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accompanying the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down minimum standards for the reception of asylum seekers

Summary of the Impact Assessment

{COM(2008) 815 final}
{SEC(2008) 2944}

1. INTRODUCTION

The adoption of a proposal for the amendment of the Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers (hereafter referred to as the Reception Conditions Directive) was included in the Commission's Work Programme for 2008¹ as one of its strategic initiatives.

With a view to preparing for the second stage of the asylum legislation, as called for by The Hague Programme², the Commission launched the evaluation process of the results achieved in the first phase of the establishment of the Common European Asylum System (hereafter referred to as the CEAS), including *inter alia* the issue of reception conditions of asylum seekers.

In this respect, the Commission issued a report on 26 November 2007³ (hereafter referred to as **the Evaluation Report**) on the transposition and application of the Directive by Member States highlighting the areas where clarification of the existing provisions and/or further harmonisation is required. Additionally the Commission presented in June 2007 a **Green Paper** with a view to consult stakeholders on the possible options shaping the second phase of the CEAS also in relation to the reception of asylum seekers. Finally, several expert meetings took place with Member States, UNHCR, NGOs, and academics in view of identifying the main areas of concern to be addressed during the second phase of the asylum legislation.

The issues raised and the suggestions put forward during the consultation process have provided the basis for the preparation of this Impact Assessment.

2. STATE OF PLAY AND PROBLEMS

The following problems have been identified in the area of reception conditions for asylum seekers:

- The Reception Conditions Directive does not always guarantee adequate standards of treatment for asylum seekers, notably in relation to:
 - access to the labour market;
 - level and form of material reception conditions;
 - addressing the needs of vulnerable persons;
 - detention;
 - scope of application of the Directive.
- Different standards of treatment between vulnerable asylum seekers and vulnerable nationals, could lead to discrimination.
- The lack of harmonised reception conditions could increase secondary movements of asylum seekers which impose an unfair strain on national administrations and on asylum seekers themselves.

¹ COM (2007) 640

² The Hague Programme: strengthening freedom, security and justice in the European Union, adopted on 5 November 2004

³ COM (2007) 745

The Impact Assessment then looks into the possible evolution of the situation if no actions were taken at EU level and concludes that the existing problems would persist and that there is a strong need for EU action.

3. POLICY OBJECTIVES

The **general objectives** of the second phase of the CEAS with regard to the Reception Conditions Directive are to ensure higher standards of treatment for persons in need of international protection and to contribute to the reduction of the phenomenon of secondary movements.

The new Directive shall in particular ensure the following specific objectives:

- I) To facilitate access to the labour market;
- II) To ensure adequate standards for material reception conditions;
- III) To guarantee that the needs of vulnerable groups are adequately addressed;
- IV) To ensure that detention is applied only in exceptional cases and to strengthen legal guarantees for detained asylum seekers;
- V) To clearly define the scope of application of the Directive.

4. POLICY OPTIONS

Taking into consideration the different nature of the above mentioned specific objectives, the Impact Assessment proposes separate policy options for each of these objectives. The preferred policy option has been constructed by combining the preferred policy options selected for each specific objective.

4.1. Status Quo

The existing legal framework would remain unchanged and ongoing activities in Member States would continue.

The Commission would continue monitoring the implementation of the Reception Conditions Directive.

4.2. Preferred Policy Option

Given the level of complexity of the proposed policy options, this summary is limited to an enumeration of the main elements composing the preferred policy option. The preferred policy option consists of both **legislative options** and options focused on **fostering practical cooperation** amongst Member States.

With regard to:

- **the scope of the Directive**, the preferred policy option:
 - clarifies that the Directive applies during all types of asylum procedures (including Dublin) and to all geographic areas and facilities hosting asylum seekers (including detention);
 - ensures that applicants for subsidiary protection are included.
- **access to the labour market** the preferred policy option:
 - shortens time limitations regarding access to employment;
 - prohibits the imposition of conditions to the labour market at national level that could hinder the right to employment for asylum seekers.

The preferred practical cooperation option which complements the preferred legislative one foresees the exchange of best practices, within the EURASIL framework, in relation to labour restrictions with a view to further facilitate access; for example, Member States' tradition of not requiring work permits and/or of allowing immediate access to employment could be presented next to that of Member States foreseeing stricter measures in this domain.

- **detention of asylum seekers**, the preferred policy option:

- aims to ensure that detention should normally be avoided and used only in exceptional cases;
- introduces a number of procedural guarantees for detained asylum seekers such as the right to be informed on the grounds of detention and on the possibilities to challenge the detention decision before a national court;
- provides for conditions of detention taking into consideration the vulnerable situation of persons with special needs notably children and victims of torture;
- provides that minors will not be detained unless it is in their best interests whereas detention of unaccompanied minors will not be allowed;
- introduces a system of periodic review in order to monitor detention.

The preferred practical cooperation option which complements the preferred legislative one foresees exchanging best practices, within the EURASIL framework, with those Member States that apply alternative measures to detention (i.e. financial guarantee, provision of a guarantor etc).

- **material reception conditions**, the preferred policy option:

- follows a quantitative approach regarding the principle of 'adequate level of material reception conditions' by introducing a benchmark, namely the minimum level of social assistance granted to nationals;
- introduces a reporting requirement for Member States in view of monitoring, *inter alia*, the level of assistance granted to asylum seekers;
- ensures that the withdrawal or reduction of reception conditions by national authorities is in line with the principle of adequate standard of living and guarantees a right of appeal against such decisions.

The preferred practical cooperation option which complements the preferred legislative one foresees the exchange of best practices, within the EURASIL framework, in order to ensure higher standards concerning material reception conditions while also taking into consideration Member States' reception capacities; in specific, ideas could be shared on how to better channel asylum seekers' needs through reception centres or on how to ensure that housing facilities take into account age and gender considerations and respect the right to privacy and family life.

- **persons with special needs**, the preferred policy option:

- ensures the establishment of mechanisms that could adequately identify special needs and provide monitoring of individual cases where necessary;
- facilitates access to education for minors;
- introduces an obligation for Member States to prevent gender related crimes in accommodation centres;

- clarifies the meaning of essential notions currently provided in the Directive such as 'necessary medical or other assistance' and 'essential treatment of illness';
- introduces the obligation for adequate training of staff in contact with victims of torture or rape.

The preferred practical cooperation option which complements the preferred legislative one foresees:

- the exchange of best practices, within the EURASIL framework at a regular basis, regarding the treatment of vulnerable groups, in particular in order to ensure pro-activeness in identifying special needs, to guarantee access to adequate treatment where necessary, and to ensure that staff in contact with vulnerable groups receive appropriate training;
- practical cooperation within the EURASIL framework could assist in the adoption of an EU handbook that could assemble best practices at EU level concerning training of staff in contact with vulnerable groups, guidelines on the identification of special needs, accommodation of vulnerable persons etc.

The **main advantages** of the preferred option are:

- It ensures **higher standards** of treatment for asylum seekers (facilitated access to the labour market, procedural guarantees for detainees, higher standards of treatment for vulnerable groups etc.) in line with international law, notably the UN Convention on the Rights of the Child and the EU Charter of Fundamental Human Rights;
- It achieves **further harmonization** of reception conditions through legislative intervention as well as enhanced measures of practical cooperation thus fostering equal standards of treatment throughout the EU and ensuring a comprehensive approach to reception conditions.

As far as the main impacts are concerned:

- Ensuring higher standards of reception will have an overall positive impact for asylum seekers concerning respect of their fundamental rights. In particular, the right to free movement will be reinforced by providing that detention should only occur in exceptional cases and that unaccompanied minors will not be detained; facilitating access to the labour market will make asylum seekers more self-sufficient and will assist in their integration to the hosting Member State; vulnerable groups will be more adequately addressed by ensuring that their needs are duly and timely identified and that access to appropriate treatment is available; finally, exchanging best practices and adopting guidelines in all the relevant areas of reception conditions could be a very useful instrument for ensuring that the highest possible standards are applied throughout the EU;
- By ensuring more equal standards of treatment throughout the EU, notably concerning detention, material reception conditions and access to the labour market, the proposed measures could assist in reducing the phenomenon of secondary movements. Practical cooperation could also assist in establishing common practices in the area of reception of asylum seekers especially concerning the treatment of vulnerable groups through the adoption of an EU Handbook consisting of best procedures and policies to be applied by all Member States.

As far as the financial feasibility is concerned:

- financial efforts would be required in order to comply with the new Directive, with regard to:

- material reception conditions in view of aligning their policies with the benchmarks set out in the new Directive;
- treatment of vulnerable persons, in view of establishing at national level mechanisms for identifying special needs;
- ensuring access to health care for vulnerable persons under the same conditions applicable for nationals;
- the envisaged intervention regarding shortening time constraints for access to the labour market could achieve savings for Member States. This could be attributed to the fact that asylum seekers would be more self-sufficient therefore additional welfare assistance would be avoided. Moreover they would contribute to Member States' fiscal systems through labour taxation;
- ensuring that detention is applied only in exceptional cases would also result in savings for Member States; due to the high number of staff employed in detention centres in order to meet security requirements, detention policies could prove more costly than accommodating asylum seekers in open reception centres.

5. MONITORING AND EVALUATION

The monitoring and evaluation of the preferred policy option will be an important element to assess the efficiency and effectiveness of the new Directive. In this respect the Commission will regularly evaluate and report on the implementation of the new Directive in Member States. In addition yearly reporting mechanisms will also be put in place with a view to monitor those areas whose implementation proved problematic during the first-phase of the asylum legislation. Regular expert meetings will continue to take place in view of discussing implementation problems and exchanging best practices between Member States.

The table below includes a proposed list of indicators that could be used to assess the progress and effectiveness of the preferred option in achieving the main policy objectives.

Indicators

- Level of implementation by Member States of the amendments proposed to the Directive on Reception Conditions;
- Number of asylum seekers in a Member State;
- Number of asylum seekers employed in a Member State;
- Number of asylum seekers identified to have special needs and number of referrals to competent institutions;
- Number of Dublin requests and transfers;
- EURODAC hits;
- Amounts of benefits granted to asylum seekers;
- Number of persons benefiting from ERF-funded activities;
- Level of financial resources allocated for the ERF;
- Level of financial resources allocated for practical cooperation activities;
- Number of trainings carried out.