



# European Union: Health Standards in Refugee Camps

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# Contents

I. Introduction.....	1
II. Legislative Framework.....	2
A. Health Standards.....	3
B. Special Rules for Vulnerable Persons.....	3
III. Monitoring of Implementation.....	4
IV. Relationship to International Norms.....	5

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# European Union: Health Standards in Refugee Camps

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**SUMMARY** The European Union (EU) is tasked with establishing a Common European Asylum System. To that end, several legislative instruments have been adopted, including a directive on standards regarding reception conditions of applicants for asylum or subsidiary and temporary protection. For vulnerable persons, such as minors, there are special protections in place. Member States must ensure that material reception conditions that provide an adequate standard of living for applicants, guaranteeing their subsistence and protecting their physical and mental health, are available to all applicants. Applicants have a right to receive necessary health care, which must at least include emergency care and essential treatment of illnesses and of serious mental disorders. Vulnerable persons must be provided with necessary medical or other assistance, including mental health care. All EU asylum policies must be in conformity with the 1951 Geneva Convention and its 1967 Protocol.

## I. Introduction

The European Union (EU) is tasked with establishing a Common European Asylum System (CEAS).<sup>1</sup> The idea was first considered in October 1999 at the meeting of the European Council in Tampere, Finland.<sup>2</sup> In its conclusions, the European Council stated that the EU and the Member States

agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention . . . To that end, the Council is urged to adopt, on the basis of Commission proposals, the necessary decisions according to the timetable set in the Treaty of Amsterdam and the Vienna Action Plan. The European Council stresses the importance of consulting UNHCR and other international organisations. In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission is asked to prepare within one year a communication on this matter.

To that end, several legislative instruments have been adopted that establish common procedures, a uniform status for refugees and people that have been awarded subsidiary and temporary protection, criteria and mechanisms for determining which Member State is responsible for considering an asylum application, standards regarding conditions for the reception of applicants for asylum or subsidiary protection, and partnerships and cooperation with third countries.<sup>3</sup> With regard to health standards in refugee camps, the EU Reception Conditions Directive is the most important legislative instrument. In 2014, the European Council adopted strategic guidelines that reaffirmed that the “full transposition and effective

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<sup>1</sup> Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), art. 67, para. 2, art. 78, 2016 O.J. (C 202) 47, <https://perma.cc/432S-DKZ8>.

<sup>2</sup> *Tampere European Council, Presidency Conclusions* (Oct. 15-16, 1999), <https://perma.cc/D4NF-ET4X>.

<sup>3</sup> TFEU, art. 78, para. 2.

implementation of the Common European Asylum System (CEAS) is an absolute priority.”<sup>4</sup> However, as reception conditions are still not fully harmonized in the Member States, because the directive leaves discretion to the Member States with regard to the standards, the European Commission in 2016 presented a proposal to revise the current directive.<sup>5</sup>

## II. Legislative Framework

The EU Reception Conditions Directive was adopted in 2003.<sup>6</sup> In 2013, it was replaced with a revised version.<sup>7</sup> Directives must be transposed into national law by the Member States. They are only binding with regard to the goal that the EU countries must achieve. The means are up to the individual Member States.<sup>8</sup> The deadline for transposing the revised Reception Conditions Directive was July 21, 2015.<sup>9</sup>

The Reception Conditions Directive aims to harmonize reception conditions in the EU Member States with regard to housing, food, clothing, financial allowances, a decent standard of living, and medical and psychological care. For vulnerable persons, such as minors, there are special protections in place.<sup>10</sup>

Furthermore, the Charter of Fundamental Rights of the European Union (EU Charter) states that “[e]veryone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices”.<sup>11</sup> The right applies to everyone, not just EU citizens. The EU Charter generally binds the institutions, bodies, offices, and agencies of the EU and applies to the Member States only when they are implementing EU law.<sup>12</sup> It has the same legal status as the EU Treaties.<sup>13</sup>

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<sup>4</sup> European Council, Conclusions, EUCO 79/14 (June 26-27, 2014), at 3, no. 7, <https://perma.cc/J8WM-WKYL>.

<sup>5</sup> Commission Proposal COM (2016) 465 final (July 13, 2016), <https://perma.cc/VE7X-J8UY>.

<sup>6</sup> Reception Conditions Directive, 2003 O.J. (L 31) 18, <https://perma.cc/N2YZ-HWPH>.

<sup>7</sup> Revised Reception Conditions Directive, 2013 O.J. (L 180) 96, <https://perma.cc/YBD5-LL82>.

<sup>8</sup> TFEU, art. 288, para. 3.

<sup>9</sup> Revised Reception Conditions Directive, art. 31.

<sup>10</sup> Id. arts. 21-25.

<sup>11</sup> Charter of Fundamental Rights of the European Union (EU Charter), art. 35, 2012 (C 326) 391, <https://perma.cc/UBM4-NH4Y>.

<sup>12</sup> Id. art. 51.

<sup>13</sup> Consolidated Version of the Treaty on European Union (TEU), art. 6, para. 1, 2016 O.J. (C 202) 13, <https://perma.cc/2WKP-G5DZ>.

## A. Health Standards

An initial medical screening may be required of applicants for international protection.<sup>14</sup>

Article 17 of the Reception Conditions Directive provides that Member States must ensure that material reception conditions that “provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health” are available to all applicants for international protection. Material reception conditions are “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.”<sup>15</sup> When housing is provided in kind in an accommodation center, meaning a place used for the collective housing of applicants, an adequate standard of living must be guaranteed.<sup>16</sup>

Member States must also ensure that all applicants receive necessary health care, which must at least include emergency care and essential treatment of illnesses and of serious mental disorders.<sup>17</sup> The European Asylum Support Office (EASO) has published guidance on reception conditions to help Member States with the implementation of the directive.<sup>18</sup> It describes standards and indicators against which compliance with the standards must be measured. With regard to health care, it states that applicants must have access to all types of care, it must be available within a reasonable distance, be free of charge, services must be provided by qualified medical personnel, interpreters must be provided, there must be access to first aid, and applicants must be provided with their medical records.<sup>19</sup> The guidance documents also list best practices with regard to health care, such as providing preventive health care and vaccinations.<sup>20</sup>

## B. Special Rules for Vulnerable Persons

For applicants with special reception needs, more detailed rules are in place. Applicants with special reception needs are 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,

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<sup>14</sup> Revised Reception Conditions Directive, art. 13.

<sup>15</sup> Id. art. 2(g).

<sup>16</sup> Id. art. 2(i), art. 18, para. 1(b).

<sup>17</sup> Id. art. 19, para. 1.

<sup>18</sup> European Asylum Support Office (EASO), EASO Guidance on Reception Conditions: Operational Standards and Indicators (Sept. 2016), <https://perma.cc/Y7RK-TEBB>.

<sup>19</sup> Id. at 33 et seq.

<sup>20</sup> Id. at 34.

such as victims of female genital mutilation.<sup>21</sup> Member States must conduct an individual assessment in order to identify vulnerable persons and to ensure that their needs are met.<sup>22</sup>

In particular, minors, meaning third-country (non-EU) nationals or stateless persons below 18 years of age,<sup>23</sup> and unaccompanied minors, meaning minors arriving without an adult responsible for them,<sup>24</sup> benefit from special protections. Member States must always assess the best interests of minors when implementing the provisions of the directive that concern them and take due account of their well-being.<sup>25</sup> They must ensure a standard of living adequate for the minor's physical, mental, spiritual, moral, and social development.<sup>26</sup> Minors in accommodation centers must be given access to, among other things, open-air activities; rehabilitation services for victims of abuse, neglect, exploitation, torture or cruel, inhuman, and degrading treatment, or who have suffered from armed conflicts; and mental health services and qualified counseling.<sup>27</sup> Unaccompanied minors will be provided with a representative who ensures that they can take advantage of these benefits.<sup>28</sup>

With regard to health care, the directive states that the Member States must provide vulnerable persons with necessary medical or other assistance, including mental health care.<sup>29</sup>

### III. Monitoring of Implementation

The directive provides that its implementation should be evaluated at regular intervals.<sup>30</sup> Furthermore, Member States must set up mechanisms to ensure that guidance, monitoring, and control of the level of reception conditions are established.<sup>31</sup> Information on such mechanisms must be sent to the European Commission.<sup>32</sup> The Member States must also submit information to the European Commission on the laws, regulations, and administrative measures transposing the directive.<sup>33</sup> Member States that fail to transpose or properly transpose the directive into national law within the deadline may be referred by the European Commission to the Court of Justice of the EU and be sanctioned.<sup>34</sup>

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<sup>21</sup> Revised Reception Conditions Directive, art. 2(k), art. 21.

<sup>22</sup> *Id.* art. 22.

<sup>23</sup> *Id.* art. 2(d).

<sup>24</sup> *Id.* art. 2(e).

<sup>25</sup> *Id.* art. 23.

<sup>26</sup> *Id.* art. 23, para. 1.

<sup>27</sup> *Id.* art. 23, paras. 3, 4.

<sup>28</sup> *Id.* art. 24.

<sup>29</sup> *Id.* art. 19, para. 2.

<sup>30</sup> *Id.* recital 30.

<sup>31</sup> *Id.* art. 28, para. 1.

<sup>32</sup> *Id.* art. 28, para. 2.

<sup>33</sup> *Id.* art. 31.

<sup>34</sup> TFEU, art. 258, art. 260, para. 3.

The European Commission is required to report to the European Parliament and the Council of the European Union on the application of the directive at least every five years.<sup>35</sup> The first report was due by July 20, 2017.<sup>36</sup>

The EASO guidance mentioned above might serve as a basis for the development of monitoring frameworks to assess the quality of national reception systems in the future.<sup>37</sup>

#### **IV. Relationship to International Norms**

The TFEU provides that any asylum policy has to be in accordance with the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol.<sup>38</sup> Likewise, the EU Charter states that the right to asylum is guaranteed with due respect for the 1951 Geneva Convention and the 1967 Protocol and in accordance with the EU Treaties.<sup>39</sup>

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<sup>35</sup> Revised Reception Conditions Directive, art. 30.

<sup>36</sup> *Id.*

<sup>37</sup> EASO Guidance, *supra* note 18, at 7.

<sup>38</sup> TFEU, art. 78, para. 1.

<sup>39</sup> EU Charter, art. 18.