

Brussels, 26 November 2007

## Evaluation of the implementation of Directive 2003/9/EC of 27 January 2003: laying down minimum standards for the reception of asylum seekers

*Creating a Common European Asylum System (CEAS) as a constituent part of an Area of Freedom, Security and Justice emerged from the idea of making the European Union a single protection area for refugees, based on the full and inclusive application of the Geneva Convention and on the common humanitarian values shared by all Member States. The Hague Programme Action Plan foresees the adoption of the proposal for CEAS by end 2010.*

The basic layout of the CEAS, as defined in the Tampere Programme and confirmed by the Hague Programme, consists in the establishment of a common asylum procedure and a uniform status valid throughout the EU. The ultimate objective pursued at EU level is thus to establish a level playing field, a system which guarantees to persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States while at the same time dealing fairly and efficiently with those found not to be in need of protection.

The goal pursued in the **first phase** of the CEAS was to bring Member States' legal frameworks closer to each other on the basis of **common minimum standards**. The goal in the **second phase** should be to achieve a **higher standard and greater equality of protection** across the EU as well as a **higher degree of solidarity** between EU Member States.

**Directive 2003/9/EC** of 27 January 2003 laying down minimum standards for the reception of asylum seekers Directive (the Reception Conditions Directive) was adopted on 27 January 2003. The legal basis for adoption was **Article 63(1)(b)** of the Treaty establishing the European Community (TEC).<sup>1</sup>

Under Articles 2(c) and 3, the Directive is **applicable to all third country national and stateless asylum seekers** from the time of filing their applications for international protection **until they are allowed to remain** on the territory of a Member State as asylum seekers (ie. until the final decision on their application).

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<sup>1</sup> Article 63 TEC: "The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

1.measures on asylum, 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, within the following areas: (...)

(b) minimum standards on the reception of asylum seekers in Member States"

The Reception Conditions Directive **includes provisions on** access to information and legal assistance, employment, vocational training, health care, special assistance for applicants with special needs and provides for the obligation to supply them with proper documentation certifying their status. As the Directive sets out minimum standards, Member States may introduce or retain **more favourable provisions**.

On the basis of Article 25 of the Directive, the Commission has adopted a report on the application of the Directive by the 23 Member States which were covered by its provisions in the period analysed by the report (Denmark does not take part in the adoption of legislation under Title IV of the TEC,<sup>2</sup> Ireland did not use its opt-in and Bulgaria and Romania were not yet EU Member States at the time.).

**Overall**, the Directive has been **transposed satisfactorily** in the majority of Member States. Contrary to fears previously raised upon adoption of the Directive, the report shows that Member States **have not lowered their previous standards** of reception of asylum seekers. Only **3 Member States decreased in a given area the reception conditions** they provide, while as many as **12 Member States raised their standards** compared to the rules in place before its adoption (in particular as far as granting access to the labour market and education are concerned).

**Information** on the rights and obligations of asylum seekers are generally duly provided to them, however, the **timely delivery of appropriate documentation** and adequate location and capacity of **reception centres** remains a challenge in many Member States. A **few best practices** can however also be identified, including practices in some Member States aiming at creating good relations with asylum seekers and the local community.

However, the report has also shown that **the wide discretion allowed by the Directive** in a number of areas (ie. regarding access to employment, level and form of material reception conditions, free movement rights and needs of vulnerable persons) **undermines the objective of creating a level playing field** in the area.

The Commission intends to address the issues flagged in the report in the proposal for amending the Directive which will be presented in July 2008, in the framework of the presentation of proposals for legislation to constitute the second phase of the **CEAS**.<sup>3</sup>

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<sup>2</sup> Visas, *asylum*, immigration and other policies related to free movement of persons.

<sup>3</sup> These legislative instruments are scheduled by the Hague Programme to be adopted by 2010.