable positions as regards the remuneration which will be granted during the entire transfer. Each Member State should be responsible for checking the remuneration granted to the intra-corporate transferees during their stay on its territory. That is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards to take any competitive advantage.

(16) In order to ensure that the skills of the intra-corporate transferee are specific to the host entity, the transferee should have been employed within the same group of undertakings from at least three up to twelve uninterrupted months immediately prior to the transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees.

(17) As intra-corporate transfers constitute temporary migration, the maximum duration of one transfer to the Union, including mobility between Member States, should not exceed three years for managers and specialists and one year for trainee employees after which they should leave for a third country unless they obtain a residence permit on another basis in accordance with Union or national law. The maximum duration of the transfer should encompass the cumulated durations of consecutively issued intra-corporate transferee permits. A subsequent transfer to the Union might take place after the third-country national has left the territory of the Member States.

(18) In order to ensure the temporary character of an intra-corporate transfer and prevent abuses, Member States should be able to require a certain period of time to elapse between the end of the maximum duration of one transfer and another application concerning the same third-country national for the purposes of this Directive in the same Member State.

(19) As intra-corporate transfers consist of temporary secondment, the applicant should provide evidence, as part of the work contract or the assignment letter, that the third-country national will be able to transfer back to an entity belonging to the same group and established in a third country at the end of the assignment. The applicant should also provide evidence that the third-country national manager or specialist possesses the professional qualifications and adequate professional experience needed in the host entity to which he or she is to be transferred.

(20) Third-country nationals who apply to be admitted as trainee employees should provide evidence of a university degree. In addition, they should, if required, present a training agreement, including a description of the training programme, its duration and the conditions in which the trainee employees will be supervised, proving that they will benefit from genuine training and not be used as normal workers.

(21) Unless it conflicts with the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, no labour market test should be required.

(22) A Member State should recognise professional qualifications acquired by a third-country national in another Member State in the same way as those of Union citizens and should take into account qualifications acquired in a third country in accordance with Directive 2005/36/EC of the European Parliament and the Council ([2]). Such recognition should be without prejudice to any restrictions on access to regulated professions deriving from reservations to the existing commitments as regards regulated professions made by the Union or by the Union and its Member States in the framework of trade agreements. In any event, this Directive should not provide for a more favourable treatment of intra-corporate transferees, in comparison with Union or European Economic Area nationals, as regards access to regulated professions in a Member State.

([1]) 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 (OJ L 18, 21.1.1997, p. 1).

([2]) Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

(23) This Directive should not affect the right of the Member States to determine the volumes of admission in accordance with Article 79(5) TFEU.

(24) With a view to fighting possible abuses of this Directive, Member States should be able to refuse, withdraw or not renew an intra-corporate transferee permit where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees and/or does not have a genuine activity.

(25) This Directive aims to facilitate mobility of intra-corporate transferees within the Union ('intra-EU mobility') and to reduce the administrative burden associated with work assignments in several Member States. For this purpose, this Directive sets up a specific intra-EU mobility scheme whereby the holder of a valid intra-corporate transferee permit issued by a Member State is allowed to enter, to stay and to work in one or more Member States in accordance with the provisions governing short-term and long-term mobility under this Directive. Short-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit, for a period of up to 90 days per Member State. Long-term mobility for the purposes of this Directive should cover stays in Member States other than the one that issued the intra-corporate transferee permit for more than 90 days per Member State. In order to prevent circumvention of the distinction between short-term and long-term mobility, short-term mobility in relation to a given Member State should be limited to a maximum of 90 days in any 180-day period and it should not be possible to submit a notification for short-term mobility and an application for long-term mobility at the same time. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the second Member State may request that the application be submitted at least 20 days before the end of the short-term mobility period.

(26) While the specific mobility scheme established by this Directive should lay down autonomous rules regarding entry and stay for the purpose of work as an intra-corporate transferee in Member States other than the one that issued the intra-corporate transferee permit, all the other rules governing the movement of persons across borders as laid down in the relevant provisions of the Schengen *acquis* continue to apply.

(27) In order to facilitate checks, if the transfer involves several locations in different Member States, the competent authorities of second Member States should be provided where applicable with the relevant information.

(28) Where intra-corporate transferees have exercised their right to mobility, the second Member State should, under certain conditions, be in a position to take steps so that the intra-corporate transferees' activities do not contravene the relevant provisions of this Directive.

(29) Member States should provide for effective, proportionate and dissuasive sanctions, such as financial sanctions, to be imposed in the event of failure to comply with this Directive. Those sanctions could, inter alia, consist of measures as provided for in Article 7 of Directive 2009/52/EC of the European Parliament and of the Council [1]. Those sanctions could be imposed on the host entity established in the Member State concerned.

(30) Provision for a single procedure leading to one combined title encompassing both residence and work permit ('single permit') should contribute to simplifying the rules currently applicable in Member States.

(31) It should be possible to set up a simplified procedure for entities or groups of undertakings which have been recognised for that purpose. Recognition should be regularly assessed.

(32) Once a Member State has decided to admit a third-country national fulfilling the criteria laid down in this Directive, that third-country national should receive an intra-corporate transferee permit allowing him or her to carry out, under certain conditions, his or her assignment in diverse entities belonging to the same transnational corporation, including entities located in other Member States.

[1] 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 (OJ L 168, 30.6.2009, p. 24).

(33) Where a visa is required and the third-country national fulfils the criteria for being issued with an intra-corporate transferee permit, the Member State should grant the third-country national every facility to obtain the requisite visa and should ensure that the competent authorities effectively cooperate for that purpose.

(34) Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen *acquis* in full and the intra-corporate transferee, in the framework of intra-EU mobility, crosses an external border within the meaning of Regulation (EC) No 562/2006 of the European Parliament and of the Council ([1]), a Member State should be entitled to require evidence proving that the intra-corporate transferee is moving to its territory for the purpose of an intra-corporate transfer. Besides, in case of crossing of an external border within the meaning of Regulation (EC) No 562/2006, the Members States applying the Schengen *acquis* in full should consult the Schengen information system and should refuse entry or object to the mobility for persons for whom an alert for the purposes of refusing entry or stay, as referred to in Regulation (EC) No 1987/2006 of the European Parliament and of the Council ([2]), has been issued in that system.

(35) Member States should be able to indicate additional information in paper format or store such information in electronic format, as referred to in Article 4 of Council Regulation (EC) No 1030/2002 ([3])and point (a)16 of the Annex thereto, in order to provide more precise information on the employment activity during the intra-corporate transfer. The provision of this additional information should be optional for Member States and should not constitute an additional requirement that would compromise the single permit and the single application procedure.

(36) This Directive should not prevent intra-corporate transferees from exercising specific activities at the sites of clients within the Member State where the host entity is established in accordance with the provisions applying in that Member State with regard to such activities.

(37) This Directive does not affect the conditions of the provision of services in the framework of Article 56 TFEU. In particular, this Directive does not affect the terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted by an undertaking established in a Member State to provide a service in the territory of another Member State. This Directive should not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC. Third-country nationals holding an intra-corporate transferee permit cannot avail themselves of Directive 96/71/EC. This Directive should not give undertakings established in a third country any more favourable treatment than undertakings established in a Member State, in line with Article 1(4) of Directive 96/71/EC.

(38) Adequate social security coverage for intra-corporate transferees, including, where relevant, benefits for their family members, is important for ensuring decent working and living conditions while staying in the Union. Therefore, equal treatment should be granted under national law in respect of those branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council ([4]). This Directive does not harmonise the social security legislation of Member States. It is limited to applying the principle of equal treatment in the field of social security to the persons falling within its scope. The right to equal treatment in the field of social security applies to third-country nationals who fulfil the objective and non-discriminatory conditions laid down by the law of the Member State where the work is carried out with regard to affiliation and entitlement to social security benefits.

In many Member States, the right to family benefits is conditional upon a certain connection with that Member State since the benefits are designed to support a positive demographic development in order to secure the future work force in that Member State. Therefore, this Directive should not affect the right of a Member State to restrict, under certain conditions, equal treatment in respect of family benefits, since the intra-corporate transferee and the accompanying family members are staying temporarily in that Member State. Social security rights

([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]) 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) (OJ L 381, 28.12.2006, p. 4).

([3]) Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1).

([4]) Regulation (EC) No 883/04 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

should be granted without prejudice to provisions of national law and/or bilateral agreements providing for the application of the social security legislation of the country of origin. However, bilateral agreements or national law on social security rights of intra-corporate transferees which are adopted after the entry into force of this Directive should not provide for less favourable treatment than the treatment granted to nationals of the Member State where the work is carried out. As a result of national law or such agreements, it may be, for example, in the interests of the intra-corporate transferees to remain affiliated to the social security system of their country of origin if an interruption of their affiliation would adversely affect their rights or if their affiliation would result in their bearing the costs of double coverage. Member States should always retain the possibility to grant more favourable social security rights to intra-corporate transferees. Nothing in this Directive should affect the right of survivors who derive rights from the intra-corporate transferee to receive survivor's pensions when residing in a third country.

(39) In the event of mobility between Member States, Regulation (EU) No 1231/2010 of the European Parliament and of the Council ([1]) should apply accordingly. This Directive should not confer more rights than those already provided for in existing Union law in the field of social security for third-country nationals who have cross-border interests between Member States.

(40) In order to make the specific set of rules established by this Directive more attractive and to allow it to produce all the expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification in the Member State which issued the intra-corporate transferee permit and in those Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with the provisions of this Directive on long-term mobility. This right would indeed remove an important obstacle to potential intra-corporate transferees for accepting an assignment. In order to preserve family unity, family members should be able to join the intra-corporate transferee in another Member State, and their access to the labour market should be facilitated.

(41) In order to facilitate the fast processing of applications, Member States should give preference to exchanging information and transmitting relevant documents electronically, unless technical difficulties occur or essential interests require otherwise.

(42) The collection and transmission of files and data should be carried out in compliance with the relevant data protection and security rules.

(43) This Directive should not apply to third -country nationals who apply to reside in a Member State as researchers in order to carry out a research project, as they fall within the scope of Council Directive 2005/71/EC ([2]).

(44) Since the objectives of this Directive, namely a special admission procedure and the adoption of conditions of entry and residence for the purpose of intra-corporate transfers of third-country nationals, cannot be sufficiently achieved by the Member States but can rather, 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.

(45) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, which itself builds upon the rights deriving from the Social Charters adopted by the Union and by the Council of Europe.

([1]) 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 on nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality (OJ L 344, 29.12.2010, p. 1).

([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 (OJ L 289, 3.11.2005, p. 15).

(46) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 ([1]), 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.

(47) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, 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 or subject to its application.

(48) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and 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

This Directive lays down:

(a) the conditions of entry to, and residence for more than 90 days in, the territory of the Member States, and the rights, of third-country nationals and of their family members in the framework of an intra-corporate transfer;

(b) the conditions of entry and residence, and the rights, of third-country nationals, referred to in point (a), in Member States other than the Member State which first grants the third-country national an intra-corporate transferee permit on the basis of this Directive.

Article 2

Scope

1. This Directive shall apply to third-country nationals who reside outside the territory of the Member States at the time of application and apply to be admitted or who have been admitted to the territory of a Member State under the terms of this Directive, in the framework of an intra-corporate transfer as managers, specialists or trainee employees.

2. This Directive shall not apply to third-country nationals who:

(a) 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;

(b) under agreements between the Union and its Member States and third countries, enjoy rights of free movement equivalent to those of Union citizens or are employed by an undertaking established in those third countries;

([1]) OJ C 369, 17.12.2011, p. 14.

(c) are posted in the framework of Directive 96/71/EC;

(d) carry out activities as self-employed workers;

(e) are assigned by employment agencies, temporary work agencies or any other undertakings engaged in making available labour to work under the supervision and direction of another undertaking;

(f) are admitted as full-time students or who are undergoing a short-term supervised practical training as part of their studies.

3. This Directive shall be without prejudice to the right of Member States to issue residence permits, other than the intra-corporate transferee permit covered by this Directive, for any purpose of employment for third-country nationals who fall outside the scope of this Directive.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

(a) 'third-country national' means any person who is not a citizen of the Union, within the meaning of Article 20(1) TFEU;

(b) 'intra-corporate transfer' means the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States;

(c) 'intra-corporate transferee' means any third-country national who resides outside the territory of the Member States at the time of application for an intra-corporate transferee permit and who is subject to an intra-corporate transfer;

(d) 'host entity' means the entity to which the intra-corporate transferee is transferred, regardless of its legal form, established, in accordance with national law, in the territory of a Member State;

(e) 'manager' means a person holding a senior position, who primarily directs the management of the host entity, receiving general supervision or guidance principally from the board of directors or shareholders of the business or equivalent; that position shall include: directing the host entity or a department or subdivision of the host entity; supervising and controlling work of the other supervisory, professional or managerial employees; having the authority to recommend hiring, dismissing or other personnel action;

(f) 'specialist' means a person working within the group of undertakings possessing specialised knowledge essential to the host entity's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification including adequate professional experience referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession;

(g) 'trainee employee' means a person with a university degree who is transferred to a host entity for career development purposes or in order to obtain training in business techniques or methods, and is paid during the transfer;

(h) 'family members' means the third-country nationals referred to in Article 4(1) of Council Directive 2003/86/EC ([1]);

(i) 'intra-corporate transferee permit' means an authorisation bearing the acronym 'ICT' entitling its holder to reside and work in the territory of the first Member State and, where applicable, of second Member States, under the terms of this Directive;

([1]) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

(j) 'permit for long-term mobility' means an authorisation bearing the term 'mobile ICT' entitling the holder of an intra-corporate transferee permit to reside and work in the territory of the second Member State under the terms of this Directive;

(k) 'single application procedure' means the procedure leading, on the basis of one application for the authorisation for residence and work of a third-country national in the territory of a Member State, to a decision on that application;

(l) 'group of undertakings' means two or more undertakings recognised as linked under national law in the following ways: an undertaking, in relation to another undertaking directly or indirectly, holds a majority of that undertaking's subscribed capital; controls a majority of the votes attached to that undertaking's issued share capital; is entitled to appoint more than half of the members of that undertaking's administrative, management or supervisory body; or the undertakings are managed on a unified basis by the parent undertaking;

(m) 'first Member State' means the Member State which first issues a third-country national an intra-corporate transferee permit;

(n) 'second Member State' means any Member State in which the intra-corporate transferee intends to exercise or exercises the right of mobility within the meaning of this Directive, other than the first Member State;

(o) 'regulated profession' means a regulated profession as defined in point (a) of Article 3(1) of Directive 2005/36/EC.

Article 4

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:

(a) Union law, including bilateral and multilateral agreements concluded between the Union 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 third-country nationals to whom it applies in respect of point (h) of Article 3, and Articles 15, 18 and 19.

CHAPTER II

CONDITIONS OF ADMISSION

Article 5

Criteria for admission

1. Without prejudice to Article 11(1), a third-country national who applies to be admitted under the terms of this Directive or the host entity shall:

(a) provide evidence that the host entity and the undertaking established in a third country belong to the same undertaking or group of undertakings;

(b) provide evidence of employment within the same undertaking or group of undertakings, from at least three up to twelve uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of managers and specialists, and from at least three up to six uninterrupted months in the case of trainee employees;

(c) present a work contract and, if necessary, an assignment letter from the employer containing the following:

(i) details of the duration of the transfer and the location of the host entity or entities;

(ii) evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities in the Member State concerned;

(iii) the remuneration as well as other terms and conditions of employment granted during the intra-corporate transfer;

(iv) evidence that the third-country national will be able to transfer back to an entity belonging to that undertaking or group of undertakings and established in a third country at the end of the intra-corporate transfer;

(d) provide evidence that the third-country national has the professional qualifications and experience needed in the host entity to which he or she is to be transferred as manager or specialist or, in the case of a trainee employee, the university degree required;

(e) where applicable, present documentation certifying that the third-country national fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;

(f) present a valid travel document of the third-country national, as determined by national law, and, if required, an application for a visa or a visa; Member States may require the period of validity of the travel document to cover at least the period of validity of the intra-corporate transferee permit;

(g) without prejudice to existing bilateral agreements, provide evidence of having, or, if provided for by national law, having applied for, 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 as a result of, the work carried out in that Member State.

2. Member States may require the applicant to present the documents listed in points (a), (c), (d), (e) and (g) of paragraph 1 in an official language of the Member State concerned.

3. Member States may require the applicant to provide, at the latest at the time of the issue of the intra-corporate transferee permit, the address of the third-country national concerned in the territory of the Member State.

4. Member States shall require that:

(a) all conditions in the law, regulations, or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met during the intra-corporate transfer with regard to terms and conditions of employment other than remuneration.

In the absence of a system for declaring collective agreements of universal application, Member States may base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers and employee organisations at national level and which are applied throughout their national territory;

(b) the remuneration granted to the third-country national during the entire intra-corporate transfer is not less favourable than the remuneration granted to nationals of the Member State where the work is carried out occupying comparable positions in accordance with applicable laws or collective agreements or practices in the Member State where the host entity is established.

5. On the basis of the documentation provided pursuant to paragraph 1, Member States may require that the intra-corporate transferee will have sufficient resources during his or her stay to maintain himself or herself and his or her family members without having recourse to the Member States' social assistance systems.

6. In addition to the evidence required under paragraph 1, any third-country national who applies to be admitted as a trainee employee may be required to present a training agreement relating to the preparation for his or her future position within the undertaking or group of undertakings, including a description of the training programme, which demonstrates that the purpose of the stay is to train the trainee employee for career development purposes or in order to obtain training in business techniques or methods, its duration and the conditions under which the trainee employee is supervised during the programme.

7. Any modification during the application procedure that affects the criteria for admission set out in this Article shall be notified by the applicant to the competent authorities of the Member State concerned.

8. Third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted for the purposes of this Directive.

Article 6

Volumes of admission

This Directive shall not affect the right of a Member State to determine the volumes of admission of third-country nationals in accordance with Article 79(5) TFEU. On that basis, an application for an intra-corporate transferee permit may either be considered inadmissible or be rejected.

Article 7

Grounds for rejection

1. Member States shall reject an application for an intra-corporate transferee permit in any of the following cases:

(a) where Article 5 is not complied with;

(b) where the documents presented were fraudulently acquired, or falsified, or tampered with;

(c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;

(d) where the maximum duration of stay as defined in Article 12(1) has been reached.

2. Member States shall, if appropriate, reject an application where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

3. Member States may reject an application for an intra-corporate transferee permit in any of the following cases:

(a) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(b) where the employer's or the host entity's business is being or has been wound up under national insolvency laws or no economic activity is taking place;

(c) where the intent or effect of the temporary presence of the intra-corporate transferee is to interfere with, or otherwise affect the outcome of, any labour management dispute or negotiation.

4. Member States may reject an application for an intra-corporate transferee permit on the ground set out in Article 12(2).

5. Without prejudice to paragraph 1, any decision to reject an application shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 8

Withdrawal or non-renewal of the intra-corporate transferee permit

1. Member States shall withdraw an intra-corporate transferee permit in any of the following cases:

(a) where it was fraudulently acquired, or falsified, or tampered with;

(b) where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;

(c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees.

2. Member States shall, if appropriate, withdraw an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

3. Member States shall refuse to renew an intra-corporate transferee permit in any of the following cases:

(a) where it was fraudulently acquired, or falsified, or tampered with;

(b) where the intra-corporate transferee is residing in the Member State concerned for purposes other than those for which he or she was authorised to reside;

(c) where the host entity was established for the main purpose of facilitating the entry of intra-corporate transferees;

(d) where the maximum duration of stay as defined in Article 12(1) has been reached.

4. Member States shall, if appropriate, refuse to renew an intra-corporate transferee permit where the employer or the host entity has been sanctioned in accordance with national law for undeclared work and/or illegal employment.

5. Member States may withdraw or refuse to renew an intra-corporate transferee permit in any of the following cases:

(a) where Article 5 is not or is no longer complied with;

(b) where the employer or the host entity has failed to meet its legal obligations regarding social security, taxation, labour rights or working conditions;

(c) where the employer's or the host entity's business is being or has been wound up under national insolvency laws or if no economic activity is taking place;

(d) where the intra-corporate transferee has not complied with the mobility rules set out in Articles 21 and 22.

6. Without prejudice to paragraphs 1 and 3, any decision to withdraw or to refuse to renew an intra-corporate transferee permit shall take account of the specific circumstances of the case and respect the principle of proportionality.

Article 9

Sanctions

1. Member States may hold the host entity responsible for failure to comply with the conditions of admission, stay and mobility laid down in this Directive.

2. The Member State concerned shall provide for sanctions where the host entity is held responsible in accordance with paragraph 1. Those sanctions shall be effective, proportionate and dissuasive.

3. Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice.

CHAPTER III

PROCEDURE AND PERMIT

Article 10

Access to information

1. Member States shall make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence, including the rights, obligations and procedural safeguards, of the intra-corporate transferee and of his or her family members. Member States shall also make easily available information on the procedures applicable to the short-term mobility referred to in Article 21(2) and to the long-term mobility referred to in Article 22(1).

2. The Member States concerned shall make available information to the host entity on the right of Member States to impose sanctions in accordance with Articles 9 and 23.

Article 11

Applications for an intra-corporate transferee permit or a permit for long-term mobility

1. Member States shall determine whether an application is to be submitted by the third-country national or by the host entity. Member States may also decide to allow an application from either of the two.

2. The application for an intra-corporate transferee permit shall be submitted when the third-country national is residing outside the territory of the Member State to which admission is sought.

3. The application for an intra-corporate transferee permit shall be submitted to the authorities of the Member State where the first stay takes place. Where the first stay is not the longest, the application shall be submitted to the authorities of the Member State where the longest overall stay is to take place during the transfer.

4. Member States shall designate the authorities competent to receive the application and to issue the intra-corporate transferee permit or the permit for long-term mobility.

5. The applicant shall be entitled to submit an application in a single application procedure.

6. Simplified procedures relating to the issue of intra-corporate transferee permits, permits for long-term mobility, permits granted to family members of an intra-corporate transferee, and visas may be made available to entities or to undertakings or groups of undertakings that have been recognised for that purpose by Member States in accordance with their national law or administrative practice.

Recognition shall be regularly reassessed.

7. The simplified procedures provided for in paragraph 6 shall at least include:

(a) exempting the applicant from presenting some of the evidence referred to in Article 5 or in point (a) of Article 22(2);

(b) a fast-track admission procedure allowing intra-corporate transferee permits and permits for long-term mobility to be issued within a shorter time than specified in Article 15(1) or in point (b) of Article 22(2); and/or

(c) facilitated and/or accelerated procedures in relation to the issue of the requisite visas.

8. Entities or undertakings or groups of undertakings which have been recognised in accordance with paragraph 6 shall notify to the relevant authority any modification affecting the conditions for recognition without delay and, in any event, within 30 days.

9. Member States shall provide for appropriate sanctions, including revocation of recognition, in the event of failure to notify the relevant authority.

Article 12

Duration of an intra-corporate transfer

1. The maximum duration of the intra-corporate transfer shall be three years for managers and specialists and one year for trainee employees after which they shall leave the territory of the Member States unless they obtain a residence permit on another basis in accordance with Union or national law.

2. Without prejudice to their obligations under international agreements, Member States may require a period of up to six months to elapse between the end of the maximum duration of a transfer referred to in paragraph 1 and another application concerning the same third-country national for the purposes of this Directive in the same Member State.

Article 13

Intra-corporate transferee permit

1. Intra-corporate transferees who fulfil the admission criteria set out in Article 5 and for whom the competent authorities have taken a positive decision shall be issued with an intra-corporate transferee permit.

2. The period of validity of the intra-corporate transferee permit shall be at least one year or the duration of the transfer to the territory of the Member State concerned, whichever is shorter, and may be extended to a maximum of three years for managers and specialists and one year for trainee employees.

3. The intra-corporate transferee permit shall be issued by the competent authorities of the Member State using the uniform format laid down in Regulation (EC) No 1030/2002.

4. Under the heading 'type of permit', in accordance with point (a) 6.4 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter 'ICT'.

Member States may also add an indication in their official language or languages.

5. Member States shall not issue any additional permits, in particular work permits of any kind.

6. Member States may indicate additional information relating to the employment activity during the intra-corporate transfer of the third-country national in paper format, and/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.

7. The Member State concerned shall grant third-country nationals whose application for admission has been accepted every facility to obtain the requisite visa.

Article 14

Modifications affecting the conditions for admission during the stay

Any modification during the stay that affects the conditions for admission set out in Article 5 shall be notified by the applicant to the competent authorities of the Member State concerned.

Article 15

Procedural safeguards

1. The competent authorities of the Member State concerned shall adopt a decision on the application for an intra-corporate transferee permit or a renewal of it and notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days from the date on which the complete application was submitted.

2. Where the information or documentation supplied in support of the application is incomplete, the competent authorities shall notify the applicant within a reasonable period 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 competent authorities have received the additional information required.

3. Reasons for a decision declaring inadmissible or rejecting an application or refusing renewal shall be given to the applicant in writing. Reasons for a decision withdrawing an intra-corporate transferee permit shall be given in writing to the intra-corporate transferee and to the host entity.

4. Any decision declaring inadmissible or rejecting the application, refusing renewal, or withdrawing an intra-corporate transferee permit shall be open to legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the court or administrative authority with which an appeal may be lodged and the time-limit for lodging the appeal.

5. Within the period referred to in Article 12(1) an applicant shall be allowed to submit an application for renewal before the expiry of the intra-corporate transferee permit. Member States may set a maximum deadline of 90 days prior to the expiry of the intra-corporate transferee permit for submitting an application for renewal.

6. Where the validity of the intra-corporate transferee permit expires during the procedure for renewal, Member States shall allow the intra-corporate transferee to stay on their territory until the competent authorities have taken a decision on the application. In such a case, they may issue, where required under national law, national temporary residence permits or equivalent authorisations.

Article 16

Fees

Member States may require the payment of fees for the handling of applications in accordance with this Directive. The level of such fees shall not be disproportionate or excessive.

CHAPTER IV

RIGHTS

Article 17

Rights on the basis of the intra-corporate transferee permit

During the period of validity of an intra-corporate transferee permit, the holder shall enjoy at least the following rights:

(a) the right to enter and stay in the territory of the first Member State;

(b) free access to the entire territory of the first Member State in accordance with its national law;

(c) the right to exercise the specific employment activity authorised under the permit in accordance with national law in any host entity belonging to the undertaking or the group of undertakings in the first Member State.

The rights referred to in points (a) to (c) of the first paragraph of this Article shall be enjoyed in second Member States in accordance with Article 20.

Article 18

Right to equal treatment

1. Whatever the law applicable to the employment relationship, and without prejudice to point (b) of Article 5(4), intra-corporate transferees admitted under this Directive shall enjoy at least equal treatment with persons covered by Directive 96/71/EC with regard to the terms and conditions of employment in accordance with Article 3 of Directive 96/71/EC in the Member State where the work is carried out.

2. Intra-corporate transferees shall enjoy equal treatment with nationals of the Member State where the work is carried out as regards:

(a) 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 rights and benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(b) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

(c) provisions in national law regarding the branches of social security defined in Article 3 of Regulation (EC) No 883/2004, unless the law of the country of origin applies by virtue of bilateral agreements or the national law of the Member State where the work is carried out, ensuring that the intra-corporate transferee is covered by the social security legislation in one of those countries. In the event of intra-EU mobility, and without prejudice to bilateral agreements ensuring that the intra-corporate transferee is covered by the national law of the country of origin, Regulation (EU) No 1231/2010 shall apply accordingly;

(d) without prejudice to Regulation (EU) No 1231/2010 and to bilateral agreements, payment of old-age, invalidity and death statutory pensions based on the intra-corporate transferees' previous employment and acquired by intra-corporate transferees moving to a third country, or the survivors of such intra-corporate transferees residing in a third country deriving rights from the intra-corporate transferee, in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member State concerned when they move to a third country;

(e) access to goods and services and the supply of goods and services made available to the public, except procedures for obtaining housing as provided for by national law, without prejudice to freedom of contract in accordance with Union and national law, and services afforded by public employment offices.

The bilateral agreements or national law referred to in this paragraph shall constitute international agreements or Member States' provisions within the meaning of Article 4.

3. Without prejudice to Regulation (EU) No 1231/2010, Member States may decide that point (c) of paragraph 2 with regard to family benefits shall not apply to intra-corporate transferees who have been authorised to reside and work in the territory of a Member State for a period not exceeding nine months.

4. This Article shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the permit in accordance with Article 8.

Article 19

Family members

1. Directive 2003/86/EC shall apply in the first Member State and in second Member States which allow the intra-corporate transferee to stay and work on their territory in accordance with Article 22 of this Directive, subject to the derogations laid down in this Article.

2. By way of derogation from Article 3(1) and Article 8 of Directive 2003/86/EC, family reunification in the Member States shall not be made dependent on the requirement that the holder of the permit issued by those Member States on the basis of this Directive has reasonable prospects of obtaining the right of permanent residence and has a minimum period of residence.

3. By way of derogation from the third subparagraph of Article 4(1) and from Article 7(2) of Directive 2003/86/EC, the integration measures referred to therein may be applied by the Member States only 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 by a Member State, if the conditions for family reunification are fulfilled, within 90 days from the date on which the complete application was submitted. The competent authority of the Member State shall process the residence permit application for the intra-corporate transferee's family members at the same time as

the application for the intra-corporate transferee permit or the permit for long-term mobility, in cases where the residence permit application for the intra-corporate transferee's family members is submitted at the same time. The procedural safeguards laid down in Article 15 shall apply accordingly.

5. By way of derogation from Article 13(2) of Directive 2003/86/EC, the duration of validity of the residence permits of family members in a Member State shall, as a general rule, end on the date of expiry of the intra-corporate transferee permit or the permit for long-term mobility issued by that Member State.

6. By way of derogation from Article 14(2) of Directive 2003/86/EC and without prejudice to the principle of preference for Union citizens as expressed in the relevant provisions of the relevant Acts of Accession, the family members of the intra-corporate transferee who have been granted family reunification shall be entitled to have access to employment and self-employed activity in the territory of the Member State which issued the family member residence permit.

CHAPTER V

INTRA-EU MOBILITY

Article 20

Mobility

Third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State may, on the basis of that permit and a valid travel document and under the conditions laid down in Article 21 and 22 and subject to Article 23, enter, stay and work in one or several second Member States.

Article 21

Short-term mobility

1. Third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State shall be entitled to stay in any second Member State and work in any other entity, established in the latter and belonging to the same undertaking or group of undertakings, for a period of up to 90 days in any 180-day period per Member State subject to the conditions laid down in this Article.

2. The second Member State may require the host entity in the first Member State to notify the first Member State and the second Member State of the intention of the intra-corporate transferee to work in an entity established in the second Member State.

In such cases, the second Member State shall allow the notification to take place either:

(a) at the time of the application in the first Member State, where the mobility to the second Member State is already envisaged at that stage; or

(b) after the intra-corporate transferee was admitted to the first Member State, as soon as the intended mobility to the second Member State is known.

3. The second Member State may require the notification to include the transmission of the following documents and information:

(a) evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;

(b) the work contract and, if necessary, the assignment letter, which were transmitted to the first Member State in accordance with point (c) of Article 5(1);

(c) where applicable, documentation certifying that the intra-corporate transferee fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;

(d) a valid travel document, as provided for in point (f) of Article 5(1); and

(e) where not specified in any of the preceding documents, the planned duration and dates of the mobility.

The second Member State may require those documents and that information to be presented in an official language of that Member State.

4. Where the notification has taken place in accordance with point (a) of paragraph 2, and where the second Member State has not raised any objection with the first Member State in accordance with paragraph 6, the mobility of the intra-corporate transferee to the second Member State may take place at any moment within the period of validity of the intra-corporate transferee permit.

5. Where the notification has taken place in accordance with point (b) of paragraph 2, the mobility may be initiated after the notification to the second Member State immediately or at any moment thereafter within the period of validity of the intra-corporate transferee permit.

6. Based on the notification referred to in paragraph 2, the second Member State may object to the mobility of the intra-corporate transferee to its territory within 20 days from having received the notification, where:

(a) the conditions set out in point (b) of Article 5(4) or in point (a), (c) or (d) of paragraph 3 of this Article are not complied with;

(b) the documents presented were fraudulently acquired, or falsified, or tampered with;

(c) the maximum duration of stay as defined in Article 12(1) or in paragraph 1 of this Article has been reached.

The competent authorities of the second Member State shall inform without delay the competent authorities of the first Member State and the host entity in the first Member State about their objection to the mobility.

7. Where the second Member State objects to the mobility in accordance with paragraph 6 of this Article and the mobility has not yet taken place, the intra-corporate transferee shall not be allowed to work in the second Member State as part of the intra-corporate transfer. Where the mobility has already taken place, Article 23(4) and (5) shall apply.

8. Where the intra-corporate transferee permit is renewed by the first Member State within the maximum duration provided for in Article 12(1), the renewed intra-corporate transferee permit shall continue to authorise its holder to work in the second Member State, subject to the maximum duration provided for in paragraph 1 of this Article.

9. Intra-corporate transferees who are considered to pose a threat to public policy, public security or public health shall not be allowed to enter or to stay on the territory of the second Member State.

Article 22

Long-term mobility

1. In relation to third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State and who intend to stay in any second Member State and work in any other entity, established in the latter and belonging to the same undertaking or group of undertakings, for more than 90 days per Member State, the second Member State may decide to:

(a) apply Article 21 and allow the intra-corporate transferee to stay and work on its territory on the basis of and during the period of validity of the intra-corporate transferee permit issued by the first Member State; or

(b) apply the procedure provided for in paragraphs 2 to 7.

2. Where an application for long-term mobility is submitted:

(a) the second Member State may require the applicant to transmit some or all of the following documents where they are required by the second Member State for an initial application:

(i) evidence that the host entity in the second Member State and the undertaking established in a third country belong to the same undertaking or group of undertakings;

(ii) a work contract and, if necessary, an assignment letter, as provided for in point (c) of Article 5(1);

(iii) where applicable, documentation certifying that the third-country national fulfils the conditions laid down under the national law of the Member State concerned for Union citizens to exercise the regulated profession to which the application relates;

(iv) a valid travel document, as provided for in point (f) of Article 5(1);

(v) evidence of having, or, if provided for by national law, having applied for, sickness insurance, as provided for in point (g) of Article 5(1).

The second Member State may require the applicant to provide, at the latest at the time of issue of the permit for long-term mobility, the address of the intra-corporate transferee concerned in the territory of the second Member State.

The second Member State may require those documents and that information to be presented in an official language of that Member State;

(b) the second Member State shall take a decision on the application for long-term mobility and notify the decision to the applicant in writing as soon as possible but not later than 90 days from the date on which the application and the documents provided for in point (a) were submitted to the competent authorities of the second Member State;

(c) the intra-corporate transferee shall not be required to leave the territories of the Member States in order to submit the application and shall not be subject to a visa requirement;

(d) the intra-corporate transferee shall be allowed to work in the second Member State until a decision on the application for long-term mobility has been taken by the competent authorities, provided that:

(i) the time period referred to in Article 21(1) and the period of validity of the intra-corporate transferee permit issued by the first Member State has not expired; and

(ii) if the second Member State so requires, the complete application has been submitted to the second Member State at least 20 days before the long-term mobility of the intra-corporate transferee starts;

(e) an application for long-term mobility may not be submitted at the same time as a notification for short-term mobility. Where the need for long-term mobility arises after the short-term mobility of the intra-corporate transferee has started, the second Member State may request that the application for long-term mobility be submitted at least 20 days before the short-term mobility ends.

3. Member States may reject an application for long-term mobility where:

(a) the conditions set out in point (a) of paragraph 2 of this Article are not complied with or the criteria set out in Article 5(4), Article 5(5) or Article 5(8) are not complied with;

(b) one of the grounds covered by point (b) or (d) of Article 7(1) or by Article 7(2), (3) or (4) applies; or

(c) the intra-corporate transferee permit expires during the procedure.

4. Where the second Member State takes a positive decision on the application for long-term mobility as referred to in paragraph 2, the intra-corporate transferee shall be issued with a permit for long-term mobility allowing the intra-corporate transferee to stay and work in its territory. This permit shall be issued using the uniform format laid down in Regulation (EC) No 1030/2002. Under the heading 'type of permit', in accordance with point (a)6.4 of the Annex to Regulation (EC) No 1030/2002, the Member States shall enter: 'mobile ICT'. Member States may also add an indication in their official language or languages.

Member States may indicate additional information relating to the employment activity during the long-term mobility of the intra-corporate transferee in paper format, and/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.

5. Renewal of a permit for long-term mobility is without prejudice to Article 11(3).

6. The second Member State shall inform the competent authorities in the first Member State where a permit for long-term mobility is issued.

7. Where a Member State takes a decision on an application for long-term mobility, Article 8, Article 15(2) to (6) and Article 16 shall apply accordingly.

Article 23

Safeguards and sanctions

1. Where the intra-corporate transferee permit is issued by a Member State not applying the Schengen *acquis* in full and the intra-corporate transferee crosses an external border, the second Member State shall be entitled to require as evidence that the intra-corporate transferee is moving to the second Member State for the purpose of an intra-corporate transfer:

(a) a copy of the notification sent by the host entity in the first Member State in accordance with Article 21(2); or

(b) a letter from the host entity in the second Member State that specifies at least the details of the duration of the intra-EU mobility and the location of the host entity or entities in the second Member State.

2. Where the first Member State withdraws the intra-corporate transferee permit, it shall inform the authorities of the second Member State immediately.

3. The host entity of the second Member State shall inform the competent authorities of the second Member State of any modification which affects the conditions on which basis the mobility was allowed to take place.

4. The second Member State may request that the intra-corporate transferee immediately cease all employment activity and leave its territory where:

(a) it has not been notified in accordance with Article 21(2) and (3) and requires such notification;

(b) it has objected to the mobility in accordance with Article 21(6);

(c) it has rejected an application for long-term mobility in accordance with Article 22(3);

(d) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;

(e) the conditions on which the mobility was allowed to take place are no longer fulfilled.

5. In the cases referred to in paragraph 4, the first Member State shall, upon request of the second Member State, allow re-entry of the intra-corporate transferee, and, where applicable, of his or her family members, without formalities and without delay. That shall also apply if the intra-corporate transferee permit issued by the first Member State has expired or has been withdrawn during the period of mobility within the second Member State.

6. Where the holder of an intra-corporate transferee permit crosses the external border of a Member State applying the Schengen *acquis* in full, that Member State shall consult the Schengen information system. That Member State shall refuse entry or object to the mobility of persons for whom an alert for the purposes of refusing entry and stay has been issued in the Schengen information system.

7. Member States may impose sanctions against the host entity established on its territory in accordance with Article 9, where:

(a) the host entity has failed to notify the mobility of the intra-corporate transferee in accordance with Article 21(2) and (3);

(b) the intra-corporate transferee permit or the permit for long-term mobility is used for purposes other than those for which it was issued;

(c) the application for an intra-corporate transferee permit has been submitted to a Member State other than the one where the longest overall stay takes place;

(d) the intra-corporate transferee no longer fulfils the criteria and conditions on the basis of which the mobility was allowed to take place and the host entity fails to notify the competent authorities of the second Member State of such a modification;

(e) the intra-corporate transferee started to work in the second Member State, although the conditions for mobility were not fulfilled in case Article 21(5) or point (d) of Article 22(2) applies.

CHAPTER VI

FINAL PROVISIONS

Article 24

Statistics

1. Member States shall communicate to the Commission statistics on the number of intra-corporate transferee permits and permits for long-term mobility issued for the first time, and, where applicable, the notifications received pursuant to Article 21(2) and, as far as possible, on the number of intra-corporate transferees whose permit has been renewed or withdrawn. Those statistics shall be disaggregated by citizenship and by the period of validity of the permit and, as far as possible, by the economic sector and transferee position.

2. The statistics shall relate to reference periods of one calendar year and shall be communicated to the Commission within six months of the end of the reference year. The first reference year shall be 2017.

3. The statistics shall be communicated in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council ([1]).

Article 25

Reporting

Every three years, and for the first time by 29 November 2019, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose any amendments necessary. The report shall focus in particular on the assessment of the proper functioning of the intra-EU mobility scheme and on possible misuses of such a scheme as well as its interaction with the Schengen *acquis*. The Commission shall in particular assess the practical application of Articles 20, 21, 22, 23 and 26.

([1]) 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 and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (JO L 199, 31.7.2007, p. 23).

Article 26

Cooperation between contact points

1. Member States shall appoint contact points which shall cooperate effectively and be responsible for receiving and transmitting the information needed to implement Articles 21, 22 and 23. Member States shall give preference to exchanging of information via electronic means.

2. Each Member State shall inform the other Member States, via the national contact points referred to in paragraph 1, about the designated authorities referred to in Article 11(4) and about the procedure applied to mobility referred to in the Articles 21 and 22.

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 November 2016. They shall forthwith communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or 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 28

Entry into force

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

Article 29

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 15 May 2014.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	D. KOURKOULAS

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.

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(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.

▼B

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.

▼B

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.

▼B

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.

▼B

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.

▼B

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.

▼B

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.

▼M1

6. This Article shall be without prejudice to Article 21(1) of Directive 2004/83/EC.

▼B

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.

▼B

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.

▼B

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.

▼B

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.

▼M1

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.

▼B

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.

▼B

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.

▼M1

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.

▼B

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.

▼B

Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in the first paragraph.

▼B

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. *Regulation (EU) No 604/2013 of the European Parliament and of the Council of of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast of Regulation No 343/2003)* (*)

2. *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast of Qualification Directive 2004/83/EC)* (*)

3. *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast of Reception Directive 2003/9/EC)* (*)

4. *Directive 2013/32/EU of the EP and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast of Procedures Directive 2005/85/EC)* (*)

5. *Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office*

REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

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 78(2)(e) 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) A number of substantive changes are to be made to 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 [4]. In the interests of clarity, that Regulation should be recast.

(2) A common policy on asylum, including a Common European Asylum System (CEAS), 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 Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing the CEAS, 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 ('the Geneva Convention'), thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, all respecting the principle of *non-refoulement*, are considered as safe countries for third-country nationals.

(4) The Tampere conclusions also stated that the CEAS should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) 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 granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

(6) The first phase in the creation of a CEAS that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted international protection, has now been completed. The European Council of 4 November 2004 adopted The Hague Programme which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council with a view to their adoption before 2010.

(7) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted

[1] OJ C 317, 23.12.2009, p. 115.
[2] OJ C 79, 27.3.2010, p. 58.
[3] Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 370) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).
[4] OJ L 50, 25.2.2003, p. 1.

international protection, by 2012 at the latest. Furthermore it emphasised that the Dublin system remains a cornerstone in building the CEAS, as it clearly allocates responsibility among Member States for the examination of applications for international protection.

(8) The resources of the European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010 of the European Parliament and of the Council [1], should be available to provide adequate support to the relevant services of the Member States responsible for implementing this Regulation. In particular, EASO should provide solidarity measures, such as the Asylum Intervention Pool with asylum support teams, to assist those Member States which are faced with particular pressure and where applicants for international protection ('applicants') cannot benefit from adequate standards, in particular as regards reception and protection.

(9) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Regulation (EC) No 343/2003, while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system. Given that a well-functioning Dublin system is essential for the CEAS, its principles and functioning should be reviewed as other components of the CEAS and Union solidarity tools are built up. A comprehensive 'fitness check' should be foreseen by conducting an evidence-based review covering the legal, economic and social effects of the Dublin system, including its effects on fundamental rights.

(10) In order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2], the scope of this Regulation encompasses applicants for subsidiary protection and persons eligible for subsidiary protection.

(11) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [3] should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.

(12) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [4] should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Directive.

(13) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

(14) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.

(15) The processing together of the applications for international protection of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.

(16) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should become a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion.

[1] OJ L 132, 29.5.2010, p. 11.
[2] OJ L 337, 20.12.2011, p. 9.
[3] See page 96 of this Official Journal.
[4] See page 60 of this Official Journal.

(17) Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

(18) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection. As soon as the application for international protection is lodged, the applicant should be informed of the application of this Regulation and of the possibility, during the interview, of providing information regarding the presence of family members, relatives or any other family relations in the Member States, in order to facilitate the procedure for determining the Member State responsible.

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.

(20) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive 2013/33/EU also to persons detained on the basis of this Regulation.

(21) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, can jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights and refugee rights.

(22) A process for early warning, preparedness and management of asylum crises serving to prevent a deterioration in, or the collapse of, asylum systems, with EASO playing a key role using its powers under Regulation (EU) No 439/2010, should be established in order to ensure robust cooperation within the framework of this Regulation and to develop mutual trust among Member States with respect to asylum policy. Such a process should ensure that the Union is alerted as soon as possible when there is a concern that the smooth functioning of the system set up by this Regulation is being jeopardised as a result of particular pressure on, and/or deficiencies in, the asylum systems of one or more Member States. Such a process would allow the Union to promote preventive measures at an early stage and pay the appropriate political attention to such situations. Solidarity, which is a pivotal element in the CEAS, goes hand in hand with mutual trust. By enhancing such trust, the process for early warning, preparedness and management of asylum crises could improve the steering of concrete measures of genuine and practical solidarity towards Member States, in order to assist the affected Member States in general and the applicants in particular. In accordance with Article 80 TFEU, Union acts should, whenever necessary, contain appropriate measures to give effect to the principle of solidarity, and the process should be accompanied by such measures. The conclusions on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows, adopted by the Council on 8 March 2012, provide for a 'tool box' of existing and potential new measures, which should be taken into account in the context of a mechanism for early warning, preparedness and crisis management.

(23) Member States should collaborate with EASO in the gathering of information concerning their ability to manage particular pressure on their asylum and reception systems, in particular within the framework of the application of this Regulation. EASO should regularly report on the information gathered in accordance with Regulation (EU) No 439/2010.

(24) In accordance with Commission Regulation (EC) No 1560/2003 [1], transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the applicant and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the

[1] OJ L 222, 5.9.2003, p. 3.

best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.

(25) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the TFEU and the establishment of Union 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.

(26) 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] applies to the processing of personal data by the Member States under this Regulation.

(27) The exchange of an applicant's personal data, including sensitive data on his or her health, prior to a transfer, will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provisions should be made to ensure the protection of data relating to applicants involved in that situation, in accordance with Directive 95/46/EC.

(28) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication 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.

(29) Continuity between the system for determining the Member State responsible established by Regulation (EC) No 343/2003 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparisons with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes [2].

(30) The operation of the Eurodac system, as established by Regulation (EU) No 603/2013, should facilitate the application of this Regulation.

(31) The operation of the Visa Information System, as established by 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 [3], and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.

(32) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.

(33) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers [4].

(34) The examination procedure should be used for the adoption of a common leaflet on Dublin/Eurodac, as well as a specific leaflet for unaccompanied minors; of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge and take back requests; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.

[1] OJ L 281, 23.11.1995, p. 31.

[2] See page 1 of this Official Journal.

[3] OJ L 218, 13.8.2008, p. 60.

[4] OJ L 55, 28.2.2011, p. 13.

(35) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the identification of family members, siblings or relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements for assessing a dependency link; the criteria for assessing the capacity of a person to take care of a dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3) of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(36) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from, among others, all relevant national authorities.

(37) Detailed rules for the application of Regulation (EC) No 343/2003 have been laid down by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 should be incorporated into this Regulation, either for reasons of clarity or because they can serve a general objective. In particular, it is important, both for the Member States and the applicants concerned, that there should be a general mechanism for finding a solution in cases where Member States differ over the application of a provision of this Regulation. It is therefore justified to incorporate the mechanism provided for in Regulation (EC) No 1560/2003 for the settling of disputes on the humanitarian clause into this Regulation and to extend its scope to the entirety of this Regulation.

(38) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

(39) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.

(40) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(41) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.

(42) In accordance with Articles 1 and 2 of 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 Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Member State responsible').

Article 2

Definitions

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not national of a State which participates in this Regulation by virtue of an agreement with the European Union;

(b) 'application for international protection' means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

(c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(d) 'examination of an application for international protection' means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;

(e) 'withdrawal of an application for international protection' means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly;

(f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(a) of Directive 2011/95/EU;

(g) '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 on the territory of the Member States:

— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

— when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

— when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present;

(h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

(i) 'minor' means a third-country national or a stateless person below the age of 18 years;

(j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

(k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor, in accordance with this Regulation;

(l) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on 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 Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

(m) '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:

— 'long-stay visa' means an authorisation or decision issued by one of the Member States in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than three months,

— 'short-stay visa' means an authorisation or decision of a Member State with a view to transit through or an intended stay on the territory of one or more or all the Member States of a duration of no more than three months in any six-month period beginning on the date of first entry on the territory of the Member States,

— 'airport transit visa' means a visa valid for transit through the international transit areas of one or more airports of the Member States;

(n) 'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond.

CHAPTER II

GENERAL PRINCIPLES AND SAFEGUARDS

Article 3

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. 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. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.

3. Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.

Article 4

Right to information

1. As soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular of:

(a) the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of moving from one Member State to another during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined;

(b) the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;

(c) the personal interview pursuant to Article 5 and the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;

(d) the possibility to challenge a transfer decision and, where applicable, to apply for a suspension of the transfer;

(e) the fact that the competent authorities of Member States can exchange data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

(f) the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 35 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article 5.

3. The Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article. This common leaflet shall also include information regarding the application of Regulation (EU) No 603/2013 and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2) of this Regulation.

Article 5

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 4.

2. The personal interview may be omitted if:

(a) the applicant has absconded; or

(b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

4. The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Article 6

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

2. Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.

This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor, in accordance with his or her age and maturity.

4. For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 35 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

5. With a view to facilitating the appropriate action to identify the family members, siblings or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 4 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

CHAPTER III

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 7

Hierarchy of criteria

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 set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.

3. In view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance.

Article 8

Minors

1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).

6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 9

Family members who are beneficiaries of international protection

Where the applicant 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 beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10

Family members who are applicants for international protection

If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 11

Family procedure

Where several family members and/or minor unmarried siblings submit applications for international protection 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 their being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(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.

Article 12

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas [1]. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection 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 applicant 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 or her 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 applicant 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 or her 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 for international protection 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 13

Entry and/or stay

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013, that an applicant 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 international protection. That 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 of this Article and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), that the applicant — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — has been living for a continuous period of at least five months in a Member State before lodging the application for international protection, that Member State shall be responsible for examining the application for international protection.

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where he or she has been living most recently shall be responsible for examining the application for international protection.

[1] OJ L 243, 15.9.2009, p. 1.

Article 14

Visa waived entry

1. If a third-country national or a stateless person 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 international protection.

2. The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for international protection 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 that case, that other Member State shall be responsible for examining the application for international protection.

Article 15

Application in an international transit area of an airport

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

CHAPTER IV

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 16

Dependent persons

1. Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

2. Where the child, sibling or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, sibling or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child, sibling or parent of the applicant to its territory.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the elements to be taken into account in order to assess the dependency link, the criteria for establishing the existence of proven family links, the criteria for assessing the capacity of the person concerned to take care of the dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 17

Discretionary clauses

1. By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform, using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003, 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 to take back, the applicant.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with Regulation (EU) No 603/2013 by adding the date when the decision to examine the application was taken.

2. The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16. The persons concerned must express their consent in writing.

The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based.

Where the requested Member State accepts the request, responsibility for examining the application shall be transferred to it.

CHAPTER V

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 18

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;

(b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;

(c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;

(d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document.

2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.

In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU. In such cases, Member States shall ensure that the examination of the application is completed.

In the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.

Article 19

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State.

2. The obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

3. The obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application lodged after an effective removal has taken place shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

CHAPTER VI

PROCEDURES FOR TAKING CHARGE AND TAKING BACK

SECTION I

Start of the procedure

Article 20

Start of the procedure

1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State.

2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant 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 applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The same treatment shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for international protection is lodged with the competent authorities of a Member State by an applicant who is on 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 international protection was lodged.

The applicant shall be informed in writing of this change in the determining Member State and of the date on which it took place.

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24, 25 and 29, by the Member State with which that application for international protection was first lodged, with a view to completing the process of determining the Member State responsible.

That obligation shall cease where the Member State requested to complete the process of determining the Member State responsible can establish that the applicant has in the meantime left the territory of the Member States for a period of at least three months or has obtained a residence document from another Member State.

An application lodged after the period of absence referred to in the second subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

SECTION II

Procedures for take charge requests

Article 21

Submitting a take charge request

1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 14 of Regulation (EU) No 603/2013, the request shall be sent within two months of receiving that hit pursuant to Article 15(2) of that Regulation.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection 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 international protection 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.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. That period shall be at least one week.

3. In the cases referred to in paragraphs 1 and 2, 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 22(3) and/or relevant elements from the applicant'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 Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 22

Replying to a take charge request

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 receipt of the request.

2. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

(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 44 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(b) Circumstantial evidence:

(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 international protection 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 21(2), the requested Member State shall make every effort to comply with 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 its reply after the time limit requested, but in any event 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 obligation to provide for proper arrangements for arrival.

SECTION III

Procedures for take back requests

Article 23

Submitting a take back request when a new application has been lodged in the requesting Member State

1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.

4. A take back request shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the statements of the person concerned, 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 Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 24

Submitting a take back request when no new application has been lodged in the requesting Member State

1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. By way of derogation from Article 6(2) of 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]), where a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system in accordance with Article 17 of Regulation (EU) No 603/2013, the request to take back a person as referred to in Article 18(1)(b) or (c) of this Regulation, or a person as referred to in its Article 18(1)(d) whose application for international protection has not been rejected by a final decision, shall be made as quickly as possible and in any event within two months of receipt of the Eurodac hit, pursuant to Article 17(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

3. Where the take back request is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give that person the opportunity to lodge a new application.

4. Where a person as referred to in Article 18(1)(d) of this Regulation whose application for international protection has been rejected by a final decision in one Member State is on the territory of another Member State without a residence document, the latter Member State may either request the former Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC.

When the latter Member State decides to request the former Member State to take back the person concerned, the rules laid down in Directive 2008/115/EC shall not apply.

5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the person's statements, 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 Commission shall, by means of implementing acts, establish and review periodically two lists indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in Article 22(3)(a) and (b), and shall adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 25

Replying to a take back request

1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.

SECTION IV

Procedural safeguards

Article 26

Notification of a transfer decision

1. Where the requested Member State accepts to take charge of or to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.

2. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

Article 27

Remedies

1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

([1]) OJ L 348, 24.12.2008, p. 98.

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or

(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or

(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.

5. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

6. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. Member States may 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.

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision.

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.

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

SECTION V

Detention for the purpose of transfer

Article 28

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.

SECTION VI

Transfers

Article 29

Modalities and time limits

1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible 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 by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 30

Costs of transfer

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(c) or (d) to the Member State responsible shall be met by the transferring Member State.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

Article 31

Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 18(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;

(b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;

(c) in the case of minors, information on their education;

(d) an assessment of the age of an applicant.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 35 of this Regulation using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

5. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 32

Exchange of health data before a transfer is carried out

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or, if the applicant is physically or legally incapable of giving his or her consent, when such transmission is necessary to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

6. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 33

A mechanism for early warning, preparedness and crisis management

1. Where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation (EU) No 439/2010, the Commission establishes that the application of this Regulation may be jeopardised due either to a substantiated risk of particular pressure being placed on a Member State's asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan.

The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan in order to overcome the pressure and/or problems in the functioning of its asylum system whilst ensuring the protection of the fundamental rights of applicants for international protection.

A Member State may, at its own discretion and initiative, draw up a preventive action plan and subsequent revisions thereof. When drawing up a preventive action plan, the Member State may call for the assistance of the Commission, other Member States, EASO and other relevant Union agencies.

2. Where a preventive action plan is drawn up, the Member State concerned shall submit it and shall regularly report on its implementation to the Council and to the Commission. The Commission shall subsequently inform the European Parliament of the key elements of the preventive action plan. The Commission shall submit reports on its implementation to the Council and transmit reports on its implementation to the European Parliament.

The Member State concerned shall take all appropriate measures to deal with the situation of particular pressure on its asylum system or to ensure that the deficiencies identified are addressed before the situation deteriorates. Where the preventive action plan includes measures aimed at addressing particular pressure on a Member State's asylum system which may jeopardise the application of this Regulation, the Commission shall seek the advice of EASO before reporting to the European Parliament and to the Council.

3. Where the Commission establishes, on the basis of EASO's analysis, that the implementation of the preventive action plan has not remedied the deficiencies identified or where there is a serious risk that the asylum situation in the Member State concerned develops into a crisis which is unlikely to be remedied by a preventive action plan, the Commission, in cooperation with EASO as applicable, may request the Member State concerned to draw up a crisis management action plan and, where necessary, revisions thereof. The crisis management action plan shall ensure, throughout the entire process, compliance with the asylum *acquis* of the Union, in particular with the fundamental rights of applicants for international protection.

Following the request to draw up a crisis management action plan, the Member State concerned shall, in cooperation with the Commission and EASO, do so promptly, and at the latest within three months of the request.

The Member State concerned shall submit its crisis management action plan and shall report, at least every three months, on its implementation to the Commission and other relevant stakeholders, such as EASO, as appropriate.

The Commission shall inform the European Parliament and the Council of the crisis management action plan, possible revisions and the implementation thereof. In those reports, the Member State concerned shall report on data to monitor compliance with the crisis management action plan, such as the length of the procedure, the detention conditions and the reception capacity in relation to the inflow of applicants.

4. Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council shall closely monitor the situation and may request further information and provide political guidance, in particular as regards the urgency and severity of the situation and thus the need for a Member State to draw up either a preventive action plan or, if necessary, a crisis management action plan. The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate.

CHAPTER VII

ADMINISTRATIVE COOPERATION

Article 34

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is appropriate, relevant and non-excessive for:

(a) determining the Member State responsible;

(b) examining the application for international protection;

(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, his or her family members, relatives or any other family relations (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 (EU) No 603/2013;

(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 on which any previous application for international protection was lodged, the date on which 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 international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests 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 international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. It 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 by which applicants enter the territories of the Member States, or on what specific and verifiable part of 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 an individual applicant.

5. The requested Member State shall be obliged to reply within five weeks. Any delays in the reply shall be duly justified. Non-compliance with the five week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Articles 21, 23 and 24 as a reason for refusing to comply with a request to take charge or take back. In that case, the time limits provided for in Articles 21, 23 and 24 for submitting a request to take charge or take back shall be extended by a period of time which shall be equivalent to the delay in the reply by the requested Member State.

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 in accordance with Article 35(1).

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) determining the Member State responsible;

(b) examining the application for international protection;

(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 it 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 applicant shall have the right to be informed, on request, of any data that is processed concerning him or her.

If the applicant finds that the data have been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased.

The authority correcting or erasing the data shall inform, as appropriate, the Member State transmitting or receiving the information.

The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her.

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 they are exchanged.

12. Where the data are not processed automatically or are not contained, or intended to be entered, in a file, each Member State shall take appropriate measures to ensure compliance with this Article through effective checks.

Article 35

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States 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 applicants.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.

3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 for transmitting requests, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 36

Administrative arrangements

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 applicants.

2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities observed.

3. Before concluding or amending any arrangement referred to in paragraph 1(b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.

4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any incompatibilities observed.

5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

CHAPTER VIII

CONCILIATION

Article 37

Conciliation

1. Where the Member States cannot resolve a dispute on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2.

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 44. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

The Chairman of the Committee, or his or her deputy, shall chair the discussion. He or she may put forward his or her point of view but may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

CHAPTER IX

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 38

Data security and data protection

Member States shall take all appropriate measures to ensure the security of transmitted personal data and in particular to avoid unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.

Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question.

Article 39

Confidentiality

Member States shall ensure that the authorities referred to in Article 35 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 40

Penalties

Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Article 41

Transitional measures

Where an application has been lodged after the date mentioned in the second paragraph of Article 49, 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 13(2).

Article 42

Calculation of time limits

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;

(c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

Article 43

Territorial scope

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 44

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 45

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8(5) and 16(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 8(5) and 16(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 8(5) and 16(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 46

Monitoring and evaluation

By 21 July 2016, the Commission shall report to the European Parliament and to 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.

After having submitted that report, the Commission shall report to the European Parliament and to 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 40 of Regulation (EU) No 603/2013.

Article 47

Statistics

In accordance with Article 4(4) of 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]), Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

Article 48

Repeal

Regulation (EC) No 343/2003 is repealed.

Articles 11(1), 13, 14 and 17 of Regulation (EC) No 1560/2003 are repealed.

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

Article 49

Entry into force and applicability

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

It shall apply to applications for international protection 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 applicants, irrespective of the date on which the application was made. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation (EC) No 343/2003.

References in this Regulation to Regulation (EU) No 603/2013, Directive 2013/32/EU and Directive 2013/33/EU shall be construed, until the dates of their application, as references to Regulation (EC) No 2725/2000 ([2]), Directive 2003/9/EC ([3]) and Directive 2005/85/EC ([4]) respectively.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. SHATTER

([1]) OJ L 199, 31.7.2007, p. 23.

([2]) 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 (OJ L 316, 15.12.2000, p. 1).

([3]) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18).

([4]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

ANNEX I

Repealed Regulations (referred to in Article 48)

Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003, p. 1)

Commission Regulation (EC) No 1560/2003 only Articles 11(1), 13, 14 and 17

(OJ L 222, 5.9.2003, p. 3)

ANNEX II

Correlation table

Regulation (EC) No 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	—
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
—	Article 2(h)
—	Article 2(i)
Article 2(h)	Article 2(j)
Article 2(i)	Article 2(g)
—	Article 2(k)
Article 2(j) and (k)	Article 2(l) and (m)
—	Article 2(n)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)
Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
—	Article 4(1)(a) to (f)
—	Article 4(2) and (3)
Article 4(1) to (5)	Article 20(1) to (5)
—	Article 20(5), third subparagraph
—	Article 5
—	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
—	Article 7(3)
Article 6, first paragraph	Article 8(1)
—	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9

Regulation (EC) No 343/2003	This Regulation
Article 8	Article 10
Article 9	Article 12
Article 10	Article 13
Article 11	Article 14
Article 12	Article 15
—	Article 16
Article 13	Article 3(2)
Article 14	Article 11
Article 15(1)	Article 17(2), first subparagraph
Article 15(2)	Article 16(1)
Article 15(3)	Article 8(2)
Article 15(4)	Article 17(2), fourth subparagraph
Article 15(5)	Articles 8(5) and (6) and Article 16(2)
Article 16(1)(a)	Article 18(1)(a)
Article 16(1)(b)	Article 18(2)
Article 16(1)(c)	Article 18(1)(b)
Article 16(1)(d)	Article 18(1)(c)
Article 16(1)(e)	Article 18(1)(d)
Article 16(2)	Article 19(1)
Article 16(3)	Article 19(2), first subparagraph
—	Article 19(2), second subparagraph
Article 16(4)	Article 19(3)
—	Article 19(3), second subparagraph
Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 26(1)
Article 19(2)	Article 26(2) and Article 27(1)
—	Article 27(2) to (6)
Article 19(3)	Article 29(1)
Article 19(4)	Article 29(2)
—	Article 29(3)
Article 19(5)	Article 29(4)
Article 20(1), introductory wording	Article 23(1)
—	Article 23(2)
—	Article 23(3)

Regulation (EC) No 343/2003	This Regulation
—	Article 23(4)
Article 20(1)(a)	Article 23(5), first subparagraph
—	Article 24
Article 20(1)(b)	Article 25(1)
Article 20(1)(c)	Article 25(2)
Article 20(1)(d)	Article 29(1), first subparagraph
Article 20(1)(e)	Article 26(1), (2), Article 27(1), Article 29(1), second and third subparagraphs
Article 20(2)	Article 29(2)
Article 20(3)	Article 23(5), second subparagraph
Article 20(4)	Article 29(4)
—	Article 28
—	Article 30
—	Article 31
—	Article 32
—	Article 33
Article 21(1) to (9)	Article 34(1) to (9), first to third subparagraphs
—	Article 34(9), fourth subparagraph
Article 21(10) to (12)	Article 34(10) to (12)
Article 22(1)	Article 35(1)
—	Article 35(2)
—	Article 35(3)
Article 22(2)	Article 35(4)
Article 23	Article 36
—	Article 37
—	Article 40
Article 24(1)	—
Article 24(2)	Article 41
Article 24(3)	—
Article 25(1)	Article 42
Article 25(2)	—
Article 26	Article 43

Regulation (EC) No 343/2003	This Regulation
Article 27(1), (2)	Article 44(1), (2)
Article 27(3)	—
—	Article 45
Article 28	Article 46
—	Article 47
—	Article 48
Article 29	Article 49

Regulation (EC) No 1560/2003	This Regulation
Article 11(1)	—
Article 13(1)	Article 17(2), first subparagraph
Article 13(2)	Article 17(2), second subparagraph
Article 13(3)	Article 17(2), third subparagraph
Article 13(4)	Article 17(2), first subparagraph
Article 14	Article 37
Article 17(1)	Articles 9, 10, 17(2), first subparagraph
Article 17(2)	Article 34(3)

STATEMENT BY THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE COMMISSION

The Council and the European Parliament invite the Commission to consider, without prejudice to its right of initiative, a revision of Article 8(4) of the Recast of the Dublin Regulation once the Court of Justice rules on case C-648/11 MA and Others vs. Secretary of State for the Home Department and at the latest by the time limits set in Article 46 of the Dublin Regulation. The European Parliament and the Council will then both exercise their legislative competences, taking into account the best interests of the child.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, accepts to consider this invitation, which it understands as being limited to these specific circumstances and not creating a precedent.

DIRECTIVES

DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

(recast)

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 78(2) thereof,

Having regard to the proposal from the European Commission,

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

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

Whereas:

(1) A number of substantive changes are to be made to 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 interests of clarity, that Directive should be recast.

(2) 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 Union.

(3) 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 ('the Geneva Convention'), as supplemented by the New York Protocol of 31 January 1967 ('the Protocol'), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

(4) The Geneva Convention and the Protocol provide the cornerstone of the international legal regime for the protection of refugees.

(5) 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.

(6) 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.

(7) The first phase in the creation of a Common European Asylum System has now been achieved. The European Council of 4 November 2004 adopted the Hague Programme, which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, the Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and the Council, with a view to their adoption before the end of 2010.

(8) In the European Pact on Immigration and Asylum, adopted on 15 and 16 October 2008, the European Council noted that considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes and called for new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, and thus to offer a higher degree of protection.

[1] OJ C 18, 19.1.2011, p. 80.
[2] Position of the European Parliament of 27 October 2011 (not yet published in the Official Journal) and decision of the Council of 24 November 2011.
[3] OJ L 304, 30.9.2004, p. 12.

(9) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity, based on a common asylum procedure and a uniform status, in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted international protection, by 2012 at the latest.

(10) In the light of the results of the evaluations undertaken, it is appropriate, at this stage, to confirm the principles underlying Directive 2004/83/EC as well as to seek to achieve a higher level of approximation of the rules on the recognition and content of international protection on the basis of higher standards.

(11) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressure on their asylum systems, due in particular to their geographical or demographic situation.

(12) 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 those persons in all Member States.

(13) The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks.

(14) Member States should have the power to introduce or maintain more favourable provisions than the standards laid down in this Directive 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 eligible for subsidiary protection.

(15) 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.

(16) 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 and to promote the application of Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of that Charter, and should therefore be implemented accordingly.

(17) 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, including in particular those that prohibit discrimination.

(18) The 'best interests of the child' should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

(19) It is necessary to broaden the notion of family members, taking into account the different particular circumstances of dependency and the special attention to be paid to the best interests of the child.

(20) This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty on European Union (TEU) and the TFEU.

(21) The recognition of refugee status is a declaratory act.

(22) 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.

(23) 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.

(24) It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

(25) 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.

(26) Protection can be provided, where they are willing and able to offer protection, either by the State or by parties or organisations, including international organisations, meeting the conditions set out in this Directive, which control a region or a larger area within the territory of the State. Such protection should be effective and of a non-temporary nature.

(27) Internal protection against persecution or serious harm should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle. Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant. When the applicant is an unaccompanied minor, the availability of appropriate care and custodial arrangements, which are in the best interest of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available.

(28) It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.

(29) One of the conditions for qualification for refugee status within the meaning of Article 1(A) of the Geneva Convention is the existence of a causal link between the reasons for persecution, namely race, religion, nationality, political opinion or membership of a particular social group, and the acts of persecution or the absence of protection against such acts.

(30) It is equally necessary to introduce a common concept of the persecution ground 'membership of a particular social group'. For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution.

(31) 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'.

(32) As referred to in Article 14, 'status' can also include refugee status.

(33) 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.

(34) It is necessary to introduce common 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.

(35) 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.

(36) 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.

(37) 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.

(38) When deciding on entitlements to the benefits included in this Directive, Member States should take due account of the best interests of the child, as well as of the particular circumstances of the dependency on the beneficiary of international protection of close relatives who are already present in the Member State and who are not family members of that beneficiary. In exceptional circumstances, where the close relative of the beneficiary of international protection is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with his or her original family.

(39) While responding to the call of the Stockholm Programme for the establishment of a uniform status for refugees or for persons eligible for subsidiary protection, and with the exception of derogations which are necessary and objectively justified, beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees under this Directive, and should be subject to the same conditions of eligibility.

(40) 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, healthcare and access to integration facilities requires the prior issue of a residence permit.

(41) In order to enhance the effective exercise of the rights and benefits laid down in this Directive by beneficiaries of international protection, it is necessary to take into account their specific needs and the particular integration challenges with which they are confronted. Such taking into account should normally not result in a more favourable treatment than that provided to their own nationals, without prejudice to the possibility for Member States to introduce or retain more favourable standards.

(42) In that context, efforts should be made in particular to address the problems which prevent beneficiaries of international protection from having effective access to employment-related educational opportunities and vocational training, inter alia, relating to financial constraints.

(43) This Directive does not apply to financial benefits from the Member States which are granted to promote education.

(44) Special measures need to be considered with a view to effectively addressing the practical difficulties encountered by beneficiaries of international protection concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualifications, in particular due to the lack of documentary evidence and their inability to meet the costs related to the recognition procedures.

(45) Especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with adequate social welfare and means of subsistence, without discrimination in the context of social assistance. With regard to social assistance, 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 such assistance to core benefits is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law.

(46) Access to healthcare, including both physical and mental healthcare, should be ensured to beneficiaries of international protection.

(47) The specific needs and particularities of the situation of beneficiaries of refugee status and of subsidiary protection status should be taken into account, as far as possible, in the integration programmes provided to them including, where appropriate, language training and the provision of information concerning individual rights and obligations relating to their protection status in the Member State concerned.

(48) 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.

(49) Since the objectives of this Directive, namely to establish standards for the granting of international protection to third-country nationals and stateless persons by Member States, for a uniform status for refugees or for persons eligible for subsidiary protection, and for 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 this Directive, 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 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.

(50) In accordance with Articles 1, 2 and Article 4a(1) of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(51) 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.

(52) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2004/83/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(53) This Directive should be without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of Directive 2004/83/EC set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to lay down standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection-granted.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

(a) 'international protection' means refugee status and subsidiary protection status as defined in points (e) and (g);

(b) 'beneficiary of international protection' means a person who has been granted refugee status or subsidiary protection status as defined in points (e) and (g);

(c) '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;

(d) '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;

(e) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;

(f) '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) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(g) '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;

(h) '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;

(i) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(j) 'family members' means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in the same Member State in relation to the application for international protection:

— the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

— the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

— the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;

(k) 'minor' means a third-country national or stateless person below the age of 18 years;

(l) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

(m) 'residence permit' means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's law, allowing a third-country national or stateless person to reside on its territory;

(n) '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 the 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 paragraph 1 consist of the applicant's statements and all the documentation at the applicant's 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, 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 those activities would expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she 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 has been given regarding any lack of other relevant elements;

(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 the applicant has engaged in since he or she 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 not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her 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 points (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 against persecution or serious harm can only 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;

provided they are willing and able to offer protection in accordance with paragraph 2.

2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of 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 when 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 Union 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, he or she:

(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or

(b) has access to protection against persecution or serious harm as defined in Article 7;

and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

2. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin 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 in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its 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 point (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 within the scope of the grounds for exclusion as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature.

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

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, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;

(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 re-acquired 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; or

(f) being a stateless person, 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.

3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

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, those 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 up 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 incite 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 Directive 2004/83/EC, 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 or 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, was 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 judgment 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, 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) the 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 in 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.

3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

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 incite 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 concerned, 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 those 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 Directive 2004/83/EC, 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, was 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 or 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, victims of human trafficking, persons with mental disorders 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 interests of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

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 judgment 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 beneficiaries of international protection, as soon as possible after refugee status or subsidiary protection status has been granted, with access to information, in a language that they understand or are reasonably supposed to understand, 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 international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to 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 international protection at that time.

Article 24

Residence permits

1. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 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 3 years and renewable.

2. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be valid for at least 1 year and, in case of renewal, for at least 2 years, 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 outside their territory, unless compelling reasons of national security or public order otherwise require.

Article 26

Access to employment

1. Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.

2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals.

3. Member States shall endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in paragraph 2.

4. 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 international protection, under the same conditions as nationals.

2. Member States shall allow adults granted international protection access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident.

Article 28

Access to procedures for recognition of qualifications

1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

2. Member States shall endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall comply with Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [1].

Article 29

Social welfare

1. Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.

2. By way of derogation from 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 level and under the same eligibility conditions as nationals.

Article 30

Healthcare

1. Member States shall ensure that beneficiaries of international protection have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted such protection.

2. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted protection, adequate healthcare, including treatment of mental disorders when needed, to beneficiaries of international protection 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.

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

Article 31

Unaccompanied minors

1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian 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 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. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor's best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. 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 and continue to receive appropriate training concerning their needs.

Article 32

Access to accommodation

1. Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories.

2. While allowing for national practice of dispersal of beneficiaries of international protection, Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.

Article 33

Freedom of movement within the Member State

Member States shall allow freedom of movement within their territory to beneficiaries of international protection, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories.

Article 34

Access to integration facilities

In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.

Article 35

Repatriation

Member States may provide assistance to beneficiaries of international protection who wish to be repatriated.

CHAPTER VIII

ADMINISTRATIVE COOPERATION

Article 36

Cooperation

Member States shall each appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information 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 37

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 38

Reports

1. By 21 June 2015, 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. Those proposals for amendment shall be made by way of priority in Articles 2 and 7. Member States shall send the Commission all the information that is appropriate for drawing up that report by 21 December 2014.

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 5 years.

Article 39

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 by 21 December 2013. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law covered by this Directive.

Article 40

Repeal

Directive 2004/83/EC is repealed for the Member States bound by this Directive with effect from 21 December 2013, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directive set out in Annex I, Part B.

For the Member States bound by this Directive, references to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

Article 41

Entry into force

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

Articles 1, 2, 4, 7, 8, 9, 10, 11, 16, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 shall apply from 22 December 2013.

Article 42

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

ANNEX I

PART A

Repealed Directive

(referred to in Article 40)

Council Directive 2004/83/EC (OJ L 304, 30.9.2004, p. 12).

PART B

Time limit for transposition into national law

(referred to in Article 39)

Directive	Time limit for transposition
2004/83/EC	10 October 2006

ANNEX II

Correlation table

Directive 2004/83/EC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2(a)	Article 2(a)
—	Article 2(b)
Article 2(b)-(g)	Article 2(c)-(h)
—	Article 2(i)
Article 2(h)	Article 2(j) first and second indent
—	Article 2(j) third indent
—	Article 2(k)
Article 2(i)	Article 2(l)
Article 2(j)	Article 2(m)
Article 2(k)	Article 2(n)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7	Article 7
Article 8(1)(2)	Article 8(1)(2)
Article 8(3)	—
Article 9	Article 9
Article 10	Article 10
Article 11(1)(2)	Article 11(1)(2)
—	Article 11(3)
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16(1)(2)	Article 16(1)(2)
—	Article 16(3)
Article 17	Article 17
Article 18	Article 18
Article 19	Article 19
Article 20(1)-(5)	Article 20(1)-(5)
Article 20(6)(7)	—

Directive 2004/83/EC	This Directive
Article 21	Article 21
Article 22	Article 22
Article 23(1)	Article 23(1)
Article 23(2) first subparagraph	Article 23(2)
Article 23(2) second subparagraph	—
Article 23(2) third subparagraph	—
Article 23(3)-(5)	Article 23(3)-(5)
Article 24(1)	Article 24(1)
Article 24(2)	Article 24(2)
Article 25	Article 25
Article 26(1)-(3)	Article 26(1)-(3)
Article 26(4)	—
Article 26(5)	Article 26(4)
Article 27(1)(2)	Article 27(1)(2)
Article 27(3)	Article 28(1)
—	Article 28(2)
Article 28(1)	Article 29(1)
Article 28(2)	Article 29(2)
Article 29(1)	Article 30(1)
Article 29(2)	—
Article 29(3)	Article 30(2)
Article 30	Article 31
Article 31	Article 32(1)
—	Article 32(2)
Article 32	Article 33
Article 33	Article 34
Article 34	Article 35
Article 35	Article 36
Article 36	Article 37
Article 37	Article 38
Article 38	Article 39
—	Article 40
Article 39	Article 41
Article 40	Article 42
—	Annex I
—	Annex II

DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

laying down standards for the reception of applicants for international protection (recast)

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 78(2)(f) 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) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ([4]). In the interests of clarity, that Directive should be recast.

(2) 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 Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

(3) 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 ('the Geneva Convention'), thus affirming the principle of *non-refoulement*. The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments, including Directive 2003/9/EC, provided for in the Treaties.

(4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council.

(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.

(6) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

(7) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for applicants for international protection ('applicants').

([1]) OJ C 317, 23.12.2009, p. 110 and OJ C 24, 28.1.2012, p. 80.
([2]) OJ C 79, 27.3.2010, p. 58.
([3]) Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 348) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).
([4]) OJ L 31, 6.2.2003, p. 18.

(8) In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants.

(9) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.

(10) 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.

(11) Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

(12) The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.

(13) With a view to ensuring equal treatment amongst all applicants for international protection and guaranteeing consistency with current EU asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [1], it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

(14) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.

(15) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority.

(16) With regard to administrative procedures relating to the grounds for detention, the notion of 'due diligence' at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention shall not exceed the time reasonably needed to complete the relevant procedures.

(17) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national's or stateless person's application for international protection.

(18) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied.

(19) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. However, any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned.

[1] OJ L 337, 20.12.2011, p. 9.

(20) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non-custodial alternative measures to detention have been duly examined. Any alternative measure to detention must respect the fundamental human rights of applicants.

(21) In order to ensure compliance with the 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.

(22) When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of any applicant who is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State.

(23) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market.

(24) To ensure that the material support provided to applicants complies with the principles set out in this Directive, it is necessary that Member States determine the level of such support on the basis of relevant references. That does not mean that the amount granted should be the same as for nationals. Member States may grant less favourable treatment to applicants than to nationals as specified in this Directive.

(25) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which material reception conditions for applicants may be reduced or withdrawn while at the same time ensuring a dignified standard of living for all applicants.

(26) The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured.

(27) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.

(28) Member States should 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.

(29) 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 provided for under Directive 2011/95/EU.

(30) The implementation of this Directive should be evaluated at regular intervals.

(31) Since the objective of this Directive, namely to establish standards for the reception of applicants in Member States, 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 the 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 that objective.

(32) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 [1], 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 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU, and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland 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 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.

[1] OJ C 369, 17.12.2011, p. 14.

(35) 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, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.

(36) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2003/9/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(37) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2003/9/EC set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down standards for the reception of applicants for international protection ('applicants') in Member States.

Article 2

Definitions

For the purposes of this Directive:

(a) 'application for international protection': means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

(b) 'applicant': means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(c) 'family members': means, 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 international protection:

— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;

— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;

— the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried;

(d) 'minor': means a third-country national or stateless person below the age of 18 years;

(e) 'unaccompanied minor': means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

(f) 'reception conditions': means the full set of measures that Member States grant to applicants in accordance with this Directive;

(g) 'material reception conditions': means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;

(h) 'detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(i) 'accommodation centre': means any place used for the collective housing of applicants;

(j) 'representative': means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;

(k) 'applicant with special reception needs': means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.

Article 3

Scope

1. This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to 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 Directive 2011/95/EU.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants and other close relatives of the applicant who are present in the same Member State when they are dependent on him or her, 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 applicants, within a reasonable time not exceeding 15 days after they have lodged their application for international protection, 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, in a language that the applicant understands or is reasonably supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6

Documentation

1. Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on 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 that fact.

2. Member States may exclude application of this Article when the applicant is in detention and during the examination of an application for international protection made at the border or within the context of a procedure to decide on the right of the applicant to enter the territory of a Member State. In specific cases, during the examination of an application for international protection, 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 applicant.

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

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

[1] OJ L 212, 7.8.2001, p. 12.

6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive for the sole reason that they are applicants for international protection.

Article 7

Residence and freedom of movement

1. Applicants 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 applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.

3. 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 law.

4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 3 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.

5. 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

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [1].

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under 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 [2], in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so requires;

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [3].

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

[1] See page 60 of this Official Journal.

[2] OJ L 348, 24.12.2008, p. 98.

[3] See page 31 of this Official Journal.

Article 9

Guarantees for detained applicants

1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the applicant. When conducted *ex officio*, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review *ex officio* and/or the judicial review at the request of the applicant shall be conducted.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, *ex officio* and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant. Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

7. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and 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.

9. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

10. Procedures for access to legal assistance and representation shall be laid down in national law.

Article 10

Conditions of detention

1. Detention of applicants 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 detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

2. Detained applicants shall have access to open-air spaces.

3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article 43 of Directive 2013/32/EU.

Article 11

Detention of vulnerable persons and of applicants with special reception needs

1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

3. Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible.

Unaccompanied minors shall never be detained in prison accommodation.

As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

5. Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article 43 of Directive 2013/32/EU.

Article 12

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 applicant's agreement.

Article 13

Medical screening

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

Article 14

Schooling and education of minors

1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals 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.

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 on which the application for international protection was lodged by or on behalf of the minor.

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1.

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 concerned shall offer other education arrangements in accordance with its national law and practice.

Article 15

Employment

1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.

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

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.

Article 16

Vocational training

Member States may allow applicants 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 15.

Article 17

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 international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, 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 those basic needs were being covered, Member States may ask the applicant for a refund.

5. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.

Article 18

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 international protection made at the border or in transit zones;

(b) accommodation centres which guarantee an adequate standard of living;

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

2. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that:

(a) applicants are guaranteed protection of their family life;

(b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;

(c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

3. Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres referred to in paragraph 1(a) and (b).

4. Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b).

5. Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.

6. 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 or counsellors of the transfer and of their new address.

7. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

8. 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.

9. In duly justified cases, 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:

(a) an assessment of the specific needs of the applicant is required, in accordance with Article 22;

(b) housing capacities normally available are temporarily exhausted.

Such different conditions shall in any event cover basic needs.

Article 19

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 illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 20

Reduction or withdrawal of material reception conditions

1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or

(b) 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

(c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU.

In relation to cases (a) and (b), 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 material reception conditions withdrawn or reduced.

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

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

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article 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 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.

CHAPTER IV

PROVISIONS FOR VULNERABLE PERSONS

Article 21

General principle

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, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.

Article 22

Assessment of the special reception needs of vulnerable persons

1. In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.

3. Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive.

4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive 2011/95/EU.

Article 23

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. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor in accordance with his or her age and maturity.

3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article 18(1)(a) and (b) and to open-air activities.

4. 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.

5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.

Article 24

Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development referred to in Article 23(2)(b), the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

Regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor.

2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection 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 applicants, if it is in their best interests, as prescribed in Article 23(2).

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 shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. 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 and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 25

Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

2. Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

CHAPTER V

APPEALS

Article 26

Appeals

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

2. In cases of an appeal or a review before a judicial authority referred to in paragraph 1, Member States shall ensure that free legal assistance and representation is made available on request in so far as such aid is necessary to ensure effective access to justice. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the applicant.

3. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that free legal assistance and representation not be made available if the appeal or review is considered by a competent authority to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

6. Procedures for access to legal assistance and representation shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 27

Competent authorities

Each Member State shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

Article 28

Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

2. Member States shall submit relevant information to the Commission in the form set out in Annex I, by 20 July 2016 at the latest.

Article 29

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 law implementing this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 30

Reports

By 20 July 2017 at the latest, 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 by 20 July 2016.

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

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 12, 14 to 28 and 30 and Annex I by 20 July 2015 at the latest. 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. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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 32

Repeal

Directive 2003/9/EC is repealed for the Members States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

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

Article 33

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*.

Articles 13 and 29 shall apply from 21 July 2015.

Article 34

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. SHATTER

ANNEX I

Reporting form on the information to be submitted by Member States, as required under Article 28(2)

After the date referred to in Article 28(2), the information to be submitted by Member States shall be re-submitted to the Commission when there is a substantial change in the national law or practice that supersedes the information provided.

1. On the basis of Articles 2(k) and 22, please explain the different steps for the identification of persons with special reception needs, including the moment when it is triggered and its consequences in relation to addressing such needs, in particular for unaccompanied minors, victims of torture, rape or other serious forms of psychological, physical or sexual violence and victims of human trafficking.

2. Provide full information on the type, name and format of the documents provided for in Article 6.

3. With reference to Article 15, please indicate the extent to which any particular conditions are attached to labour market access for applicants, and describe such restrictions in detail.

4. With reference to Article 2(g), please describe how material reception conditions are provided (i.e. which material reception conditions are provided in kind, in money, in vouchers or in a combination of those elements) and indicate the level of the daily expenses allowance provided to applicants.

5. Where applicable, with reference to Article 17(5), please explain the point(s) of reference applied by national law or practice with a view to determining the level of financial assistance provided to applicants. To the extent that there is less favourable treatment of applicants compared with nationals, explain the reasons for it.

ANNEX II

PART A

Repealed Directive

(referred to in Article 32)

Council Directive 2003/9/EC (OJ L 31, 6.2.2003, p. 18).

PART B

Time-limit for transposition into national law

(referred to in Article 32)

Directive	Time-limit for transposition
2003/9/EC	6 February 2005

ANNEX III

Correlation Table

Directive 2003/9/EC	This Directive
Article 1	Article 1
Article 2, introductory wording	Article 2, introductory wording
Article 2(a)	—
Article 2(b)	—
—	Article 2(a)
Article 2(c)	Article 2(b)
Article 2(d), introductory wording	Article 2(c), introductory wording
Article 2(d)(i)	Article 2(c), first indent
Article 2(d)(ii)	Article 2(c), second indent
—	Article 2(c), third indent
Article 2(e), (f) and (g)	—
—	Article 2(d)
Article 2(h)	Article 2(e)
Article 2(i)	Article 2(f)
Article 2(j)	Article 2(g)
Article 2(k)	Article 2(h)
Article 2(l)	Article 2(i)
—	Article 2(j)
—	Article 2(k)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6(1) to (5)	Article 6(1) to (5)
—	Article 6(6)
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(3)	—
Article 7(4) to (6)	Article 7(3) to (5)

Directive 2003/9/EC	This Directive
—	Article 8
—	Article 9
—	Article 10
—	Article 11
Article 8	Article 12
Article 9	Article 13
Article 10(1)	Article 14(1)
Article 10(2)	Article 14(2), first subparagraph
—	Article 14(2), second subparagraph
Article 10(3)	Article 14(3)
Article 11(1)	—
—	Article 15(1)
Article 11(2)	Article 15(2)
Article 11(3)	Article 15(3)
Article 11(4)	—
Article 12	Article 16
Article 13(1) to (4)	Article 17(1) to (4)
Article 13(5)	—
—	Article 17(5)
Article 14(1)	Article 18(1)
Article 14(2), first subparagraph, introductory wording, points (a) and (b)	Article 18(2), introductory wording, points (a) and (b)
Article 14(7)	Article 18(2)(c)
—	Article 18(3)
Article 14(2), second subparagraph	Article 18(4)
Article 14(3)	—
—	Article 18(5)

Directive 2003/9/EC	This Directive
Article 14(4)	Article 18(6)
Article 14(5)	Article 18(7)
Article 14(6)	Article 18(8)
Article 14(8), first subparagraph, introductory wording, first indent	Article 18(9), first subparagraph, introductory wording, point (a)
Article 14(8), first subparagraph, second indent	—
Article 14(8), first subparagraph, third indent	Article 18(9), first subparagraph, point (b)
Article 14(8), first subparagraph, fourth indent	—
Article 14(8), second subparagraph	Article 18(9), second subparagraph
Article 15	Article 19
Article 16(1), introductory wording	Article 20(1), introductory wording
Article 16(1)(a), first subparagraph, first, second and third indents	Article 20(1), first subparagraph, points (a), (b) and (c)
Article 16(1)(a), second subparagraph	Article 20(1), second subparagraph
Article 16(1)(b)	—
Article 16(2)	—
—	Article 20(2) and (3)
Article 16(3) to (5)	Article 20(4) to (6)
Article 17(1)	Article 21
Article 17(2)	—
—	Article 22
Article 18(1)	Article 23(1)
—	Article 23(2) and (3)
Article 18(2)	Article 23(4)
—	Article 23(5)
Article 19	Article 24
Article 20	Article 25(1)
—	Article 25(2)
Article 21(1)	Article 26(1)

Directive 2003/9/EC	This Directive
—	Article 26(2) to (5)
Article 21(2)	Article 26(6)
Article 22	—
—	Article 27
Article 23	Article 28(1)
—	Article 28(2)
Article 24	Article 29
Article 25	Article 30
Article 26	Article 31
—	Article 32
Article 27	Article 33, first subparagraph
—	Article 33, second subparagraph
Article 28	Article 34
—	Annex I
—	Annex II
—	Annex III

DIRECTIVES

DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

on common procedures for granting and withdrawing international protection (recast)

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 78(2)(d) thereof,

Having regard to the proposal from the European Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status [3]. In the interest of clarity, that Directive should be recast.

(2) 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 Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

(3) 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 amended by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.

(4) 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, Union rules leading to a common asylum procedure in the Union.

(5) The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments provided for in the Treaties, including Directive 2005/85/EC, which was a first measure on asylum procedures.

(6) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-10. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council. In accordance with The Hague Programme, the objective to be pursued for the creation of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status valid throughout the Union.

(7) In the European Pact on Immigration and Asylum, adopted on 16 October 2008, the European Council noted that considerable disparities remained between one Member State and another concerning the grant of protection and called for new initiatives, including a proposal for establishing a single asylum procedure comprising common guarantees, to complete the establishment of a Common European Asylum System, provided for in The Hague Programme.

[1] OJ C 24, 28.1.2012, p. 79.
[2] Position of the European Parliament of 6 April 2011 (OJ C 296 E, 2.10.2012, p. 184) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).
[3] OJ L 326, 13.12.2005, p. 13.

(8) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme affirmed that people in need of international protection must be ensured access to legally safe and efficient asylum procedures. In accordance with the Stockholm Programme, individuals should be offered the same level of treatment as regards procedural arrangements and status determination, regardless of the Member State in which their application for international protection is lodged. The objective is that similar cases should be treated alike and result in the same outcome.

(9) The resources of the European Refugee Fund and of the European Asylum Support Office (EASO) should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

(10) When implementing this Directive, Member States should take into account relevant guidelines developed by EASO.

(11) In order to ensure a comprehensive and efficient assessment of the international protection needs of applicants within the meaning of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [1], the Union framework on procedures for granting and withdrawing international protection should be based on the concept of a single procedure.

(12) The main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union.

(13) The approximation of rules on the procedures for granting and withdrawing international protection should help to limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, and to create equivalent conditions for the application of Directive 2011/95/EU in Member States.

(14) 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 in need of international protection within the meaning of Directive 2011/95/EU.

(15) 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.

(16) It is essential that decisions on all applications for international protection be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or has received the necessary training in the field of international protection.

(17) In order to ensure that applications for international protection are examined and decisions thereon are taken objectively and impartially, it is necessary that professionals acting in the framework of the procedures provided for in this Directive perform their activities with due respect for the applicable deontological principles.

(18) It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.

(19) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees.

(20) In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive.

[1] OJ L 337, 20.12.2011, p. 9.

(21) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not *per se* entail an automatic recourse to border or accelerated procedures.

(22) It is also in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at first instance. To that end, applicants should be provided at first instance, free of charge, with legal and procedural information, taking into account their particular circumstances. The provision of such information should, inter alia, enable the applicants to better understand the procedure, thus helping them to comply with the relevant obligations. It would be disproportionate to require Member States to provide such information only through the services of qualified lawyers. Member States should therefore have the possibility to use the most appropriate means to provide such information, such as through non-governmental organisations or professionals from government authorities or specialised services of the State.

(23) In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors admitted or permitted as such under national law.

(24) The notion of public order may, inter alia, cover a conviction for having committed a serious crime.

(25) 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 or as persons eligible for subsidiary protection, every applicant should 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 or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection 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 or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.

(26) With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, inter alia, taking due account of relevant guidelines developed by EASO. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined in accordance with this Directive.

(27) Given that third-country nationals and stateless persons who have expressed their wish to apply for international protection are applicants for international protection, they should comply with the obligations, and benefit from the rights, under this Directive and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [1]. To that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.

(28) In order to facilitate access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to apply for international protection should be ensured through interpretation arrangements.

(29) Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or

[1] See page 96 of this Official Journal.

other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.

(30) Where adequate support cannot be provided to an applicant in need of special procedural guarantees in the framework of accelerated or border procedures, such an applicant should be exempted from those procedures. The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with additional guarantees in cases where his or her appeal does not have automatic suspensive effect, with a view to making the remedy effective in his or her particular circumstances.

(31) National measures dealing with identification and documentation of symptoms and signs of torture or other serious acts of physical or psychological violence, including acts of sexual violence, in procedures covered by this Directive may, inter alia, be based on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

(32) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution. The complexity of gender-related claims should be properly taken into account in procedures based on the concept of safe third country, the concept of safe country of origin or the notion of subsequent applications.

(33) The best interests of the child should be a primary consideration of Member States when applying this Directive, in accordance with the Charter of Fundamental Rights of the European Union (the Charter) and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interest of the child, Member States should in particular take due account of the minor's well-being and social development, including his or her background.

(34) Procedures for examining international protection needs should be such as to enable the competent authorities to conduct a rigorous examination of applications for international protection.

(35) When, in the framework of an application being processed, the applicant is searched, that search should be carried by a person of the same sex. This should be without prejudice to a search carried out, for security reasons, on the basis of national law.

(36) 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 those cases, Member States should be able to dismiss an application as inadmissible in accordance with the *res judicata* principle.

(37) With respect to the involvement of the personnel of an authority other than the determining authority in conducting timely interviews on the substance of an application, the notion of 'timely' should be assessed against the time limits provided for in Article 31.

(38) Many applications for international protection 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 provide for admissibility and/or substantive examination procedures which would make it possible for such applications to be decided upon at those locations in well-defined circumstances.

(39) In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as EASO, UNHCR, the Council of Europe and other relevant international organisations. Member States should ensure that any postponement of conclusion of the procedure fully complies with their obligations under Directive 2011/95/EU and Article 41 of the Charter, without prejudice to the efficiency and fairness of the procedures under this Directive.

(40) A key consideration for the well-foundedness of an application for international protection is the safety of the applicant in his or 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 or she presents counter-indications.

(41) Given the level of harmonisation achieved on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, common criteria should be established for designating third countries as safe countries of origin.

(42) 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 that country. For this reason, it is important that, where an applicant shows that there are valid reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.

(43) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies for international protection in accordance with Directive 2011/95/EU, except where this Directive provides otherwise, in particular where it can reasonably be 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 application for international protection where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to that country.

(44) Member States should not be obliged to assess the substance of an application for international protection where the applicant, due to a sufficient connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country, and there are grounds for considering that the applicant will be admitted or readmitted to that country. Member States should only proceed on that basis where that particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles should be established for the consideration or designation by Member States of third countries as safe.

(45) 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, applications for international protection regarding applicants who enter their territory from such European third countries.

(46) Where Member States apply safe country concepts on a case-by-case basis or designate countries as safe by adopting lists to that effect, they should take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including EASO Country of Origin Information report methodology, referred to in Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [1], as well as relevant UNHCR guidelines.

(47) In order to facilitate the regular exchange of information about the national application of the concepts of safe country of origin, safe third country and European safe third country as well as a regular review by the Commission of the use of those concepts by Member States, and to prepare for a potential further harmonisation in the future, Member States should notify or periodically inform the Commission about the third countries to which the concepts are applied. The Commission should regularly inform the European Parliament on the result of its reviews.

(48) In order to ensure the correct application of the safe country concepts based on up-to-date information, Member States should conduct regular reviews of the situation in those countries based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations. When Member States become aware of a significant change in the human rights situation in a country designated by them as safe, they should ensure that a review of that situation is conducted as soon as possible and, where necessary, review the designation of that country as safe.

(49) With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection 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 reasoned decision to withdraw their status.

(50) It reflects a basic principle of Union law that the decisions taken on an application for international protection, the decisions concerning a refusal to reopen the examination of an application after its discontinuation, and the decisions on the withdrawal of refugee or subsidiary protection status are subject to an effective remedy before a court or tribunal.

[1] OJ L 132, 29.5.2010, p. 11.

(51) In accordance with Article 72 of the Treaty on the Functioning of the European Union (TFEU), 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.

(52) 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] governs the processing of personal data carried out in the Member States pursuant to this Directive.

(53) This Directive does not deal with procedures between Member States governed by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2].

(54) This Directive should apply to applicants to whom Regulation (EU) No 604/2013 applies, in addition and without prejudice to the provisions of that Regulation.

(55) The implementation of this Directive should be evaluated at regular intervals.

(56) Since the objective of this Directive, namely to establish common procedures for granting and withdrawing international protection, 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 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 that objective.

(57) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 [3], 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.

(58) In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(59) In accordance with Articles 1 and 2 of 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.

(60) This Directive respects the fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 18, 19, 21, 23, 24, and 47 of the Charter and has to be implemented accordingly.

(61) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2005/85/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(62) This Directive should be without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of Directive 2005/85/EC set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.

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;

[1] OJ L 281, 23.11.1995, p. 31.
[2] See page 31 of this Official Journal.
[3] OJ C 369, 17.12.2011, p. 14.

(b) 'application for international protection' or 'application' 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 Directive 2011/95/EU, that can be applied for separately;

(c) 'applicant' means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(d) 'applicant in need of special procedural guarantees' means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances;

(e) 'final decision' means a decision on whether the third-country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU 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;

(f) 'determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance in such cases;

(g) 'refugee' means a third-country national or a stateless person who fulfils the requirements of Article 2(d) of Directive 2011/95/EU;

(h) 'person eligible for subsidiary protection' means a third-country national or a stateless person who fulfils the requirements of Article 2(f) of Directive 2011/95/EU;

(i) 'international protection' means refugee status and subsidiary protection status as defined in points (j) and (k);

(j) 'refugee status' means the recognition by a Member State of a third-country national or a stateless person as a refugee;

(k) '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;

(l) 'minor' means a third-country national or a stateless person below the age of 18 years;

(m) 'unaccompanied minor' means an unaccompanied minor as defined in Article 2(l) of Directive 2011/95/EU;

(n) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;

(o) 'withdrawal of international protection' means the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with Directive 2011/95/EU;

(p) '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 international protection has been made or is being examined;

(q) 'subsequent application' means a further application for international protection made after a final decision has been taken on a previous application, including cases where the applicant has explicitly withdrawn his or her application and cases where the determining authority has rejected an application following its implicit withdrawal in accordance with Article 28(1).

Article 3

Scope

1. This Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.

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

3. Member States may decide to apply this Directive in procedures for deciding on applications for any kind of protection falling outside of the scope of Directive 2011/95/EU.

Article 4

Responsible authorities

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.

2. Member States may provide that an authority other than that referred to in paragraph 1 shall be responsible for the purposes of:

(a) processing cases pursuant to Regulation (EU) No 604/2013; and

(b) granting or refusing permission to enter in the framework of the procedure provided for in Article 43, subject to the conditions as set out therein and on the basis of the reasoned opinion of the determining authority.

3. Member States shall ensure that the personnel of the determining authority referred to in paragraph 1 are properly trained. To that end, Member States shall provide for relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Member States shall also take into account the relevant training established and developed by the European Asylum Support Office (EASO). Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.

4. Where an authority is designated in accordance with paragraph 2, Member States shall ensure that the personnel of that authority have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

5. Applications for international protection made in a Member State to the authorities of another Member State carrying out border or immigration controls there shall be dealt with by the Member State in whose territory the application is made.

Article 5

More favourable provisions

Member States may introduce or retain more favourable standards on procedures for granting and withdrawing international protection, insofar as those standards are compatible with this Directive.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

1. When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2. Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3. Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4. Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5. Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days.

Article 7

Applications made on behalf of dependants or minors

1. Member States shall ensure that each adult with legal capacity has the right to make an application for international protection on his or her own behalf.

2. Member States may provide that an application may be made by an applicant on behalf of his or her dependants. In such cases, Member States shall ensure that dependent 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 dependent adult is conducted. Before consent is requested, each dependent adult shall be informed in private of the relevant procedural consequences of the lodging of the application on his or her behalf and of his or her right to make a separate application for international protection.

3. Member States shall ensure that a minor has the right to make an application for international protection either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative.

4. Member States shall ensure that the appropriate bodies referred to in Article 10 of 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] have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may have protection needs pursuant to Directive 2011/95/EU.

5. Member States may determine in national legislation:

(a) the cases in which a minor can make an application on his or 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 25(1)(a);

(c) the cases in which the lodging of an application for international protection is deemed to constitute also the lodging of an application for international protection for any unmarried minor.

[1] OJ L 348, 24.12.2008, p. 98.

Article 8

Information and counselling in detention facilities and at border crossing points

1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

2. Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible.

Article 9

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. That right to remain shall not constitute an entitlement to a residence permit.

2. Member States may make an exception only where a person makes a subsequent application referred to in Article 41 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 [2] or otherwise, or to a third country or to international criminal courts or tribunals.

3. A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of the international and Union obligations of that Member State.

[2] 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

Requirements for the examination of applications

1. Member States shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

2. When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.

3. Member States shall ensure that decisions by the determining authority on applications for international protection 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 EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants 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 know the relevant standards applicable in the field of asylum and refugee law;

(d) the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

4. 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 3(b), necessary for the fulfilment of their task.

5. Member States shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article 11

Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for international protection are given in writing.

2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, 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 provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with such information at an earlier stage either in writing or by electronic means accessible to the applicant.

3. For the purposes of Article 7(2), and whenever the application is based on the same grounds, Member States may take a single decision, covering all dependants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender, sexual orientation, gender identity and/or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.

Article 12

Guarantees for applicants

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

(a) they shall be informed in a language which they understand or are reasonably 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, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2011/95/EU, as well as of the consequences of an explicit or implicit withdrawal of the application. That 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 13;

(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 provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds;

(c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;

(d) they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;

(e) they shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;

(f) they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).

Article 13

Obligations of the applicants

1. Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95/EU. Member States may impose upon applicants other obligations to cooperate with the competent authorities insofar as such obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

(a) applicants 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 have to hand over documents in their possession relevant to the examination of the application, such as their passports;

(c) applicants 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 or she indicated accordingly;

(d) the competent authorities may search the applicant and the items which he or she is carrying. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Directive shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity;

(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 or she has previously been informed thereof.

Article 14

Personal interview

1. Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).

Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Persons conducting personal interviews of applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past.

Where a person has lodged an application for international protection on behalf of his or her dependants, each dependent adult shall be given the opportunity of a personal interview.

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 on the substance of the application may be omitted where:

(a) the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available; or

(b) the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

Where a personal interview is not conducted pursuant to point (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

3. 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 international protection.

4. The absence of a personal interview pursuant to paragraph 2(b) shall not adversely affect the decision of the determining authority.

5. Irrespective of Article 28(1), Member States, when deciding on an application for international protection, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

Article 15

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 competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;

(b) wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;

(c) select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;

(d) ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform;

(e) ensure that interviews with minors are conducted in a child-appropriate manner.

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

Article 16

Content of a personal interview

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive 2011/95/EU as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant's statements.

Article 17

Report and recording of personal interviews

1. Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.

2. Member States may provide for audio or audiovisual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

3. Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarification orally and/or in writing with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, Member States shall ensure that the applicant is fully informed of the content of the report or of the substantive elements of the transcript, with the assistance of an interpreter if necessary. Member States shall then request the applicant to confirm that the content of the report or the transcript correctly reflects the interview.

When the personal interview is recorded in accordance with paragraph 2 and the recording is admissible as evidence in the appeals procedures referred to in Chapter V, Member States need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. Without prejudice to Article 16, where Member States provide for both a transcript and a recording of the personal interview, Member States need not allow the applicant to make comments on and/or provide clarification of the transcript.

4. Where an applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in the applicant's file.

Such refusal shall not prevent the determining authority from taking a decision on the application.

5. Applicants and their legal advisers or other counsellors, as defined in Article 23, shall have access to the report or the transcript and, where applicable, the recording, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the personal interview, Member States need not provide access to the recording in the procedures at first instance referred to in Chapter III. In such cases, they shall nevertheless provide access to the recording in the appeals procedures referred to in Chapter V.

Without prejudice to paragraph 3 of this Article, where the application is examined in accordance with Article 31(8), Member States may provide that access to the report or the transcript, and where applicable, the recording, is granted at the same time as the decision is made.

Article 18

Medical examination

1. Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive 2011/95/EU, Member States shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

The medical examinations referred to in the first subparagraph shall be carried out by qualified medical professionals and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

Medical examinations carried out in accordance with this paragraph shall be paid for out of public funds.

2. When no medical examination is carried out in accordance with paragraph 1, Member States shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.

3. The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.

Article 19

Provision of legal and procedural information free of charge in procedures at first instance

1. In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information — in addition to that given in accordance with Article 11(2) and Article 12(1)(f) — in order to clarify the reasons for such decision and explain how it can be challenged.

2. The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

Article 20

Free legal assistance and representation in appeals procedures

1. Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.

2. Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.

3. Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

Article 21

Conditions for the provision of legal and procedural information free of charge and free legal assistance and representation

1. Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.

2. Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provided for under national law, including rehearings or reviews of appeals.

Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).

3. Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and 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.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

Article 22

Right to legal assistance and representation at all stages of the procedure

1. Applicants shall be given the opportunity to consult, at their own cost, in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their applications for international protection, at all stages of the procedure, including following a negative decision.

2. Member States may allow non-governmental organisations to provide legal assistance and/or representation to applicants in the procedures provided for in Chapter III and Chapter V in accordance with national law.

Article 23

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, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

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 for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised. In such cases, Member States shall:

(a) make access to such information or sources available to the authorities referred to in Chapter V; and

(b) establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU.

3. Member States shall allow an applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4. Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

Member States may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

Article 24

Applicants in need of special procedural guarantees

1. Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.

2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive 2013/33/EU and need not take the form of an administrative procedure.

3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43 cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).

4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 to 17, Member States shall:

(a) take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end. The person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU;

(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 or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity 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 will in all likelihood reach the age of 18 before a decision at first instance is taken.

3. Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, 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.

4. Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

Where medical examinations are used, Member States shall ensure that:

(a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language that they understand or are reasonably 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 international protection, 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 a medical examination being carried out to determine the age of the minors concerned; and

(c) the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

6. The best interests of the child shall be a primary consideration for Member States when implementing this Directive.

Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may:

(a) apply or continue to apply Article 31(8) only if:

(i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or

(ii) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or

(iii) the applicant may for serious reasons be considered 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 or public order under national law;

(b) apply or continue to apply Article 43, in accordance with Articles 8 to 11 of Directive 2013/33/EU, only if:

(i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or

(ii) the applicant has introduced a subsequent application; or

(iii) the applicant may for serious reasons be considered 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 or public order under national law; or

(iv) there are reasonable grounds to consider that a country which is not a Member State is a safe third country for the applicant, pursuant to Article 38; or

(v) the applicant has misled the authorities by presenting false documents; or

(vi) in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality.

Member States may apply points (v) and (vi) only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for the actions referred to in points (v) and (vi), including by consulting with his or her representative;

(c) consider the application to be inadmissible in accordance with Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to Article 38, provided that to do so is in the minor's best interests;

(d) apply the procedure referred to in Article 20(3) where the minor's representative has legal qualifications in accordance with national law.

Without prejudice to Article 41, in applying Article 46(6) to unaccompanied minors, Member States shall provide at least the guarantees provided for in Article 46(7) in all cases.

Article 26

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.

2. Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU.

Article 27

Procedure in the event 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 explicitly withdraws his or her application for international protection, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application.

2. Member States may also decide that the determining authority may decide to discontinue the examination without taking a decision. In that case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

Article 28

Procedure in the event of implicit withdrawal or abandonment of the application

1. When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU, to reject the application.

Member States may assume that the applicant has implicitly withdrawn or abandoned his or her application for international protection in particular when it is ascertained that:

(a) he or she has failed to respond to requests to provide information essential to his or her application in terms of Article 4 of Directive 2011/95/EU or has not appeared for a personal interview as provided for in Articles 14 to 17 of this Directive, unless the applicant demonstrates within a reasonable time that his or her failure was due to circumstances beyond his or her control;

(b) he or she has absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time, or he or she has not within a reasonable time complied with reporting duties or other obligations to communicate, unless the applicant demonstrates that this was due to circumstances beyond his or her control.

For the purposes of implementing these provisions, Member States may lay down time limits or guidelines.

2. Member States shall ensure that an 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 or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.

Member States may provide for a time limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.

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 resume the examination at the stage where it was discontinued.

3. This Article shall be without prejudice to Regulation (EU) No 604/2013.

Article 29

The role of UNHCR

1. Member States shall allow UNHCR:

(a) to have access to applicants, including those in detention, at the border and in the transit zones;

(b) to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, provided that the applicant 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 international protection 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 UNHCR pursuant to an agreement with that Member State.

Article 30

Collection of information on individual cases

For the purposes of examining individual cases, Member States shall not:

(a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm;

(b) obtain any information from the alleged actor(s) of persecution or serious harm 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 or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 31

Examination procedure

1. Member States shall process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

3. Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

Where an application is subject to the procedure laid down in Regulation (EU) No 604/2013, the time limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

Member States may extend the time limit of six months set out in this paragraph for a period not exceeding a further nine months, where:

(a) complex issues of fact and/or law are involved;

(b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;

(c) where the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations under Article 13.

By way of exception, Member States may, in duly justified circumstances, exceed the time limits laid down in this paragraph by a maximum of three months where necessary in order to ensure an adequate and complete examination of the application for international protection.

4. Without prejudice to Articles 13 and 18 of Directive 2011/95/EU, Member States may postpone concluding the examination procedure where the determining authority cannot reasonably be expected to decide within the time-limits laid down in paragraph 3 due to an uncertain situation in the country of origin which is expected to be temporary. In such a case, Member States shall:

(a) conduct reviews of the situation in that country of origin at least every six months;

(b) inform the applicants concerned within a reasonable time of the reasons for the postponement;

(c) inform the Commission within a reasonable time of the postponement of procedures for that country of origin.

5. In any event, Member States shall conclude the examination procedure within a maximum time limit of 21 months from the lodging of the application.

6. Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall:

(a) be informed of the delay; and

(b) receive, upon his or her request, information on the reasons for the delay and the time-frame within which the decision on his or her application is to be expected.

7. Member States may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II in particular:

(a) where the application is likely to be well-founded;

(b) where the applicant is vulnerable, within the meaning of Article 22 of Directive 2013/33/EU, or is in need of special procedural guarantees, in particular unaccompanied minors.

8. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

(a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or

(b) the applicant is from a safe country of origin within the meaning of this Directive; or

(c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or

(d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality; or

(e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or

(f) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or

(g) 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 or her removal; or

(h) the applicant entered the territory of the Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry; or

(i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes [1]; or

(j) the applicant may, for serious reasons, be considered 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 or public order under national law.

9. Member States shall lay down time limits for the adoption of a decision in the procedure at first instance pursuant to paragraph 8. Those time limits shall be reasonable.

Without prejudice to paragraphs 3 to 5, Member States may exceed those time limits where necessary in order to ensure an adequate and complete examination of the application for international protection.

Article 32

Unfounded applications

1. Without prejudice to Article 27, Member States may only consider an application to be unfounded if the determining authority has established that the applicant does not qualify for international protection pursuant to Directive 2011/95/EU.

2. In cases of unfounded applications in which any of the circumstances listed in Article 31(8) apply, Member States may also consider an application to be manifestly unfounded, where it is defined as such in the national legislation.

SECTION II

Article 33

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EU) No 604/2013, Member States are not required to examine whether the applicant qualifies for international protection in accordance with Directive 2011/95/EU where an application is considered inadmissible pursuant to this Article.

2. Member States may consider an application for international protection as inadmissible only if:

(a) another Member State has granted international protection;

(b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;

(c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;

(d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or

(e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.

Article 34

Special rules on an admissibility interview

1. Member States shall allow applicants to present their views with regard to the application of the grounds referred to in Article 33 in their particular circumstances before the determining authority decides on the admissibility of an application for international protection. To that end, Member States shall conduct a personal interview on the admissibility of the application. Member States may make an exception only in accordance with Article 42 in the case of a subsequent application.

This paragraph shall be without prejudice to Article 4(2)(a) of this Directive and to Article 5 of Regulation (EU) No 604/2013.

2. Member States may provide that the personnel of authorities other than the determining authority conduct the personal interview on the admissibility of the application for international protection. In such cases, Member States shall ensure that such personnel receive in advance the necessary basic training, in particular with respect to international human rights law, the Union asylum *acquis* and interview techniques.

SECTION III

Article 35

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant if:

[1] See page 1 of this Official Journal.

(a) he or she has been recognised in that country as a refugee and he or she can still avail himself/herself of that protection; or

(b) he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*,

provided that he or she will be readmitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant, Member States may take into account Article 38(1). The applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances.

Article 36

The concept of safe country of origin

1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

(a) he or she has the nationality of that country; or

(b) he or she is a stateless person and was formerly habitually resident in that country,

and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU.

2. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

Article 37

National designation of third countries as safe countries of origin

1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.

2. Member States shall regularly review the situation in third countries designated as safe countries of origin in accordance with this Article.

3. 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, EASO, UNHCR, the Council of Europe and other relevant international organisations.

4. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

Article 38

The concept of safe third country

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking international protection 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) there is no risk of serious harm as defined in Directive 2011/95/EU;

(c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected;

(d) 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

(e) 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 law, including:

(a) rules requiring a connection between the applicant 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 the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

3. When implementing a decision solely based on this Article, Member States shall:

(a) inform the applicant accordingly; and

(b) provide him or 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 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.

Article 39

The concept of European safe third country

1. Member States may provide that no, or no full, examination of the application for international protection and of the safety of the applicant in his or 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 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; and

(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.

3. The applicant shall be allowed to challenge the application of the concept of European safe third country on the grounds that the third country concerned is not safe in his or her particular circumstances.

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*, 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 or 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 readmit the applicant, 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 shall inform the Commission periodically of the countries to which this concept is applied in accordance with this Article.

SECTION IV

Article 40

Subsequent application

1. Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall 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. For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU.

3. If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive 2011/95/EU, the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

4. Member States may provide that the application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations set forth in paragraphs 2 and 3 of this Article in the previous procedure, in particular by exercising his or her right to an effective remedy pursuant to Article 46.

5. When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

6. The procedure referred to in this Article may also be applicable in the case of:

(a) a dependant who lodges an application after he or she has, in accordance with Article 7(2), consented to have his or her case be part of an application lodged on his or her behalf; and/or

(b) an unmarried minor who lodges an application after an application has been lodged on his or her behalf pursuant to Article 7(5)(c).

In those cases, the preliminary examination referred to in paragraph 2 will consist of examining whether there are facts relating to the dependant's or the unmarried minor's situation which justify a separate application.

7. Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EU) No 604/2013 makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.

Article 41

Exceptions from the right to remain in case of subsequent applications

1. Member States may make an exception from the right to remain in the territory where a person:

(a) has lodged a first subsequent application, which is not further examined pursuant to Article 40(5), merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State; or

(b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to Article 40(5) or after a final decision to reject that application as unfounded.

Member States may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect *refoulement* in violation of that Member State's international and Union obligations.

2. In cases referred to in paragraph 1, Member States may also:

(a) derogate from the time limits normally applicable in accelerated procedures, in accordance with national law, when the examination procedure is accelerated in accordance with Article 31(8)(g);

(b) derogate from the time limits normally applicable to admissibility procedures provided for in Articles 33 and 34, in accordance with national law; and/or

(c) derogate from Article 46(8).

Article 42

Procedural rules

1. Member States shall ensure that applicants whose application is subject to a preliminary examination pursuant to Article 40 enjoy the guarantees provided for in Article 12(1).

2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 40. Those rules may, inter alia:

(a) oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;

(b) permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview, with the exception of the cases referred to in Article 40(6).

Those rules shall not render impossible the access of applicants to a new procedure or result in the effective annulment or severe curtailment of such access.

3. Member States shall ensure that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.

SECTION V

Article 43

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:

(a) the admissibility of an application, pursuant to Article 33, made at such locations; and/or

(b) the substance of an application in a procedure pursuant to Article 31(8).

2. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 1 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant shall be granted entry to the territory of the Member State in order for his or her application to be processed in accordance with the other provisions of this Directive.

3. In the event of arrivals involving a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it impossible in practice to apply there the provisions of paragraph 1, 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.

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF INTERNATIONAL PROTECTION

Article 44

Withdrawal of international protection

Member States shall ensure that an examination to withdraw international protection from a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection.

Article 45

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

(a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and

(b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and Articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

2. In addition, Member States shall ensure that within the framework of the procedure set out in paragraph 1:

(a) the competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from EASO and UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and

(b) where information on an individual case is collected for the purposes of reconsidering international protection, it is not obtained from the actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration, or jeopardise the physical integrity of the person or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

3. Member States shall ensure that the decision of the competent authority to withdraw international protection 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.

4. Once the competent authority has taken the decision to withdraw international protection, Article 20, Article 22, Article 23(1) and Article 29 are equally applicable.

5. By way of derogation from paragraphs 1 to 4 of this Article, Member States may decide that international protection shall lapse by law where the beneficiary of international protection has unequivocally renounced his or her recognition as such. A Member State may also provide that international protection shall lapse by law where the beneficiary of international protection has become a national of that Member State.

CHAPTER V

APPEALS PROCEDURES

Article 46

The right to an effective remedy

1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and/or subsidiary protection status;

(ii) considering an application to be inadmissible pursuant to Article 33(2);

(iii) taken at the border or in the transit zones of a Member State as described in Article 43(1);

(iv) not to conduct an examination pursuant to Article 39;

(b) a refusal to reopen the examination of an application after its discontinuation pursuant to Articles 27 and 28;

(c) a decision to withdraw international protection pursuant to Article 45.

2. Member States shall ensure that persons recognised by the determining authority as eligible for subsidiary protection have the right to an effective remedy pursuant to paragraph 1 against a decision considering an application unfounded in relation to refugee status.

Without prejudice to paragraph 1(c), where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law, that Member State may consider an appeal against a decision considering an application unfounded in relation to refugee status inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings.

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.

Member States may also provide for an *ex officio* review of decisions taken pursuant to Article 43.

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.

6. In the case of a decision:

(a) considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);

(b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);

(c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or

(d) not to examine or not to examine fully the application pursuant to Article 39,

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting *ex officio*, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.

7. Paragraph 6 shall only apply to procedures referred to in Article 43 provided that:

(a) the applicant has the necessary interpretation, legal assistance and at least one week to prepare the request and submit to the court or tribunal the arguments in favour of granting him or her the right to remain on the territory pending the outcome of the remedy; and

(b) in the framework of the examination of the request referred to in paragraph 6, the court or tribunal examines the negative decision of the determining authority in terms of fact and law.

If the conditions referred to in points (a) and (b) are not met, paragraph 5 shall apply.

8. Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7.

9. Paragraphs 5, 6 and 7 shall be without prejudice to Article 26 of Regulation (EU) No 604/2013.

10. Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

11. 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 or her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 47

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 48

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 49

Cooperation

Member States shall each appoint a national contact point and communicate its address to the Commission. The Commission shall communicate that information 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.

When resorting to the measures referred to in Article 6(5), the second subparagraph of Article 14(1) and Article 31(3)(b), Member States shall inform the Commission as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.

Article 50

Report

No later than 20 July 2017, 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 to the Commission all the information that is appropriate for drawing up its 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 five years.

As part of the first report, the Commission shall also report, in particular, on the application of Article 17 and the various tools used in relation to the reporting of the personal interview.

Article 51

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate the text of those measures to the Commission.

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 31(3), (4) and (5) by 20 July 2018. They shall forthwith communicate the text of those measures to the Commission.

3. When Member States adopt the provisions referred to in paragraphs 1 and 2, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

4. 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 52

Transitional provisions

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(1) to applications for international protection lodged and to procedures for the withdrawal of international protection started after 20 July 2015 or an earlier date. Applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC.

Member States shall apply the laws, regulations and administrative provisions referred to in Article 51(2) to applications for international protection lodged after 20 July 2018 or an earlier date. Applications lodged before that date shall be governed by the laws, regulations and administrative provisions in accordance with Directive 2005/85/EC.

Article 53

Repeal

Directive 2005/85/EC is repealed for the Member States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time limit for transposition into national law of the Directive set out in Annex II, Part B.

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

Article 54

Entry into force and application

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

Articles 47 and 48 shall apply from 21 July 2015.

Article 55

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. SHATTER

ANNEX I

Designation of safe countries of origin for the purposes of Article 37(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 2011/95/EU, 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 United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect for the *non-refoulement* principle in accordance with the Geneva Convention;

(d) provision for a system of effective remedies against violations of those rights and freedoms.

ANNEX II

PART A

Repealed Directive

(referred to in Article 53)

Council Directive 2005/85/EC (OJ L 326, 13.12.2005, p. 13).

PART B

Time limit for transposition into national law

(referred to in Article 51)

Directive	Time limits for transposition
2005/85/EC	First deadline: 1 December 2007 Second deadline: 1 December 2008

ANNEX III

Correlation Table

Directive 2005/85/EC	This Directive
Article 1	Article 1
Article 2(a) to (c)	Article 2(a) to (c)
—	Article 2(d)
Article 2(d) to (f)	Article 2(e) to (g)
—	Article 2(h) and (i)
Article 2(g)	Article 2(j)
—	Article 2(k) and (l)
Article 2(h) to (k)	Article 2(m) to (p)
—	Article 2(q)
Article 3(1) and (2)	Article 3(1) and (2)
Article 3(3)	—
Article 3(4)	Article 3(3)
Article 4(1), first subparagraph	Article 4(1), first subparagraph
Article 4(1), second subparagraph	—
Article 4(2)(a)	Article 4(2)(a)
Article 4(2)(b) to (d)	—
Article 4(2)(e)	Article 4(2)(b)
Article 4(2)(f)	—
—	Article 4(3)
Article 4(3)	Article 4(4)
—	Article 4(5)
Article 5	Article 5
Article 6(1)	Article 6(1)
—	Article 6(2) to (4)
Article 6(2) and (3)	Article 7(1) and (2)
—	Article 7(3)
—	Article 7(4)
Article 6(4)	Article 7(5)
Article 6(5)	—
—	Article 8
Article 7(1) and (2)	Article 9(1) and (2)

Directive 2005/85/EC	This Directive
—	Article 9(3)
Article 8(1)	Article 10(1)
—	Article 10(2)
Article 8(2)(a) to (c)	Article 10(3)(a) to (c)
—	Article 10(3)(d)
Article 8(3) and (4)	Article 10(4) and (5)
Article 9(1)	Article 11(1)
Article 9(2), first subparagraph	Article 11(2), first subparagraph
Article 9(2), second subparagraph	—
Article 9(2), third subparagraph	Article 11(2), second subparagraph
Article 9(3)	Article 11(3)
Article 10(1)(a) to (c)	Article 12(1)(a) to (c)
—	Article 12(1)(d)
Article 10(1)(d) and (e)	Article 12(1)(e) and (f)
Article 10(2)	Article 12(2)
Article 11	Article 13
Article 12(1), first subparagraph	Article 14(1), first subparagraph
Article 12(2), second subparagraph	—
—	Article 14(1), second and third subparagraph
Article 12(2), third subparagraph	Article 14(1), fourth subparagraph
Article 12(2)(a)	Article 14(2)(a)
Article 12(2)(b)	—
Article 12(2)(c)	—
Article 12(3), first subparagraph	Article 14(2)(b)
Article 12(3), second subparagraph	Article 14(2), second subparagraph
Article 12(4) to (6)	Article 14(3) to (5)
Article 13(1) and (2)	Article 15(1) and (2)
Article 13(3)(a)	Article 15(3)(a)
—	Article 15(3)(b)
Article 13(3)(b)	Article 15(3)(c)
—	Article 15(3)(d)
—	Article 15(3)(e)
Article 13(4)	Article 15(4)

Directive 2005/85/EC	This Directive
Article 13(5)	—
—	Article 16
Article 14	—
—	Article 17
—	Article 18
—	Article 19
Article 15(1)	Article 22(1)
Article 15(2)	Article 20(1)
—	Article 20(2) to (4)
—	Article 21(1)
Article 15(3)(a)	—
Article 15(3)(b) and (c)	Article 21(2)(a) and (b)
Article 15(3)(d)	—
Article 15(3), second subparagraph	—
Article 15(4) to (6)	Article 21(3) to (5)
—	Article 22(2)
Article 16(1), first subparagraph	Article 23(1), first subparagraph
Article 16(1), second subparagraph, first sentence	Article 23(1), second subparagraph, introductory words
—	Article 23(1)(a)
Article 16(1), second subparagraph, second sentence	Article 23(1)(b)
Article 16(2), first sentence	Article 23(2)
Article 16(2), second sentence	—
—	Article 23(3)
Article 16(3)	Article 23(4), first subparagraph
Article 16(4), first subparagraph	—
Article 16(4), second and third subparagraphs	Article 23(4), second and third subparagraphs
—	Article 24
Article 17(1)	Article 25(1)
Article 17(2)(a)	Article 25(2)
Article 17(2)(b) and (c)	—
Article 17(3)	—
Article 17(4)	Article 25(3)
—	Article 25(4)
Article 17(5)	Article 25(5)

Directive 2005/85/EC	This Directive
—	Article 25(6)
Article 17(6)	Article 25(7)
Article 18	Article 26
Article 19	Article 27
Article 20(1) and (2)	Article 28(1) and (2)
—	Article 28(3)
Article 21	Article 29
Article 22	Article 30
Article 23(1)	Article 31(1)
Article 23(2), first subparagraph	Article 31(2)
—	Article 31(3)
—	Article 31(4) and (5)
Article 23(2), second subparagraph	Article 31(6)
Article 23(3)	—
—	Article 31(7)
Article 23(4)(a)	Article 31(8)(a)
Article 23(4)(b)	—
Article 23(4)(c)(i)	Article 31(8)(b)
Article 23(4)(c)(ii)	—
Article 23(4)(d)	Article 31(8)(c)
Article 23(4)(e)	—
Article 23(4)(f)	Article 31(8)(d)
Article 23(4)(g)	Article 31(8)(e)
—	Article 31(8)(f)
Article 23(4)(h) and (i)	—
Article 23(4)(j)	Article 31(8)(g)
—	Article 31(8)(h) and (i)
Article 23(4)(k) and (l)	—
Article 23(4)(m)	Article 31(8)(j)
Article 23(4)(n) and (o)	—
—	Article 31(9)
Article 24	—
Article 25	Article 33
Article 25(1)	Article 33(1)

Directive 2005/85/EC	This Directive
Article 25(2)(a) to (c)	Article 33(2)(a) to (c)
Article 25(2)(d) and (e)	—
Article 25(2)(f) and (g)	Article 33(2)(d) and (e)
—	Article 34
Article 26	Article 35
Article 27(1)(a)	Article 38(1)(a)
—	Article 38(1)(b)
Article 27(1)(b) to (d)	Article 38(1)(c) to (e)
Article 27(2) to (5)	Article 38(2) to (5)
Article 28	Article 32
Article 29	—
Article 30(1)	Article 37(1)
Article 30(2) to (4)	—
—	Article 37(2)
Article 30(5) and (6)	Article 37(3) and (4)
Article 31(1)	Article 36(1)
Article 31(2)	—
Article 31(3)	Article 36(2)
Article 32(1)	Article 40(1)
Article 32(2)	—
Article 32(3)	Article 40(2)
Article 32(4)	Article 40(3), first sentence
Article 32(5)	Article 40(3), second sentence
Article 32(6)	Article 40(4)
—	Article 40(5)
Article 32(7), first subparagraph	Article 40(6)(a)
—	Article 40(6)(b)
Article 32(7), second subparagraph	Article 40(6), second subparagraph
—	Article 40(7)
—	Article 41
Article 33	—
Article 34(1) and (2)(a)	Article 42(1) and (2)(a)
Article 34(2)(b)	—
Article 34(2)(c)	Article 42(2)(b)

Directive 2005/85/EC	This Directive
Article 34(3)(a)	Article 42(3)
Article 34(3)(b)	—
Article 35(1)	Article 43(1)(a)
—	Article 43(1)(b)
Article 35(2) and (3)(a) to (f)	—
Article 35(4)	Article 43(2)
Article 35(5)	Article 43(3)
Article 36(1) to (2)(c)	Article 39(1) to (2)(c)
Article 36(2)(d)	—
Article 36(3)	—
—	Article 39(3)
Article 36(4) to (6)	Article 39(4) to (6)
—	Article 39(7)
Article 36(7)	—
Article 37	Article 44
Article 38	Article 45
—	Article 46(1)(a)(i)
Article 39(1)(a)(i) and (ii)	Article 46(1)(a)(ii) and (iii)
Article 39(1)(a)(iii)	—
Article 39(1)(b)	Article 46(1)(b)
Article 39(1)(c) and (d)	—
Article 39(1)(e)	Article 46(1)(c)
—	Article 46(2) and (3)
Article 39(2)	Article 46(4), first subparagraph
—	Article 46(4), second and third subparagraphs
Article 39(3)	—
—	Article 46(5) to (9)
Article 39(4)	Article 46(10)
Article 39(5)	—
Article 39(6)	Article 41(11)
Article 40	Article 47
Article 41	Article 48
—	Article 49
Article 42	Article 50

Directive 2005/85/EC	This Directive
Article 43, first subparagraph	Article 51(1)
—	Article 51(2)
Article 43, second and third subparagraphs	Article 51(3) and (4)
Article 44	Article 52, first subparagraph
—	Article 52, second subparagraph
—	Article 53
Article 45	Article 54
Article 46	Article 55
Annex I	—
Annex II	Annex I
Annex III	—
—	Annex II
—	Annex III

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

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 [(*)]

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

►B 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

(OJ L 168, 30.6.2009, p. 24)

Corrected by:

►C1 Corrigendum, OJ L 208, 3.8.2012, p. 22 (2009/52/EC)

▼B

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.

([1]) OJ C 204, 9.8.2008, p. 70.
([2]) OJ C 257, 9.10.2008, p. 20.
([3]) ►C1 Opinion of the European Parliament of 19 February 2009 ◄ (not yet published in the Official Journal) and Council Decision of 25 May 2009.

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(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) ([1]). 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.

(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.

([1]) OJ L 105, 13.4.2006, p. 1.

▼B

(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.

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(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 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 ([2]).

([1]) OJ L 248, 16.9.2002, p. 1.
([2]) OJ L 203, 1.8.2002, p. 1.

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(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 ([1]).

(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.

([1]) OJ L 261, 6.8.2004, p. 19.

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(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.

(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.

([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.

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(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;

(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;

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(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.

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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).

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;

([1]) OJ L 16, 23.1.2004, p. 44.

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(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;

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(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.

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;

([1]) OJ L 134, 30.4.2004, p. 114.

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(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.

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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.

([1]) OJ L 328, 5.12.2002, p. 17.

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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.

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.

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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.