

NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN: THE NETHERLANDS

by

Karina Franssen (K.Franssen@jur.ru.nl)

(junior researcher)

under the responsibility of

Kees Groenendijk (C.Groenendijk@jur.ru.nl)

1. NORMS OF TRANSPOSITION

- Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Main norm of transposition

Regulation on the provisions for asylum seekers and other categories of aliens 2005 (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005)(Rva 2005), 26 January 2005, Nr. 5332253/05/DVB Directie Vreemdelingenbeleid, published in the Government Gazette of 3 februari 2005, no. 24, p. 17.

Legal nature

The Rva 2005 is a legally binding regulatory measure issued by the Minister for Alien Affairs and Integration. Regulatory measures are orders of a general nature from the central government and issued by a Minister. In contrast with the procedure regarding the coming about of acts, orders and decrees, the Minister will neither ask the Council of State for advice nor involve the Parliament in the procedure. Moreover, the regulatory measure will not be published in the official Bulletin of Acts, Orders and Decrees, but in the Government Gazette.

According to the explanatory memorandum to the Rva 2005, which forms a part of the Rva 2005, the Rva 2005 is not only issued because of the transposition of the Reception Conditions Directive. It holds a complete revision of the Rva 1997 which has expired with the coming into force of the Rva 2005. The Rva 2005 is also issued to carry out national policy reforms (return policy, policy regarding unaccompanied minors, etc.) and a clarification of the existing policy. Thus at the same time a few changes in the Rva are made in relation with the transposition of Directive 2001/55/EC on temporary protection for asylum seekers.

Transposing table (as laid down in the explanatory memorandum to the Rva 2005)

Reception Conditions

Directive

Article 2, under b
Article 2, under c
Article 2, under d
Article 2, under h
Article 2, under j
Article 2, under l
Article 3 par. 1
Article 5
Article 7 par. 4

Article 8

Article 9
Article 13 par. 1
Article 13 par. 1 and 2
Article 13 par. 1, 2 and 5
Article 13 par. 3
Article 13 par. 4
Article 13 par. 5
Article 14 par. 1
Article 14 par 2, under a

Article 14 par. 2, under b, 2nd alinea
Article 14 par. 2, under b and par. 7
Article 14 par. 4
Article 14 par. 8
Article 15

Article 16 par. 1, under a

Article 16 par. 1, under b

Article 16 par. 3
Article 16 par. 5
Article 17 par. 1
Article 18 par. 2
Article 19 par. 2

Article 20

Rva 2005

Article 1, under c
Article 1, under d
Article 1, under f
Article 1, under e
Article 9 par. 1
Article 1, under h
Article 3 par. 2, under a
Article 2 par. 3 and 4
Article 10 under c juncto
article 19, under e;
article 13
Article 3 par. 3, under d;
article 11 par. 3
Article 9 par. 2
Article 3 par. 1 and 2
Article 9 par. 1
Articles 14 and 15
Article 2 par. 1
Article 20
Article 15
Article 1, under h
Article 3 par. 3, under d;
article 11 par. 3
Article 10 under c and d
Article 9 par. 6-8
Article 11 par. 1
Article 4 par. 1
Article 9 par. 1, under e;
article 16 par. 1
Article 4 par. 2, article 7
par. 1, under i and j;
article 10, under c; article
11 par. 1; article 13
par.1; article 19, under e
Article 7 par. 1, under k;
article 10, under a and b;
article 21
Article 10, under c and d
Article 7 par. 1, under b
Article 9 par. 4
Article 9 par. 4
Article 3 par. 2, under b;
article 6; article 11
par. 3-5
Article 9 par. 4

- Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,...)
- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
 - Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
 - Provide the texts of any translation of the above norms into English if they are available.

The Rva 2005 is the main, if not the sole, norm of transposition. Maybe some internal regulations of the Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers)(COA), which is the main agency responsible for the reception of asylum seekers (see below), have been changed as well, but these internal rules are unpublished.

- Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Minister for Alien Affairs and Integration.

- Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

Article 11(2)(b) of the Aliens Act mentions that asylum seekers who are lawfully resident in the Netherlands awaiting a final decision on their asylum application may claim facilities and benefits if these are granted by or pursuant to the Act on the Central Agency for the Reception of Asylum Seekers (Wet Centraal Orgaan opvang asielzoekers)(Wet COA). The Wet COA contains rules concerning the establishment of the COA, an autonomous administrative body ('zelfstandig bestuursorgaan') entrusted with the material and immaterial reception of asylum seekers. It does not contain any provision with respect to the content of the material and

immaterial reception of asylum seekers. It only holds rules about the organization of the COA. Pursuant to article 12 of the Wet COA, the Minister for Alien Affairs and Integration is competent to take further regulatory measures regarding the provisions for asylum seekers. She has used this competence by formulating the Rva 2005. Also in the past detailed rules on reception of and provisions for asylum seekers were included in a regulatory measure, the Rva 1994 and the Rva 1997.

- Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

In our opinion there has been no general tendency to just indiscriminately copy the provisions of the directive into the Rva 2005 without adaptation to national circumstances. There are however provisions in the Rva 2005 which have been literally taken over from the Directive (e.g. article 9, par. 6-9, of the Rva 2005 literally copies article 14(2)(b) and 7 of the Directive. Since these provisions contain rights for the asylum seeker (right of communicating with relatives, legal advisers and representatives of the UNHCR) which were not laid down in the Rva 1997 from the point of view of the asylum seeker this is very desirable.

- Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

The Rva 2005, which is the main, if not the sole, norm of transposition in the Netherlands has been adopted and published in the Government Gazette (Stcrt. 3 February 2005, no. 24, p. 17). With regard to a couple of mandatory provisions of the Directive there are some problems when it comes to a correct transposition into national law or practice. For instance, it is doubtful whether article 17(1) of the Directive is correctly transposed in the Rva 2005. The fact is that article 9(4) of the Rva 2005 only states in general terms, without distinction between the different categories of persons, that more vulnerable persons with special needs have the right to special support or counselling. Problems in practice arise with regard to the mandatory deadline for the delivery and extension of the W-document for asylum seekers (answers Q19 C and D). It is further questionable whether the stay in AC Ter Apel (deprivation of freedom?) and in AC Schiphol (which is secured against unauthorized departure) is in accordance with article 7(1) of the Directive relating to freedom of movement. Moreover, regarding article 13(1) of the Directive, the Rva

2005 (and thus the material reception conditions in it) does not apply to asylum seekers who stay in a TNV or in an AC. Thus apparently, the Directive is not applied to asylum seekers in these centres although they are in fact (material) reception conditions. According to article 13(2) of the Directive the reception conditions have to be considered as sufficient to ensure a standard of living adequate for the health of applicants and capable of ensuring their existence. Although the Minister for Alien Affairs and Integration did raise the level of food allowances in November 2005, there was not enough money to raise the allowances all at once. This means that the allowances will be raised in phases within a period of 3-4 years and will comply with the standards of the NIBUD (National Institute for Budget Information) only in 2009 (see answer Q12B). Although the 1969 Compulsory Education Law (*Leerplichtwet*) does ensure access to schooling for all children of asylum seekers, in practice the education to minor children of asylum seekers in detention is very elementary. Finally, according to article 23 of the Directive member states shall ensure that appropriate guidance, monitoring and control of the level of reception conditions are established. Although the *Wet COA* provides for some kind of (financial) control, there is no control or monitoring with regard to the quality of reception conditions. There have, however, been incidental monitoring reports about the health care for asylum seekers by the Inspection of the Ministry of Health and about the reception of unaccompanied minors by the National Youth Inspection.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (*please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration*).

No.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).
- Ariane den Uyl, 'Wet- en regelgeving: Opvangrichtlijn geïmplementeerd: nieuwe Rva', (*Legislation: Reception Conditions Directive implemented: new Rva*), *Nieuwsbrief Asiel- en Vluchtelingenrecht (NAV) 2001/3*, p. 132.

- Ariane den Uyl, 'Politieke overeenstemming over minimumnormen voor de opvang van asielzoekers' (Political agreement on minimum standards for the reception of asylum seekers), NAV 2002/9, p. 580-585
- H.T. Masmeyer, *Opvang van asielzoekers (Reception of asylum seekers)*, Den Haag: Sdu Publishers 2005
- ECRE (November 2005): *The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation?*
- Taco Groenewegen, 'Kronieken: Opvang van asielzoekers' (Column: Reception of asylum seekers), NAV 2006/1, p. 17-21
- F. Larsson, 'Commentaar Europees Migratierecht: de Opvangrichtlijn' (Commentary European Migration Law: the Reception Conditions Directive), Den Haag: SDU Publishers (loose-leaf book)(forthcoming)

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Important case law:

In a recent judgment of 4 May 2006 (200600347/1) the Council of State decided that according to article 2(c) juncto article 3(1) of Directive 2003/9/EC, the Directive did not apply to the appellants concerned because a final decision on their asylum requests had already been reached.

A judgment of 20 January 2006 (Jurisprudentie Vreemdelingenrecht (JV) 2006/142 m.nt. HBA) concerned a request for a preliminary injunction. The District Court of Haarlem held that the fact that the Minister for Alien Affairs and Integration did not provide reception conditions to an asylum seeker who filed a repeated asylum request according to article 4(2) of the Rva 2005 was not contrary to articles 16(1)(a), 16 (4) and 17 of the Reception Conditions Directive. Neither does article 16(5) of the Reception Conditions Directive compel the Minister to provide reception conditions until a final decision on the repeated asylum request has been reached.

Also in an earlier case the applicability of the Reception Conditions Directive was invoked. A judgment of 27 January 2003 (LJN: AF3393) concerned the case of a family who, due to the closing of a reception centre at Ameland (one of the West Frisian Islands) where they were staying, had to be transferred to a reception centre on the mainland (Kollum). They objected to this relocation stating that the reception conditions in the reception centre in Kollum were in breach of the Reception Conditions Directive. The District Court of Leeuwarden

however concluded that besides the fact that the deadline for transposition of the Directive had not yet been reached, the statement was insufficiently motivated.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

*The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. **Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Reception of asylum seekers

The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers)(COA) is the main actor in charge of reception conditions for asylum seekers in the Netherlands. This governmental agency is an autonomous administrative body ('zelfstandig bestuursorgaan'), working under the (political) responsibility of the Minister for Alien Affairs and Integration. Its budget is provided by the Department of Justice (the Minister for Alien Affairs and Integration does not have her own department).

The tasks of the COA include the reception of asylum seekers, providing basic assistance and information to asylum seekers, securing access to care for asylum seekers, the payment of the weekly allowances to asylum seekers, the acquirement, maintenance and closure of reception facilities and the maintenance of security in the facilities.

Traditionally, the COA was responsible for the organization of the first health care for asylum seekers. This responsibility is, however, gradually transferred to a medical foundation that is completely financed by the government. Since 2000 the regional Community Health Services ('GGD') are responsible for the health care for asylum seekers. In order to carry out these tasks, foundations for Community Health Services for Asylum Applicants ('Medische Opvang van Asielzoekers')(MOA) have been created. These are funded by the COA.

The Immigration and Naturalization Service (IND), the body that investigates whether or not an asylum seeker qualifies for an asylum residence permit, is also responsible for the reception of asylum seekers in

application centres, in which asylum seekers stay during the first days of the asylum procedure (see below).

The following main forms of reception of asylum seekers exist:

1. Temporary Emergency Reception (TNV)
2. Application Centre (AC)
3. Regular reception in:
 - a. Centre for orientation and integration
 - b. Centre for return
4. Administrative registration and other arrangements.

1. The TNV is used to house asylum seekers who have not been admitted to the asylum procedure yet. The Dutch asylum procedure starts in the Application Centres. At the AC in Ter Apel it usually takes several weeks (2-3) until an asylum seeker is given the opportunity to submit his claim. During the waiting period asylum seekers stay in the TNV, situated near the Application Centre in ter Apel. Housing is in mobile homes. During this stage of the procedure, the Rva 2005 is not applied.
2. As explained above, in order to request asylum, an asylum seeker must submit an official application at an Application Centre (AC) where he will also be housed. For what period of time the asylum seeker will be housed in an AC depends on the review by the IND whether an asylum request can be dealt with quickly (in cases when extensive research is not needed) or not. In the first situation the asylum request will be dealt with within 48 'processing' hours (= 3-5 working days). This procedure is the so-called accelerated asylum determination procedure. The asylum seeker will stay in the AC until a final decision is made. During this stage of the procedure the Rva 2005 is not applied. When it appears impossible to reach a decision within 48 hours, because more research is needed, the asylum seeker will be referred to one of the centres described below (under 3).
3. This is the main category of reception to which the Rva 2005 is applicable. In January 2005 a new reception model was implemented. This model distinguishes three phases of reception: orientation (before first decision), integration (after positive decision), return (after first negative decision). Accordingly, the phase of the asylum procedure determines in which type of centre the asylum seeker is staying. Therefore the standard facilities are divided in reception centres for orientation and integration and reception centres for return.

a. Centres for orientation and integration, orientation stage

These centres house asylum seekers who have not yet received a decision and those who received a positive decision.

b. Centres for return

After the first negative decision the asylum seeker is transferred to a centre for return. When an asylum seeker receives a definite refusal of his asylum claim, he automatically loses his right to reception facilities. Only in exceptional cases reception may be provided.

c. Centres for orientation and integration, integration stage

After the asylum seeker received an asylum permit, he is entitled to private housing in a municipality. However, this process may take several months. Nowadays it is on average six months, but for the last years it has been on average nine to eleven months.

This new model has been implemented since January 2005. However, to prevent unrest (and probably also for logistic reasons) the COA decided to implement the new model gradually and only apply the new model to new cases. This means that asylum seekers who were staying in the reception centres on January 2005 have not been transferred yet. A full implementation of the new model will therefore still take some time.

Some of the centres are newly built facilities, others old buildings, like monasteries and schools, which are converted for reception purposes. Not only big buildings, also regular houses are used for reception, though the government keeps the right of access during the asylum procedure.

Following protests about accommodation in tents for temporary emergency reception at the time of significant arrivals, the COA developed minimum standards for privacy, hygiene and space to move. According to the COA, the existing reception centres meet minimum quality standards. Due to the decrease in the number of asylum-seekers, the COA in recent years has closed a number of reception centres and laid off many staff. There are concerns that the COA will no longer be prepared for a large influx should there be a major refugee crisis in the future.

4. In exceptional circumstances the asylum seeker may stay outside one of the available reception centres (administrative registration). This form of housing is allowed if lodging is available at a Dutch first degree family member, or a spouse or partner residing in appropriate housing. It may also be allowed if continued reception in a centre is harmful or inhumane, because of severe medical reasons. In that case a family member must be available to assist and take care of the asylum seeker outside the reception centre. In all of these cases the municipality must allow the housing of the asylum seeker. If this form of housing is allowed, the asylum seeker concerned will be registered in the nearest reception centre. This is where he may receive his weekly financial allowance (pocket money, allowance for clothing and allowance for food). By means of

this registration he has been also insured against medical expenses and against the financial impact of third party liability.

Another form of the small-scale reception are the 'central reception houses' (COW) or the small-scale central reception units (KCO). These are ordinary houses rented by the COA. Rva 2005 applies to asylum seekers who stay in these reception houses / units.

- Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

There are differences in treatment according to the stage of the asylum procedure. Before asylum seekers are officially admitted to the asylum procedure they stay at a TNV. Accommodation and reception conditions are very basic (bed, bath, bread). When asylum seekers are admitted to the asylum procedure and their asylum claim is being processed through the accelerated 48-hours asylum determination procedure (AC-procedure) they are also only entitled to basic facilities, like accommodation in AC's run by the IND and emergency health care. The same applies to asylum seekers with respect to whom the Netherlands have made a Dublin claim with another member state.

Asylum seekers whose claim is not rejected within 48 hours under the accelerated procedure are referred to regular reception centres run by the COA. The phase of the asylum procedures determines whether an asylum seeker has to stay in a centre for orientation and integration or in a reception centre for return.

a. Centres for orientation and integration, orientation stage

These centres house asylum seekers who have not yet received a decision and those who received a positive decision.

During the orientation stage all activities and messages focus on a temporary stay in the Netherlands. The following information and facilities will be available to the applicant:

- intake focused on the informing the asylum seeker on the daily routine, rules and regulations in the centre;*
 - interviews with the asylum seeker to develop a 'realistic' perspective of the future, meaning that the asylum seeker will be regularly confronted with the notion that most asylum applications are rejected;*
 - information sessions to transfer basic knowledge of Dutch language, necessary for temporary stay;*
 - general information aimed at direct environment of the centre;*
 - introduction to the Self Study Centre.*
- Recreational activities are available, only limited outside the centre.*

b. Centres for return

After the first negative decision the asylum seeker is transferred to a centre for return. In this centre all facilities are aimed at 'voluntary' return to the country of origin. The push and pull factors of return are to be discussed with the asylum-seeker. Information is provided on the role of IOM, the situation in the country of origin, specific possibilities of return, consequences of illegal stay in the Netherlands. Another aim of this phase is the elimination of possible obstacles for return. Further access to Dutch language courses is denied.

When an asylum seeker receives a definite refusal of his asylum claim, he automatically loses his right to reception facilities. Only in exceptional cases reception may be provided.

c. Centres for orientation and integration, integration stage

After the asylum seeker receives an asylum permit, he is entitled to private housing in a municipality. However, this process may take several months. Nowadays it is on average six months, but for the last years it has been on average nine to eleven months.

To make this period useful a pilot project has been started up, which will be evaluated in January 2006. During this pilot project status holders still residing in COA centres may sign an 'integration contract' with the COA and may then participate in courses on the Dutch language, orientation on Dutch society etc.

The traject further consists of provision of general information, orientation on labour market, a basic programme for skilled labour for persons from 18 years (for persons from 5 to 17 years compulsory education applies). In this phase the COA also aims to arrange practical

matters like registration for welfare and subsidies and accreditation of foreign diploma's.

- B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The Rva 2005, which is the main norm of transposition of the Reception Conditions Directive, is only applicable to asylum seekers who stay at reception centres for orientation and integration and reception centres for return, run by the COA.

4. GENERAL RULES ON RECEPTION CONDITIONS

- Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,...). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Housing: in kind (but only in reception centres except for 'administrative registration': see answer Q10);

Health care: in kind (at the same level as for Dutch citizens with the exception of IVF-treatment and gender alteration surgery (see Q27(B)).

Clothing: money / vouchers: one-off allowance of € 36,30 and weekly allowance which can (partly) be used for the purchase of clothes (see below).

Food: in kind and/or in money (see below), but almost none of the remaining reception centres provide all food in kind

According to the Rva 2005 an asylum seeker is entitled to the following allowances:

▪ **In case no meals are provided by COA:**

	<i>Food allowance (per week)</i>	<i>Pocket money* (per week)</i>	<i>Total allowance (per week)</i>
<i>Child (0-11)</i>	€ 4,63	€ 3,63	€ 8,26
<i>Child (12-17)</i>	€ 6,90	€ 5,45	€ 12,35
<i>Adults</i>	€ 24,16	€ 15,88	€ 40,04
<i>Unaccompanied Minors</i>	€ 20,06	€ 12,71	€ 32,77
<i>Single parent bonus</i>	€ 15,88	€ 10,44	€ 26,32

* *Pocket money is meant for the purchase of clothing and other personal expenses (travel expenses, care products, recreation).*

▪ **In case dinner is provided by COA:**

	<i>Food allowance (per week)</i>	<i>Pocket money* (per week)</i>	<i>Total allowance (per week)</i>
<i>Child (0-11)</i>	€ 1,37	€ 3,63	€ 5,50
<i>Child (12-17)</i>	€ 1,82	€ 5,45	€ 7,77
<i>Adults</i>	€ 12,77	€ 15,88	€ 28,65
<i>Unaccompanied Minors</i>	€ 10,49	€ 12,71	€ 23,20
<i>Single parent bonus</i>	€ 10,44	€ 10,44	€ 20,88

* *Pocket money is meant for the purchase of clothing and other personal expenses (travel expenses, care products, recreation).*

▪ **In case all meals are provided by COA:**

	<i>Food allowance (per week)</i>	<i>Pocket money* (per week)</i>	<i>Total allowance (per week)</i>
<i>Child (0-11)</i>	€ 0	€ 3,63	€ 3,63
<i>Child (12-17)</i>	€ 0	€ 5,45	€ 5,45
<i>Adults</i>	€ 0	€ 15,88	€ 15,88
<i>Unaccompanied Minors</i>	€ 0	€ 12,71	€ 12,71
<i>Single parent bonus</i>	€ 0	€ 10,44	€ 10,44

* *Pocket money is meant for the purchase of clothing and other personal expenses (travel*

expenses, care products, recreation).

Exceptional costs: (since 2003 to a large extent) in money; according to article 17 of the Rva 2005 an asylum seeker can be refunded for extraordinary costs (e.g. traveling expenses, school costs, medical costs, (legal) dues and costs related to a countercheck).

Asylum seekers qualify for the following compensation (outlines):*

- *one-off allowance for the purchase of cooking utensils: € 108,93*
- *one-off allowance for the purchase of plates and cutlery: € 10,73*
- *yearly school costs for children of school age (in August): € 34,03 (price level 2005)*
- *in case of the birth of a child: € 114,89*
- *in case of a funeral: € 2800*

** based on information provided by the Dutch Council for Refugees*

B. Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)? In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

For some years there has been debate (in parliament) on the initiative of the Dutch Council for Refugees that the weekly financial allowance and in particular the food allowance are inadequate with regard to health food and that this will be in breach of the criterion mentioned in article 13(2) of the Directive, namely that material reception conditions have to ensure a standard of living adequate for the health of applicants and capable of ensuring their existence (Handelingen der Tweede Kamer, 8 februari 2005, vergaderjaar 2004-2005, nr. 47, p. 3006-3014).

Also the Community Health Service (GGD) has expressed its concerns. In September 2004 the GGD declared in a letter to the Minister for Alien Affairs and Integration and to the parliament that the allowance for food was not sufficient.

In the Rva 2005 the financial allowance has been raised with € 1,- as compared with the amount granted in 1997. This allowance does not come up to the standards established for the costs of a sound nutritional diet per person by the Netherlands Nutrition Centre and NIBUD, the National Institute for Budget Information, an information and advising bureau on consumer financial matters.

According to NIBUD the food allowance should be (2004/2005):

<i>Child (0-11)</i>	<i>€ 23,80</i>
<i>Child (12-17)</i>	<i>€ 33,75</i>
<i>Adults</i>	<i>€ 34,02</i>
<i>Unaccompanied Minors</i>	<i>€ 35,07</i>

These amounts are based on the costs of a two-person household. NIBUD indicates that for single persons the costs are 4% higher, for three-person households they are 17% lower per person and for four-person households, 26% lower per person.

When these amounts are compared to those mentioned in the Rva 2005 (see above), this clearly shows that according to the NIBUD, asylum seekers receive too little money to provide for a responsible diet. In particular, the amount for children is much too low. Even if parents spend the entire child supplement on food (which means no diapers, toothpaste, public transportation tickets or toys), it is still not enough.

During the debate in parliament a motion in order to raise the food allowance was adopted. This induced the Minister to re-examine the level of the allowances. In a letter of 22 November 2005 (5371296/05/DVB) the Minister indicated that she intended to raise the level of the food allowances to the NIBUD standard with regard to all age-groups (including unaccompanied minors) in phases within a period of 4 years, because there was not enough money to raise all the allowances at once. See the table below:

Total allowance (per week)*	2005	2006	2007	2008	2009
<i>Child (0-11)</i>	€ 8,26	€ 13,06	€ 17,86	€ 22,66	€ 27,46
<i>Child (12-17)</i>	€ 12,35	€ 19,06	€ 25,77	€ 32,48	€ 39,19
<i>Adults</i>	€ 40,04	€ 42,51	€ 44,98	€ 47,45	€ 49,92
<i>Unaccompanied Minors</i>	€ 36,52	€ 36,52	€ 40,27	€ 44,02	€ 47,77

** in case no meals are provided by the COA*

According to a letter of the COA of 2 January 2006, the weekly allowance for 2006 has been raised as follows:

Total allowance (per week)*	2006
<i>Child (0-11)</i>	€ 13,16
<i>Child (12-17)</i>	€ 19,22
<i>Adults</i>	€ 43,02
<i>Unaccompanied Minors</i>	€ 36,94
<i>Single parent bonus</i>	€ 26,65

** in case no meals are provided by the COA*

The new levels of the allowances are now officially laid down in a decision taken by the Minister of 7 September 2006 to alter the Rva 2005 (Stcrt. 12 September 2006, no. 177, p. 7).

Finally, it is important to note that the whole discussion about the allowances of asylum seekers has been focused on the food allowance. The part of the allowance which is for other expenses (pocket money: € 15,88 for adults) has not been raised since 1997, although the prices have gone up.

5. PROCEDURAL ASPECTS

- Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

According to Article 29 of the Aliens Act 2000 people who apply for asylum in the Netherlands can be awarded a temporary asylum residence permit on one of the following six grounds:

- a. on the basis of the 1951 Geneva Convention relating to the Status of Refugees;*
- b. on the basis of article 3 of the European Convention on Human Rights (ECHR);*
- c. for compelling humanitarian reasons relating to their individual circumstances, for instance in the light of traumatic experiences;*
- d. if return to their country of origin would place them at grave risk because of the general situation there, for instance because it is at war*
- e. if the applicant belongs, as husband, wife or minor child, to the family of the alien as referred to at (a) to (d), has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a temporary asylum residence permit;*
- f. if the applicant is, as a partner or a child who is of age, dependent on the alien as referred to at (a) to (d) and can for that reason be considered as belonging to the family of this alien, has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a temporary asylum residence permit.*

Asylum can thus be granted to people who are refugees according to the definition in article 1A of the Geneva Convention, but also to people who request for international protection on another ground. Notwithstanding the different grounds, the Aliens Act leaves only one asylum permit to be obtained. All holders of this asylum permit get the same rights.

- B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.**

The scope of application of reception conditions is extended to people who apply for refugee status in the sense of the Refugee Convention, but also to people who apply for a residence permit on the other grounds mentioned in the previous question (b-f).

- C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

No. There are however specific rules regarding so-called 'resettled refugees' (article 3(l) junco article 1(i) of Rva 2005). These refugees are refugees who, at the request of UNHCR, are invited by the Dutch government to resettle in the Netherlands (resettlement policy). These refugees will receive a revocable asylum residence permit shortly after arrival in the Netherlands and will be entitled to reception conditions in a reception centre offered by the COA.

The resettlement programme of the Netherlands has been in operation since 1984 (in principle: 500 places a year or 1500 in 3 years). In 2004 resettlement missions were revived after a period in which individual file submissions were insufficient to meet the quota. In consultation with the UNHCR, the Netherlands will determine which area-specific population groups are to be invited. The Government intends to organise four resettlement missions per year. In January 2005 a first group of 57 resettled refugees from Congo, Sudan and Burundi arrived at Amsterdam Schiphol Airport (Press Release Ministry of Justice, 24 January 2005).

During the course of December 2005 a small number of refugees who claimed asylum in Malta were accepted and resettled in the Netherlands (Press Release Maltese Ministry of Justice and Home Affairs of 21 March 2006). In total, a number of 452 refugees were selected for resettlement in 2005.

- Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?**

Asylum seekers who want to apply for asylum in the Netherlands must report to an Application Centre (AC) of the IND. There are two application centres in the Netherlands: AC Ter Apel and AC Schiphol Airport (Amsterdam). Asylum seekers who are referred to AC Ter Apel in

order to file their asylum application have to make an appointment to submit the official application. Usually this takes several weeks (2-3). During this waiting period asylum seekers stay at a Temporary Reception Centre (TNV). The TNV is run by the COA, but the Rva 2005 is not applicable to people staying at the TNV. Asylum seekers staying in a TNV do not get a financial allowance. Housing is in caravans or mobile homes.

Asylum seekers arriving from a non-Schengen country at Schiphol Airport will be admitted to the asylum procedure immediately after the Border Police hands them over to the immigration authorities (which should take place within six hours after they reported their wish to submit an asylum claim). There is no waiting period for this group, as they will be held in the closed AC Schiphol directly after the registration at the IND.

Although the TNV and AC are thus in fact (temporary) material reception conditions, the main norm of transposition, the Rva 2005 (and therefore the Directive) is not applied to asylum seekers who stay in a TNV or AC. A stay in a TNV may last for several weeks. In the AC the formal asylum application is filed.

Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

The refusal of an asylum application has as an 'automatic' consequence that the asylum seeker is no longer lawfully resident in the Netherlands (article 45(1)(a) of the Aliens Act). He will be granted 4 weeks in order to leave the Netherlands voluntarily, failing which the alien may be expelled. In general also reception conditions end 4 weeks after refusal of the asylum application (article 45(1)(c) juncto article 62(1) of the Aliens Act 2000). When an asylum seeker receives a negative decision within 48 hours in the so-called accelerated asylum determination procedure (AC-procedure) his right to reception ends immediately (article 45(1)(c) juncto article 62(3)(c) of the Aliens Act 2000).

The asylum seeker can appeal against the negative decision to an administrative court. When the negative decision has been taken within the accelerated 48 hours procedure this appeal has to be lodged within one week and does not have suspensive effect. When the negative decision has not been taken in the accelerated procedure (but in the ordinary procedure) the appeal has to be lodged within four weeks. This appeal has suspensive effect: the asylum seeker is allowed to remain in the country and has a right to reception facilities while awaiting the outcome of the appeal (article 5(1)(a) of the Rva 2005).

When the administrative court decides that the appeal is unfounded, the asylum seeker can lodge a further appeal to the Council of State which is the highest court in administrative matters. He has to lodge this appeal again within four weeks (one week with regard to the 48 hours procedure). The appeal has no suspensive effect. This means that the asylum seeker may not await the Council of State's judgment in the Netherlands and has no right to reception facilities. In that case a preliminary injunction ('voorlopige voorziening') has to be requested. According to policy rules the asylum seeker is allowed to await the outcome of this first preliminary injunction. During this period he has a right to reception facilities (article 5(1)(b) of the Rva 2005).

Besides, article 7 and 8 of the Rva 2005 enumerate in total 14 situations in which the entitlement to reception conditions provided by the COA ends. As mentioned above, first of all the entitlement to reception facilities ends when lawful residence ends. Reception facilities will also end when an asylum seeker has obtained a residence permit and has found suitable living accommodation. Further, reception can end by way of sanction (e.g. when an asylum seeker has failed to comply with his duty to report to the Aliens Police for two consecutive weeks or if after a transfer to a new reception facility, the applicant does not arrive there within 48 hours).

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Yes. Before 1 January 2006, asylum seekers who filed a repeated asylum request had in principle no right to reception conditions (except in cases of humanitarian need) even though they were lawfully resident in the Netherlands (article 4 of the Rva 2005). Since 1 January 2006 this has been changed: asylum seekers who file a repeated asylum request which is not being rejected within the accelerated 48 hours asylum procedure have a right to reception conditions (decision by the Minister of 7 September 2006 to alter the Rva 2005, Stcrt. 12 September 2006, no. 177, p. 7).

Q.17¹. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are they informed in writing or, when appropriate, orally?

¹ To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

According to article 2(3) and (4) of the Rva 2005 the COA informs asylum seekers in writing about their rights and obligations in terms of reception conditions and about legal assistance and reception facilities. According to information provided by the COA, asylum seekers will also be informed orally (interpreters are used when needed). Besides, a local department of the Dutch Council for Refugees is present in each centre and will give additional information about the rights of asylum seekers. This is done orally and if necessary with an interpreter.

B. Is that information in general provided in a language understood by the asylum seeker? Specify the list of languages in which it is available.

Article 2(4) of the Rva 2005 explicitly states that the information will be provided in a language understood by the asylum seeker. According to information of the COA this information is available in 13 languages: Dutch, Arabic, Chinese, English, Farsi, French, Croatian, Nepalese, Portuguese, Russian, Somalian, Spanish, Turkish. For ‘resettled refugees’ (answer Q13C) the information is also available in Amharic.

C. Is the deadline of maximum 15 days respected?

Article 2(3) of the Rva 2005 mentions a deadline of maximum 10 days. According to information given by the COA asylum seekers will in practice be informed within 5 working days after arrival in a reception centre. Also the Dutch Council for Refugees has the same opinion. It indicates that the COA starts with giving information as soon as the asylum seeker arrives in the centre which is 24 hours after the AC-procedure (which takes 48 ‘processing’ hours or 3-5 working days).

Q.18². Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extent a mandatory provision):

A. Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?

When the asylum seeker stays in the TNV he will be given the opportunity to speak with one of the members of the Dutch Council for Refugees. Upon arrival in the AC (where his asylum procedure starts) he will also be referred to the Dutch Council for Refugees which is present in the AC, because it is partly responsible for giving information about the asylum

² To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

procedure and the available legal assistance. There is also legal assistance and medical care in the AC. Members of the Dutch Council for Refugees and nurses will also walk around in the waiting area. In this way it is easy for the asylum seekers to get into contact with them. In the AC there are also leaflets of the IOM. The Dutch Council for Refugees will also refer to IOM if people want to know more about the possibilities to repatriate.

At the moment an asylum seeker is referred to an orientation and integration centre run by the COA, he will receive information in which a list of organisations with which the COA cooperates is mentioned. Organisations that provide legal assistance and health care are included. Other organisations which are mentioned are: Immigration and Naturalization Service (IND), Aliens Police, PreNed Security (PreNed Beveiliging), Asylum Seekers' Legal Aid Foundation (Stichting Rechtsbijstand Asiel) (SRA), (VVN), Community Health Services for Asylum seekers (Medische Opvang Asielzoekers) (MOA), International Organization for Migration (IOM), Red Cross/Tracing, Nidos Foundation (guardianship institution for unaccompanied minors).

B. Is this done in writing or, when appropriate, orally?

Asylum seekers staying in the TNV and AC will mostly be informed orally by the Dutch Council for Refugees, but there are also leaflets of the Dutch Refugee Council in different languages.

According to article 2(3) and (4) of the Rva 2005, the COA informs asylum seekers in writing about legal assistance and reception facilities. According to information provided by the COA asylum seekers will also be informed orally (interpreters are used when needed).

C. Is that information in general provided in a language understood by the asylum seeker? Specify if possible the list of languages in which it is available.

The leaflet of the Dutch Council for Refugees (see previous answer) is available in 33 languages.

Article 2(4) of the Rva 2005 literally states that the information will be provided in a language understood by the asylum seeker. With regard to the list of languages: see answer Q.17B.

D. How many organisations are active in that field in your Member State?

According to the COA there are nine organisations with which COA cooperates (see answer Q18(A)).

The Dutch Council for Refugees is present in each reception centre and almost all municipalities to assist asylum seekers and refugees. The Dutch Council for Refugees has 28 regional and 214 local departments with 630 paid staff and 8,400 volunteers. Apart from the Dutch Council for Refugees the Red Cross has some (buddy-) projects for unaccompanied minors and many religious groups and churches support asylum seekers in individual cases. In many municipalities there are groups of people, often church related and sometimes officially organised (with even financial support of the municipality) who support (rejected) asylum seekers who are not allowed to stay in reception centres. There are 101 of these groups (June 2006), which accommodate about 3,000 (rejected) asylum seekers. On estimation 70% of these people are still waiting for a final decision in an asylum procedure or a procedure on other grounds (like medical, family or humanitarian reasons).

Q.19.

Documentation of asylum seekers (see article 6):

A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

As soon as an asylum seeker reports to an AC because he wants to file an asylum application, the Aliens Police will have a short intake with the asylum seeker and will draw up a so-called M36 form to show that the asylum seeker has reported. On this form the personal data of the asylum seeker (like name, place of birth, country of origin, nationality, sex, marital state and spoken language) are included as well as a passport photo. With this document an asylum seeker can identify himself during his stay at the TNV and in the AC.

With regard to documentation during the stay in an orientation and integration centre or a return centre the following applies:

According to article 9 of the Aliens Act the Minister shall supply an alien who is lawfully resident in the Netherlands with a document or written statement evidencing the lawful residence.

Asylum seekers who are lawfully resident in the Netherlands pending a decision on an asylum application or pending a decision on appeal, receive a so-called W-document. This document does not only evidence the lawful residence of the asylum seeker, but also mentions his identity and

nationality (article 4.21 Aliens Decree juncto article 3.3. Aliens Regulation). It is however not a valid travel document (C3/13.3 Aliens Circular).

- B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?**

See answer under C.

- C. For how long is this document in principle valid and is it necessary to renew it after a certain period?**

The W-document is in principle valid for one year. When the validity ends it is in principle the IND which is responsible for issuing a new document if the asylum seeker is still entitled to such a document. According to information provided by the Dutch Council for Refugees this automatic extension unfortunately does not occur in a standard way which means that the asylum seeker himself has to apply for extension of the validity of his W-document. This can imply a waiting period of 6-8 weeks. During this waiting period it is possible for the asylum seeker to ask the IND for a declaration or a letter on the ground of article 9 Aliens Act evidencing his or her lawful residence.

- D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected³?**

The so-called M36 form (see answer Q19A) is drawn up upon arrival in the AC.

With respect to the W-document, paragraph C3/13.3 of the Aliens Circular does not explicitly mention a deadline. It only indicates that at the beginning of the reception by the COA the chief of the local police has to provide the asylum seeker with a W-document. Whether the mandatory deadline of three days which is not foreseen by law is respected in practice is rather doubtful because as mentioned above, it will only be produced at the moment the asylum request is not rejected within the AC-procedure and the asylum seeker is sent to a reception centre run by the COA. But this

³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

AC-procedure takes in general 3-5 days, so in many cases this deadline will not be respected.

With regard to the so-called 'resettled' refugees (see answer Q13C) the procedure is as follows: they have to formally ask for asylum at Schiphol airport in a short procedure, but they will not receive a W-document. According to the Dutch Council for Refugees, they usually have to wait several weeks or longer for their identification document as holder of an asylum status.

E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

Yes. In case of serious humanitarian reasons the Minister of Foreign Affairs can issue a laissez-passer to an asylum seeker who has no passport and is lawfully resident in the Netherlands (article 15 (2) of the Passport Law juncto Amended policy rules regarding the provision of laissez passers on the ground of the Passport Law, Government Gazette, 2 November 2001, nr. 213, p. 6). In order for the Minister of Foreign Affairs to issue such a laissez passer a humanitarian exigency has to be demonstrated. Such a humanitarian exigency arises for example because of family circumstances in case of serious illness of the applicant, the spouse or close relatives (parents, children, brothers/sisters, grand parents) in a foreign country (not being the country of origin) or when the asylum seeker wants to attend a funeral of his or her spouse or of a close relative in a foreign country (not being his country of origin).

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

In the so-called Basisvoorziening Vreemdelingen (BVV)(Basic Facility Aliens) personal data are registered of all aliens who are to be found in the different administrations of IND, COA, etc. The aliens registration system of the IND is called VAS (Vreemdelingen Administratie Systeem). The data in the VAS originate from the IND and are based on information from the interviews held with the asylum seekers. Thus, the data of asylum seekers are not registered separately from the data of other aliens.

Q.20.

Residence of asylum seekers⁴:

- A. **Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)**

As mentioned earlier, asylum seekers will often first be sent to a TNV when they report at an AC in order to file an asylum application. The asylum seeker is however not legally obliged to stay at the TNV.

For some time there has been debate on whether the stay in an AC had to be considered as deprivation of liberty. The Appeal Court of the Hague ruled on 31 October 2002 that accommodation in an AC must be considered as deprivation of liberty (00/68 KG, NAV 2002/291). In reaction to this judgment the Minister for Alien Affairs and Integration decided that asylum seekers are allowed to leave the ACs when their availability is not necessary for the investigation into the allowability of the application (TBV 2002/52, 2 December 2002). At present this means that the asylum seeker has to remain at the AC during working hours from 7:30 am to 6:00 pm (paragraph C3/12.2.5 of the Aliens Circular).

An asylum seeker who arrives in the Netherlands through Schiphol Airport (Amsterdam) or one of the seaports and who has been refused entry (which is more or less standard if the asylum seeker does not arrive from a Schengen country) may be required to stay in a space or place designated by a border control officer (article 6 of the Aliens Act). When he declares that he wants to file an asylum application he will be transferred to the AC Schiphol which is secured against unauthorised departure (see Q32D).

When asylum seekers stay in an ordinary reception centre run by the COA they can leave this centre and/or municipality where the centre is located as long as they notify the authorities and keep reporting at the agreed times.

- B. **About the place of residence (see §2 of article 7): explain to which extent the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).**

⁴ Nota bene: the case of detention is covered by other questions and should be ignored under this question.

According to article 11 of the Rva 2005 the COA is entrusted with the placement of asylum seekers and is also entitled to relocate asylum seekers. Asylum seekers are thus not free to choose the centre in which they want to stay. Moreover asylum seekers have to report to the designated reception facility within 24 hours of being notified or else they run the risk that they will be no longer entitled to reception conditions from the COA (article 2(5) of the Rva 2005).

Asylum seekers do however have the possibility not to be housed by the COA (see under C). In that case there is no formal rule saying that the asylum seeker is not allowed to choose his place of residence.

- C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).**

As mentioned above, it is the COA that decides in what reception facility an asylum seeker is placed. This decision is an administrative decision. The normal legal remedies under the General Administrative Law Act may be lodged against such decision. Depending on the stage of the asylum procedure the COA places asylum seekers in an orientation & integration centre or in a return centre.

The COA also has the possibility to place specific categories of asylum seekers (asylum seekers with behavioural and/or serious (mental) health problems, unaccompanied minors) in special reception facilities run by third parties (article 7(2) of the Wet COA). There are for example special reception facilities for asylum seekers who due to their unacceptable behaviour cannot stay in a normal reception facility (so-called AMOG centres) and for asylum seekers who have mental problems ('Abri' and 'de Vonk').

Asylum seekers have the possibility not to be housed by the COA (article 13 of the Rva 2005). In that case, however, they will not receive the provisions and benefits mentioned in article 9 of the

Rva 2005 (with the exception of necessary medical care, legal assistance during the asylum procedure and education of minors).

There is one exception to the above mentioned: the administrative registration (see answer Q10 under 4). In special, exceptional circumstances asylum seekers are allowed to live outside COA reception centres and still receive the provisions and benefits of the Rva 2005. Asylum seekers are allowed to live with relatives in the first degree or with their spouse/partner who is/are lawfully resident in the Netherlands and has/have suitable housing. These asylum seekers are registered by a COA reception centre in the neighbourhood and subject to the rules mentioned in the Rva 2005. This means that they have to participate in the phase-specific program in the centre they are administered by, but are also allowed to use its facilities.

- D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)⁵**

Because of the considerable decline of the number of asylum applications in the last five years (with an upsurge at the beginning of 2006), the COA has been reducing the number of accommodation centres drastically.

In the past however it was often difficult for the COA to organize sufficient reception capacity. Distribution of asylum seekers at times of a sudden mass influx (e.g. during the Kosovo crisis in 1999) occurred on an ad-hoc basis. It even proved necessary to use emergency accommodation in the form of tent camps.

- E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)**

An asylum seeker is allowed to temporarily leave the place of a COA reception centre as long as he or she fulfils the duty to report weekly to the Aliens Police (article 54(1)(f) of the Aliens Act juncto article 4.51 of the Aliens Decree) and the COA (article 19(e) of the

⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Rva 2005). Under certain circumstances it is possible for the asylum seeker to obtain a release from this duty to report. In some occasions he may be allowed to report only monthly to the Aliens Police (e.g. in situations in which an asylum seeker, by virtue of the Aliens Act or on the ground of a judicial decision, may await the outcome of an appeal against a negative decision). Children under 12 years of age do not have a duty to report (paragraph C3/13.2 of the Aliens Circular). Reception conditions under the Rva 2005 will however end when an asylum seeker fails to comply with his duty to report to the Aliens Police for two consecutive weeks (article 7(1)(j) of the Rva 2005). When an asylum seeker fails to comply with his duty to report to the COA, reception conditions cannot end on this ground, but it is possible for the COA to end the reception conditions (for a period of time) by virtue of a sanction (see answer Q21).

Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced.

Yes. According to article 10 of Rva 2005 reception conditions can be reduced or withdrawn if an asylum seeker:

- *does not give proper information which is necessary in order to realize reception, like name, date of birth, nationality, country of origin, family composition, properties, date of asylum application;*
- *does not contribute to reception facilities if he or she has income from work or capital;*
- *does not comply with the house rules;*
- *does not follow instructions of the COA personnel;*
- *refuses to do cleaning tasks in or around his or her living area;*
- *does not give entrance to his living area to the COA personnel when it is likely that the asylum seeker does not comply with the house rules or when this is deemed necessary because of the management of the reception facility;*
- *does not comply with the duty to report at the COA (once a week);*
- *causes trouble to other asylum seekers or the COA personnel;*
- *refuses to participate in programmes aimed at informing, stimulating and alerting the asylum seeker with regard to his or her return. This last ground is not mentioned in the Directive as a possible ground for reduction or withdrawal of reception conditions.*

Details are laid down in the COA's Rules on the Withholding of Provisions 2005 (Reglement Onthoudingen en Verstrekkingen 2005)(ROV 2005). See answer under Q21 (C).

B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice⁶?

No.

C. Are the decisions of reduction or withdrawal taken individually, objectively AND impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?

The COA has the competence to take decisions on the withdrawal or reduction of reception facilities. As mentioned above, in a separate, internal regulation (ROV) the COA laid down in what cases and under what circumstances sanctions are allowed. Decisions on the reduction or withdrawal of reception conditions are individual administrative decisions in the sense of article 1:3 (2) of the General Administrative Law Act. As a consequence all the (procedural) provisions of this Act are applicable. This implicates a.o. that the administrative decision must be based on proper reasons and must fulfil the duty of care and the weighing of interests. According to information provided by the Dutch Council for Refugees it occurs that in practice decisions of COA personnel often lack proper motivation. In that case the asylum seeker can appeal against the decision by lodging an objection with the COA. When the objection is held to be legally unfounded, the asylum seeker can lodge an appeal to an administrative court. The District Court will then decide whether or not the COA's decision was correct. If the court agrees with the rejection of the objection, the asylum seeker can lodge a further appeal to the Council of State, the highest court in administrative matters.

D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?

Statement 14/03

Member states must in all cases concerning article 16(2) and (3) of the Directive:

⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

1. *comply with international obligations on human dignity (in particular article 3 ECHR)*

Comment:

The Netherlands are party to the ECHR (and other relevant human rights treaties) the result being that they are legally obliged to respect international obligations on human dignity when deciding on reduction or withdrawal of reception conditions.

2. *take account of the situation of the person concerned (in particular the specific situation of vulnerable persons provided for in article 17)*

Comment:

According to the explanatory memorandum to the ROV, the COA will have to verify whether the behaviour of the asylum seeker justifies the reduction or withdrawal of the reception facilities. The severity of the sanction has to be in proportion with the nature and seriousness of the behaviour. It has to be ascertained that no less severe sanction will serve the same goal. The interests of the asylum seeker have to be balanced with regard to the decision whether a sanction (and what sanction) will be imposed.

3. *ensure that as a minimum access to emergency healthcare is guaranteed under all circumstances.*

Comment:

Yes. Access to emergency health care is ensured for all aliens regardless whether they are legally or illegally resident in the Netherlands. With regard to the access to emergency health care of this last category of asylum seekers (illegal residents) some doctors report that it becomes more and more complicated for these people to get access to hospitals. Often they are sent away without having their complaints examined by a doctor (Medisch Contact, 19 May 2006, nr. 20, p. 843). In February 2006, the Dutch Public Health Inspection issued a report on the quality of the medical care of asylum seekers. It concluded that, in general, the quality of the health care for asylum seekers offered at reception centres was adequate. However, the exchange of information between the stakeholders was not deemed sufficient.

- E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome⁷?

With regard to the Rva 1997 there were a lot of administrative appeal decisions or judgments on cases of reduction, withdrawal or refusal of reception conditions, but with regard to the Rva 2005 there are only a few judgments at present. See answer Q 9 for one of the most important judgments: in a judgment of 20 January 2006 (Awb 05/57129 and 57971) the District Court of Haarlem held that the fact that the Minister for Alien Affairs and Integration did not provide reception conditions to an asylum seeker who filed a repeated asylum request according to article 4(2) of the Rva 2005 was not contrary to articles 16(1)(a), 16 (4) and 17 of the Reception Conditions Directive. Neither does article 16(5) of the Reception Conditions Directive compel the Minister to provide reception conditions until a final decision on the repeated asylum request has been reached nor do new policy rules regarding the filing of a repeated asylum request as laid down in WBV 2006/1 (answer Q16).

- Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

In principle, every asylum seeker who files a (first) asylum application in the Netherlands has a right to reception facilities until a negative decision is being taken. According to the Aliens Act a negative decision on an asylum application has several 'automatic' effects. One of these 'de jure' effects is the automatic end of all reception facilities after 28 days. This means that the COA does not have to take a separate decision to end reception conditions. Against the negative decision on the asylum application the asylum seeker can lodge an appeal to the administrative court. This appeal has to be lodged within 4 weeks after the negative decision. This appeal has suspensive effect: the asylum seeker is allowed to remain in the country and has a right to reception facilities while awaiting the outcome of the appeal. When the administrative court decides that the appeal is unfounded, the asylum seeker can lodge a further appeal to the Council of State which is the highest court in administrative matters. He has to lodge this appeal again within 4 weeks. The appeal has no

⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

suspensive effect. This means that the asylum seeker may not await the Council of State's judgment in the Netherlands and has no right to reception facilities. In that case a preliminary injunction ('voorlopige voorziening') has to be requested. Because of policy rules an asylum seeker is allowed to await the outcome of this preliminary provision.

The system mentioned above is different if a negative decision is reached within the so-called accelerated determination procedure (AC-procedure). In this procedure a decision is reached within 48 'processing' hours. During these 48 hours (spread over several working days) the asylum seeker resides in the AC. During this period the Rva 2005 is not applicable to him. The asylum seeker can lodge an appeal against the negative decision to the administrative court within one week, but this appeal has no suspensive effect. He has to ask for a preliminary injunction. According to policy rules of the Minister the asylum seeker is allowed to await the outcome of this procedure, but he is not allowed to stay in the AC. He has to find accommodation himself. Against the judgment of the district court the asylum seeker can lodge an appeal to the Council of State, but also in this case the appeal has no suspensive effect.

Even though, as mentioned above, reception conditions end automatically 28 days after the negative decision on an asylum application (no separate decision is needed) it is however possible to file a separate application for reception. In a judgment of 23 February 2005 the Council of State stated that a decision on such an application is an administrative decision which is appealable (NAV 2005/80 and JV 2005, 155).

The COA itself is in charge of taking decisions relating to the reduction or withdrawal of benefits and decisions relating to the place of residence or transfer to another place of residence of asylum seekers. Such decisions are individual administrative decisions in the sense of article 1:3 (2) of the General Administrative Law Act. As a consequence all the (procedural) remedies of this Act are applicable. In that case the asylum seeker can appeal against the decision by lodging an objection with the COA. When the objection is held to be legally unfounded, the asylum seeker can lodge an appeal to the administrative court. The District Court will then decide whether or not the COA's decision was correct. If the District Court agrees with the rejection of the objection, the asylum seeker can lodge a further appeal to the Council of State.

B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

During the entire asylum procedure an asylum seeker has the right to be legally assisted or represented by a legal representative (e.g. lawyer)(article 2:1 of the general Administrative Law Act). The administrative authority may require a legal representative to produce a written authorisation.

Pursuant to the Act on Legal Aid and the Aliens Circular, in the Netherlands all asylum seekers have a right to state-funded legal assistance at all stages of the asylum procedure (first-instance decision stage, first and second judicial appeals stage). The coordination of this legal assistance in asylum matters is to a large extent consigned to the Asylum Seekers' Legal Aid Foundation (SRA). This Legal Aid Foundation assigns independent lawyers and lawyers employed by the Foundation specialised in asylum and refugee law to asylum seekers.

When a lawyer refuses to proceed with an asylum seeker's case because of lack of merit (e.g. when the lawyer refuses to lodge an appeal against a negative decision taken in the AC), he has to inform the asylum seeker about his right to contact a second lawyer for a second opinion on the merits of the case. If the second lawyer also rejects the case, this usually means that no legal aid is available through the Legal Aid Act. In that case asylum seekers can seek the services of a private lawyer independently.

Due to the reduction of the number of asylum claims however, this system will be abolished in the near future. Asylum seekers will only be assisted by privately practising lawyers again.

Further, it should be noticed that because of the very strict time limits in the accelerated 48 hours procedure it is often very difficult for legal advisers to provide effective legal assistance. Another complication is that during the accelerated procedure lawyers appointed by the Legal Aid Foundation operate on a rota-basis, so the asylum seeker may be in contact with more than one or two lawyers during the few days or weeks (including appeal and further appeal) the procedure lasts.

- C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones⁸?

⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

See answer Q9 and Q21E: A judgment of 20 January 2006 (Jurisprudentie Vreemdelingenrecht (JV) 2006/142 m.nt. HBA) concerned a request for a preliminary injunction. The District Court of Haarlem held that the fact that the Minister for Alien Affairs and Integration did not provide reception conditions to an asylum seeker who filed a repeated asylum request according to article 4(2) of the Rva 2005 was not contrary to articles 16(1)(a), 16 (4) and 17 of the Reception Conditions Directive. Neither does article 16(5) of the Reception Conditions Directive compel the Minister to provide reception conditions until a final decision on the repeated asylum request has been reached.

- D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

Yes, in 2003 the COA adopted a COA Complaints Regulation for residents and other persons (Klachtenregeling voor bewoners en derden). This Complaints Regulation is published in the Government Gazette of 29 January 2003, nr. 20, p. 25. According to this Complaints Regulation, every asylum seeker has the right to lodge a complaint with the COA about a co-resident or about (a member of staff of) the COA. The COA uses the following information sheet which gives the asylum seeker more information about the complaints procedure, how to lodge a complaint, and how the COA will deal with the complaint:

You have a complaint

A complaint is an expression of dissatisfaction with the behaviour or conduct of a co-resident, a COA member of staff, or about COA in general.

Lodging a complaint

If you have a complaint, COA will ask you to talk with the other(s) first. If you cannot come to an understanding with the other, you can lodge a written complaint with COA.

If you submit a written complaint, you must sign the complaint and give at least the following information:

- Your name and address, or the name of the person who authorised you;*
- The issue you are complaining about, and the date of the event;*
- A description of the complaint.*

You can send your written complaint to the reception centre where the undesirable behaviour took place. COA has a special complaints form for lodging your complaint. This form can be obtained from the Info desk.

Dealing with your complaint

After lodging a written complaint, COA will confirm receipt of your complaint in writing. Your complaint will be dealt with by a COA executive that has not been involved in the case. The person(s) about whom you have lodged the complaint will receive a copy of the complaint and any related documents.

Hearing the persons involved

COA will give you and the person about whom you complained the opportunity to react verbally to the complaint. COA will make a report of this reaction. This so-called hearing of those involved will not take place if the complaint is obviously unfounded, or when you do not want to make use of the right to be heard.

Handling your complaint

COA will handle your complaint within six weeks after receipt. COA can extend the handling of your complaint with four weeks at the most. You and the person about whom you complained will be informed about the deferment in writing. COA will notify you in writing and well reasoned about the result of the investigation into the complaint and any possible conclusions COA attached to it. If COA does not consider a complaint, the complainant will be informed in writing as soon as possible but not later than four weeks after receipt of the complaint. After COA dealt with your complaint and you are not satisfied, you may seek the help of an arbitrator, the National Ombudsman.

Also the Community Health Services for Asylum Seekers (MOA) employs a complaints regulation with regard to their medical service which is available for asylum seekers in different languages.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

- Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Article 1(f) of the Rva 2005 defines the family as follows:

- 1) spouses or unmarried partners together;*
- 2) spouses or unmarried partners and their (step)child under 18 years of age they are responsible for;*
- 3) the single parent and his or her (step)child under 18 years of age.*

Ad 3) A single parent is the single person who has the full care for one or more (step)children they are responsible for and who has no joint household with another person, unless this concerns a relative in the first or second degree (article 1(9) of the Rva 2005).

According to article 11 (1) of the Rva 2005 the COA decides on the housing facility of an asylum seeker. It has the authority to relocate an asylum seeker from one housing facility to another. But in using this authority the COA has to maintain, as far as possible and with the asylum seeker's agreement, the family unity and takes the protection of family life as a starting point (article 11(3) of the Rva 2005). Provided that this will be in the interest of the child, the COA will also take care of the fact that

the minor child of an asylum seeker or the asylum seeker who is a minor will be accommodated with his or her parent or with an adult family member (article 11(4) of the Rva 2005). Finally, the COA will, as far as possible, lodge minor siblings together (article 11(5) of the Rva 2005).

In the explanatory memorandum to the Rva 2005 the Minister mentions that subsections 3, 4 and 5 of article 11 of the Rva 2005 (as mentioned above) are only a formalization of what in practice is already common. What is noteworthy is that in the opinion of the Minister the maintaining of the family unity with regard to housing does not preclude the possible separated expulsion or eviction of asylum seekers after reception condition end, since according to standing jurisprudence neither article 8 of the European Convention on Human Rights nor the Convention on the Rights of the Child hinders reception conditions coming to an end at different moments for different members of a family (see explanatory memorandum to the Rva 2005).

- Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

The housing of asylum seekers is organized in a centralised way. The COA is the main responsible agency for the housing of asylum seekers. The following main forms of housing reception facilities (no private housing) of asylum seekers exist (see answer Q10):

- a. Temporary emergency reception (TNV)*
- b. Application Centre (AC)*
- c. Regular reception in:
 - a. Centre for orientation and integration*
 - b. Centre for return**
- d. Administrative registration and other arrangements*

Ad a) TNV is run by the COA. Housing is in caravans / mobile homes. The TNV in Ter Apel consists of 80 caravans, an office building and a shed. The caravans house about 400 asylum seekers. In the office building, office space is made available for the Community Health Services for Asylum Seekers (Medische Opvang Asielzoekers)(MOA), Dutch Council for Refugees (2 employees and 20 volunteers) and the COA (about 16 employees). The shed accommodates a dining room and a depot (for second-hand clothing, furniture, etc.). At present (June 2006), due to budgetary reasons,

there is neither a recreation area nor a day-care centre for children. The Rva 2005 is not applied to the stay in a TNV.

Ad b) ACs are run by the IND. The AC in Ter Apel is a half-open centre to that extent that asylum seekers are allowed to leave the AC when their availability is not necessary for the investigation into the allowability of the application (between 6pm and 7:30 am). The AC in Schiphol however is a so-called closed centre in which detention measures on the basis of article 6 of the Aliens Act (see answer Q32D) are implemented. According to the Minister for Alien Affairs and Integration accomodation in an AC is sober, but humane. Facilities are very basic. During the day, asylum seekers stay in common waiting areas with plastic chairs and one or two televisions. A small and confined outside area is available. During the night, the asylum seekers stay in dormitories with bunkbeds. Men and women are seperated during the night. If capacity allows it, families are allowed to stay in a separate room together. The sleeping facilities are not open during the day. The Rva 2005 is not applied to the stay in an AC.

Ad c) This is the main category of housing. The phase of the asylum procedure determines in which type of centre the asylum seeker is staying. Therefore the standard facilities are divided in reception centres for orientation and integration (before first decision and after positive decision) and reception centres for return (after first negative decision). The Rva 2005 is applicable.

Some of the centres are newly built facilities, others old buildings, like monasteries and schools, which are converted for reception purposes. Not only big buildings, also regular houses are used for reception, though the government keeps the right of access during the asylum procedure.

Housing facilities include facilities to sleep, to cook, to do laundry, to shower, etc. Although reception centres are set up in different accomodations, the COA however laid down prescribed dimensions for the different housing facilties in a so-called Program of Demands (Programma van Eisen)(PvE) which is of a highly technical nature and contains technical minimum standards for the construction or renovation of reception centres. For example bedrooms will be for a maximum of four individuals, measuring at least 5m²; for each eight inhabitants there will be at least one toilet and 3,25m² of bathroom space (including a washer and dryer) and for each eight inhabitants there has to be 5,72m² of kitchen space. According to the Minister for Alien Affairs and Integration, these standards meet the minimum standards for the

reception of asylum seekers as laid down in the Directive (TK 2004-2005, 19 637, nr. 913, 30 March 2005).

Ad d) In case of administrative registration, the asylum seeker concerned will be registered in the nearest reception centre. This is where he may receive his weekly financial contribution (pocket money, allowance for clothing and allowance for food). By means of this registration he has also been insured against medical expenses and against the financial impact of third party liability. Another form of the small-scale reception are the 'central reception houses' (COW) or the small-scale central reception units (KCO). These are ordinary houses rented by the COA. The Rva 2005 applies to asylum seekers who stay in these reception houses / units.

B. What is the total number of available places for asylum seekers?⁹ Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

According to information provided by the COA, at 1 May 2006 the technical capacity was 30,764 places. A number of 26,779 asylum seekers were actually present at 1 May 2006.

C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?¹⁰

At the moment the number of places appear to be sufficient. In fact, due to the decrease in the number of asylum seekers in the last couple of years, COA has closed a number of reception facilities and laid off many staff. At the beginning of 2006 however, there was a (temporary) upsurge with regard to the entry of asylum seekers into the Netherlands. According to a random, non-public and small scale investigation by the Ministry of Justice, these asylum seekers were to a large extent single male Iraqi refugees who had left Germany because of a mass issue of refugee revocation notices and the lifting of a temporary protection policy for asylum seekers coming from Central Iraq. Even the reopening of the AC in Zevenaar was under serious consideration of the IND (AC Zevenaar was closed in 2003 due to the decrease in the number of asylum seekers) at that time. Since then, however, it has been quiet.

⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁰ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

It is rather unclear whether there are such special measures. Following protests about accommodation in tents for temporary emergency reception at the time of significant numbers of new arrivals (2000), COA has nevertheless developed minimum technical standards (Program of Demands)(see answer Q24A).

Q.25. Accommodation centres (**important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question**)

- A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

Yes. As mentioned above, the following main categories of public accommodation centres exist:

1. *Temporary emergency reception (TNV)*
2. *Application Centre (AC)*
3. *Regular reception in:*
 - c. *Centres for orientation and integration*
 - d. *Centres for return*
4. *Administrative registration and other arrangements*

See for more details answer Q10. There are no formal private centres in the Netherlands.

- B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Except for the stay in the AC which may only last for 48 'processing' hours (spread over 3-5 working days), there are no legal time limits. With regard to the stay in the TNV: a decision of the district court in Groningen of 7 August 2002 (Awb 02/57266) made clear that the stay in a TNV should be as short as possible. A period of three months was not deemed as short as possible. According to the Dutch Council for Refugees, in AC Ter Apel it usually takes several weeks (2-3) until an asylum seeker is given the opportunity to submit his claim in an AC. At the beginning of 2006, due to a sudden influx of young single Iraqi men who, according to the Ministry of Justice, had left Germany because of a mass issue of

refugee revocation notices and the lifting of a temporary protection policy for asylum seekers coming from Central Iraq, the waiting period amounted to almost 8 weeks. Because this led to capacity problems in the TNV Ter Apel, a number of temporary TNVs - more or less in the vicinity of Ter Apel - were opened (Zuid-Laren, Appelscha, Musselkanaal, Zwolle, Arnhem and Bellingwolde). At present (June 2006), besides the TNV in Ter Apel, only the temporary TNV in Bellingwolde is still in use (at least until 1 January 2007).

The length of the stay in the ordinary reception centres depends on the duration of the asylum procedure. Pursuant to article 42(1) of the Aliens Act a decision has to be reached within six months after application, but there are possibilities to postpone the decision for six months (in case expert advice is needed) or for up to one year (e.g. during a period when it is unclear how the situation in a country will develop). In practice it can however take years before a decision on an asylum application is being taken. Accommodation ends 28 days after a final negative decision. When the outcome of the asylum procedure is positive, accommodation in a centre ends as soon as adequate housing in a community has been found.

B. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

With respect to the internal functioning of the TNV and the AC, the COA and the IND respectively employ so-called (unpublished) house rules. According to the house rules applicable to asylum seekers staying in a TNV, asylum seekers are not allowed to eat or to drink inside the caravans. They are obliged to enjoy their meals in the dining room only.

Regarding the internal functioning of the centres for orientation and integration and centres for return, the COA also employs (unpublished) house rules. These house rules are identical for all COA reception centres and have to be signed by the asylum seeker. They contain a number of general obligations as mentioned in article 19 of the Rva 2005 and a number of more detailed rules (obligation for asylum seekers to participate in the obligatory elements of the orientation and return programmes, rules on behaviour and rules concerning the use of the living areas). Besides these house rules, asylum seekers have to sign another document with rights and duties when arriving at a reception centre. These documents are available in 13 languages: Dutch, Arabic, Chinese, English, Farsi, French, Croatian, Nepalese, Portuguese, Russian, Somalian, Spanish, and Turkish.

C. Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? Are the decisions taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°23? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones? ¹¹

According to the house rules applicable to asylum seekers staying in a TNV, the only possible sanction is to remove an asylum seeker from the area. But this will only happen in very extraordinary circumstances (e.g. in case of repeated extreme nuisance). An asylum seeker who stays in a TNV cannot be cut back on his benefits, because he does not get a financial allowance during this stage.

House rule 15 (regarding the internal functioning of the centres for orientation and integration and the centres for return) reiterates article 10 of the Rva 2005 and says that in case of breach of the household rules a (punitive) measure or sanction pursuant to the ROV 2005 (Rules on the Withholding of Provisions 2005) can be imposed. There are 11 sanctions ranging from a one-off deduction of benefits (with a maximum up to € 15,89 for adults and € 5,45 for children from 12-17 years of age) in case of a very light form of nuisance to a permanent end of all provisions and services provided by COA (including housing) in case of very extreme extraordinary nuisance.

On the basis of the Rva 2005 and the ROV 2005 the competent authority is the COA itself. Because the punitive sanction or measure constitutes an infringement of the interests of the asylum seeker and interferes with his or her private life, the ROV 2005 requires the COA to deal with this authority in a very careful and reserved manner. Furthermore the decision to impose a (punitive) sanction or measure has to fulfil the conditions of proportionality and subsidiarity. Every (punitive) sanction or measure will be imposed by virtue of an individual administrative decision in the sense of article 1:3 (2) of the General Administrative Law Act. See also a judgment of 28 December 2005 by the Council of State (described below). As a consequence all the (procedural) provisions of this Act are applicable. This implicates a.o. that the administrative decision must be based on proper reasons and must fulfil the duty of care and the weighing of interests. In general the asylum seeker shall also be given the

¹¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

opportunity to state his or her views before an administrative decision is reached. Furthermore, the asylum seeker can appeal against the decision by lodging an objection with the COA. When the objection is held to be legally unfounded, the asylum seeker can lodge an appeal to an administrative court. The District Court will then decide whether or not the COA's decision was correct. If the District Court agrees with the rejection of the objection, the asylum seeker can lodge a further appeal to the Council of State.

In a recent judgment of 28 December 2005 (200507133/1) the Council of State also held that a decision pursuant to the ROV 2005 is an appealable decision in the sense of article 3a of the Wet COA.

D. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

According to the COA this is not the case.

E. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Yes. Article 18 of the Rva 2005 provides that an asylum seeker may participate in work activities in and around the reception facility, indicated by the COA for the performance of which a remuneration can be given. These work activities have to be distinguished from 'regular' work and cannot be considered as implying access to the labour market and are not subject to the same rules. According to the COA, working on the premises must be seen as a contribution to the well-being of the asylum seeker and the liveability inside the reception centre.

According to the explanatory memorandum to the Rva 2005, one has to think of work activities for which strength or creative or skilful knowledge is required, like sawing down a tree, hanging a painting on the wall or shortening the curtains.

The remuneration can be provided in money (up to a maximum of € 12,50 per week), in vouchers or in kind (present). The COA also has the possibility of not paying out the remuneration to the asylum seeker concerned, but to reserve the money for the benefit of all the inhabitants of the reception centre (e.g. purchase of a satellite dish, additional playthings

for the recreation rooms or a joint trip).

With regard to the remuneration, the COA employs the following directions:

Activity	Wages per hour
Organisation or the assisting with structural recreational and sports events	€0,50
Activities in the kitchen	€1
Activities in the canteen	€0,50
Bicycle workshop	€0,50
Supply room	€0,50
Assisting in the computer room	€0,50
Cleaning activities	€1
Assisting in the (children's) playroom	€0,50
Translating service	€0,50
Garbage collection on location	€1
Laundries	€0,50
Maintenance of the premises, the buildings and the green space	€0,50

The COA has to take care of the fact that the supply of work activities will be proportionally divided among the asylum seekers who want to perform such work activities.

Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

During their stay in the TNV asylum seekers can communicate with the Dutch Council for Refugees. The Dutch Council for Refugees uses this waiting period in order to prepare the asylum seeker for the asylum procedure in the AC. The employee stresses the fact that documents and being able to prove your identity are very important. Also individual counselling will be offered to the asylum seeker during which the asylum account will be gone through. In this way a digital dossier (also country-specific information can be added) will be composed which will be handed over to an employee of the Dutch Council for Refugees and to a lawyer of the Asylum Seekers' Legal Aid Foundation (SRA) in the AC. Every week the IOM has office hours in the TNV.

In the AC the asylum seeker will also be referred to the Dutch Council for Refugees which is present in the AC, because it is partly responsible for giving information about the asylum procedure and the available legal

assistance. There is also legal assistance and medical care in the AC. Members of the Dutch Council for Refugees and nurses will also walk around in the waiting area of the AC. In this way it is easy for the asylum seekers to get into contact with them. Members of the Dutch Council for Refugees also attend interviews in order to monitor proceedings. This member may make comments at the end of the interview and write a short report for the lawyer representing the asylum seeker. However, limited capacity means that the Dutch Council for Refugees cannot always send a member to attend the asylum interviews. In practice, especially particularly vulnerable asylum seekers are accompanied to asylum interviews. In the AC there are also leaflets of the IOM. The Dutch Council for Refugees will also refer asylum seekers to the IOM if they want to know more about the possibilities to repatriate.

Regarding asylum seekers who stay in an orientation and integration centre or in a return centre, article 9(6) of the Rva 2005 is applicable. Pursuant to this article an asylum seeker has the opportunity to communicate with family members, legal advisers, representatives of the UNHCR and NGO's which are recognized by the Minister. The Dutch Council for Refugees is present in these centres as well.

B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

Article 9 (7) of Rva 2005 provides that legal advisers, representatives of UNHCR and NGOs which are authorized by the Office of the UNHCR and recognized by the Minister have access to accommodation centres in order to assist the asylum seekers. They too are under a duty to live up to the house rules of the reception centre (information COA).

According to information provided by the Dutch Council for Refugees, it has an office or a room in the TNV, in the AC's and in each reception centre where they can have office hours. The COA and the Dutch Council for Refugees have an official agreement about this (since 2004, but before that time it was also practice). A problem might occur when an asylum seeker is not allowed to stay in the reception centre anymore (in case the application is rejected or as a sanction) and he still wants to make use of the services of the Dutch Council for Refugees. In that case they have to meet outside the centre or the COA must give explicit permission for a one-time visit. Other visitors to the reception centre have to report to the COA reception desk to ask permission to enter the centre. Visitors are usually allowed between 8 am and 10 pm.

C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

Yes. According to article 9(8) of Rva 2005 the access of legal advisers, UNHCR and NGOs can be limited for reasons connected with the security of the accommodation centre or the security of the asylum seeker.

Up to now there have been two known cases where the access of members of an organisation has been denied. In one case it was a volunteer of a religious organisation and in another a local politician. In both cases COA found them to obstruct the work of the employees of COA. The first case led to Parliamentary questions (TK 2004-2005, Handelingen p. 1891, nr. 892). However in the opinion of the Minister it was the right of the COA considering the circumstances to forbid entrance. The local politician tried to annul the ban by a court order, but the courts verdict was that COA was right to do so (District Court of Groningen, 17 March 2006, KGZA 06-52).

Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Pursuant to article 9(2) of the Rva 2005, which is a mandatory provision, a first examination of the asylum seeker's state of health will take place as soon as possible after an asylum seeker has been admitted to a reception centre. Upon arrival in the TNV every asylum seeker has to undergo a screening for long tuberculosis. Asylum seekers are not tested for HIV. According to information provided by the IND this is usually performed within a week after arrival. Moreover, each asylum seeker is offered an individual consult with a nurse of the Community Health Services for Asylum Applicants (MOA) within six weeks after arrival. During this consult the nurse will make use of a questionnaire (in 19 different languages) in order to assess the asylum seeker's medical history and present state of health. Children (up to 19), pregnant women, people with handicaps or ailments and the elderly are always referred to a follow up medical examination, others only when they wish to. When an asylum seeker during the asylum procedure has questions or problems concerning his health, he has the possibility to see a MOA nurse. This nurse may refer an asylum seeker to a general practitioner if the nurse deems this necessary. A report (2004) by the independent Medical Aspects of Alien Policy Commission, installed by the Minister of Health, Welfare and Sport and the State Secretary of Justice, showed that the selection of the access to a doctor by a nurse is subject of repeated complaints by asylum seekers. This general practitioner can make further referrals.

In February 2006, the Dutch Public Health Inspection issued a report on the quality of the medical care of asylum seekers. It concluded that, in general, the quality of the health care for asylum seekers offered at reception centres was adequate. However, the exchange of information between the stakeholders was not deemed sufficient.

B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Asylum seekers who stay in a reception centre for orientation and integration or in a reception centre for return are covered for medical expenses pursuant to a health insurance which is taken out by the COA (article 9(1)(e) of the Rva 2005). Coverage is comparable to that of what until 1 January 2006 was called Ziekenfondswet (Social Health Insurance Act) and the Algemene Wet Bijzondere Ziektekosten (AWBZ) with the exception of IVF-treatment and gender alteration surgery. Access to health care is thus ensured at a nearly equal level provided to nationals covered by these insurances (see also TK 2001-2002, 19 637, nr. 654).

Asylum seekers whose asylum claim has been rejected within the accelerated 48 hours procedure and are allowed to await the outcome of the preliminary injunction they have requested are only allowed to emergency care and essential treatment of illness. According to the UNHCR this only includes the treatment of a disease of which it is scientifically proven that it leads in short term to death, handicaps or another form of serious mental or physical damage.

C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?¹²

Every working day, nurses from the Community Health Service for Asylum Seekers (MOA) are present in each centre. MOA is responsible for preventive care and coordinates referral to curative care and mental health care. At most centres a general practitioner has surgery hours. Sometimes a general practitioner has office hours for asylum seekers in his own surgery. During the evenings, nights and in the weekends there is a special medical telephone line, connected to the Amsterdam

¹² To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

According to the Aliens Employment Act (Wet Arbeid Vreemdelingen) (WAV) and its implementing order (Uitvoeringsbesluit, article 2a) and implementing rules (Uitvoeringsregels, article 22) the period during which asylum seekers in the Netherlands are fully excluded from the labour market amounts to 6 months. After these six months an asylum seeker may work for a maximum of 12 weeks per year, if his employer gets a labour permit for this employment. This limited form of access (12 weeks per year) continues as long as the asylum request is pending which may be for many years.

- B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?**

An employer who contracts an asylum seeker will have to get a work permit at the Centrum voor Werk en Inkomen (CWI)(Centre for Work and Income). In order to get such a work permit the asylum seeker has to submit a Declaration issued by the Minister of Justice confirming that the asylum application has been filed more than 6 months ago and that provisions and benefits have been granted according to the Rva 2005, according to the ROA (Regeling Opvang Asielzoekers)(Regulation for the Reception of Asylum Applicants) which was the predecessor of the Rva 2005, or under the responsibility of the Nidos Foundation, which is a guardianship institution for unaccompanied minors. According to information on the website of the CWI (www.werk.nl) in general the application procedure will take 5 weeks.

- C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?**

After these six months an asylum seeker can work for a maximum of 12 weeks every 52 weeks. A report published by Regioplan (an independent commercial research company specialised in social-economic policy research) in March 2004, called Asielzoekers en werk (Asylum Seekers and Work), states that this limitation of 12 weeks per year in practice

seriously impedes the possibilities of an asylum seeker to take up work.

Until June 2002 the work during those 12 weeks was restricted to short time seasonal work. Nowadays no more restriction exists as to the nature of the work, but the duration remains limited to 12 weeks. The work for which a work permit is issued must be carried out under market conform conditions.

D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Normally an employer when applying for a work permit has to show that he has first actively sought suitable candidates in the Netherlands or in the EEA for at least five weeks. However this does not apply to work to be carried out by asylum seekers. The employer on the other hand has to comply with the current working conditions (e.g. market conform wages).

E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

Asylum seekers have access to all forms of education with the exception of in-service education and modern apprenticeship, because asylum seekers do not have free access to the labour market (see above). This practical, on-the-job training period will be regarded as 'labour', the result being that the same restrictions apply.

Asylum seekers may do a work placement for a maximum of one year, when they follow e.g. regular intermediate vocational education, but this work placement has to be part of the school curriculum. Moreover, a work permit has to be applied for.

Asylum seekers are not entitled to a study grant or a contribution in study costs by the government, but they may apply to be exempted from school fees or for support from the University Assistance Fund (UAF). The UAF is a private foundation (NGO) and has limited resources.

F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

The rules regarding access to the labour market have not changed because

of the transposition of the Directive.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes. If an asylum seeker has sufficient financial resources, savings or revenues, a contribution for reception facilities will be asked for (article 20 of the Rva 2005).

An asylum seeker who has financial means at his disposal that exceed the basic income level ensured by the Law on Social Assistance (Wet Werk en Bijstand) the asylum seeker has to contribute to the costs of reception (article 20 of the Rva 2005).

An asylum seeker who works has to pay a proportion of the wages he earns to the COA to contribute to the costs of living. There is a special, very complicated, regulation to calculate the amount of money an asylum seeker has to pay (Regulation on personal contribution by asylum applicants with income or possessions)(Regeling eigen bijdrage asielzoekers met inkomen en vermogen)(Reba). This is yet another reason why legal employment by asylum seekers is difficult and unattractive.

According to article 20(3) of the Rva 2005 the COA can also ask for a refund if after the end of the reception conditions it becomes known that an applicant had sufficient means to cover material reception conditions and health care at the moment when the basic needs were covered.

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

Q.30. A. Are the different categories of persons with special needs considered taken into account in the national legislation (see article 17, §1 which is a mandatory provision): **disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence?**

Article 9 (4) of the Rva 2005 only states in general terms, without distinction between the different categories of persons, that more vulnerable persons with special needs have the right to special support or counselling. According to the explanatory memorandum to the Rva 2005 one has to think of unaccompanied minors and asylum seekers who have

serious psychosocial problems. The COA has the possibility to transfer the responsibility for the reception of asylum seekers who suffer from serious psychosocial problems to another organisation ('Abri and 'de Vonk').

B. How is their specific situation taken into account (see articles 13, §2, second indent and 17 which are mandatory provisions)?

The COA has some adapted facilities for disabled people. Medical devices for disabled and elderly asylum seekers are available though the COA health care contract for asylum seekers. With regard to pregnant women, in most centres there are separate rooms where a woman can stay in the first period after the birth. Health care for pregnant asylum seekers is available at the same level as for Dutch women who are ensured through a statutory basic health insurance. For single parents no special facilities exist. Specialised health care is available when there is an indication. There is specialised mental and somatic health care for persons who have been tortured, raped or victims of serious physical or psychological violence. The Dutch Council for Refugees however indicates that when these people need more private living conditions this can often constitute a problem. According to the COA, its employees are trained to deal with traumas asylum seekers face.

In a research carried out in 2002 about the safety of women and girls in reception centres it turned out that many single women feel unsafe in reception centres because for instance men knock on their doors at night and if they have teenage-girls they feel they are unable to sufficiently protect them from sexual assaults. As a consequence of these results, the COA took the following measures:

- *reconstruction of centres to prevent insecurity for women;*
- *training of employees;*
- *writing of procedures in case insecurity of women is addressed;*
- *training of women and girls within centres to inform them about their rights and to learn them how to act in situations of insecurity;*
- *research on women trafficking and the possible use of reception centres in this matter.*

Asylum seekers with behavioural and/or serious (mental) health problems are taken care of in special reception facilities run by third parties (article 7(2) of the Wet COA). There are for example special reception facilities for asylum seekers who due to their unacceptable behaviour cannot stay in a normal reception facility (so-called AMOG centres) and for asylum seekers who have mental problems ('Abri' and 'de Vonk').

Also unaccompanied minors are accommodated in special centres.

- C. **How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?**

The special needs are identified by the Community Health Services for Asylum Seekers (MOA) and a doctor at arrival at a reception centre or during office hours in the reception centres.

- D. **Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?**

The MOA or general practitioner can refer asylum seekers to the Riagg, the institute that provides mental health care in the Netherlands. Especially in the big cities these centres are often specialised in migrant or refugee problems. There are also a few medical institutes that are specialised in the treatment of psychiatric problems of asylum seekers / refugees. In the Netherlands there is also a knowledge institute, Pharos in Utrecht, which provides specialist medical knowledge and training for the (mental) health care of asylum seekers / refugees. According to the UNHCR, in practice, psychological aid is often not provided by the specialized organizations during the asylum procedure as it is difficult (and sometimes contra-protective) to treat psychological disorders, including trauma, during this uncertain period.

Q.31.

About minors:

- A. **Till which age are asylum seekers considered to be minor?**

In the Netherlands asylum seekers are considered to be minors until the age of 18.

- B. **How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?**

The 1969 Compulsory Education Law (Leerplichtwet) applies to all children on Dutch territory and thus also to minor asylum seekers. All children between the age of 5 and 16 residing in the Netherlands have to be entered into a school by their parents or legal guardian. These children have to attend complete daytime

classes. All children aged 16 and 17 have a partial obligation to education. They have to be enrolled in an educational institution but it does not have to be a full-time course. The Compulsory Education Law thus ensures access to schooling for all children of asylum seekers.

Children of asylum seekers can attend regular primary and secondary schools. In principle the parent(s) or legal guardian of the minor asylum seeker can choose the school of their liking, but only public schools have an obligation to admit children of asylum seekers. In some cases a primary school forms part of a reception centre and offers specialised education.

C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided)?

In general, asylum seekers have access to education within three months. According to the report 'The child and the asylum policy' (quick scan) carried out by Loes van Willigen (Consultant Health Service Refugees and Human Rights) at the request of the Advisory Committee on Aliens Affairs (ACVZ) in August 2003 it seems that asylum seekers are no longer put on waiting lists before they have access to education. However, when an asylum seeker has been admitted to a reception centre in May or June he will have to wait until the new school year begins (August).

D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

According to the Dutch Council for Refugees this depends on the situation. The municipality together with the COA are responsible for organising the education. Sometimes schools provide so-called first-reception education ('eerste opvangonderwijs'), which is aimed at enabling children to participate in the regular educational programs as soon as possible, or have special language classes. For instance, in order to facilitate the effective access to secondary education, so-called international linking classes (internationale schakelklassen)(ISK) provide intensive language education to asylum seekers between 12-18 years of age who do not have sufficient knowledge of the Dutch language. Sometimes special classes are organised at the centre. Municipalities get extra money for the education of asylum seekers' children. However in practice the relatively short existence of

many reception centres (five years), or shorter in the case of emergency centres, often gives problems to organise the education well.

E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Provided that this will be in the interest of the child, the COA has to take care of the fact that the minor child of an asylum seeker or the asylum seeker who is a minor will be accommodated with his or her parent or with an adult family member (article 11(4) of Rva 2005).

F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Article 9 (4) of the Rva 2005 states that extremely vulnerable persons (including minors) with special needs have the right to special support or counselling.

According to the Dutch Council for Refugees these minors do have in general access to appropriate mental health care and qualified counselling (preventive child health care and curative care when there is an indication) but recent research (2005) carried out by T. Bean for the Institute of War Victims (Centrum '45) showed that their needs are not always effectively dealt with.

G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

Guardianship of all unaccompanied minors who arrive in the Netherlands is awarded to the guardianship foundation Nidos. This Nidos Foundation is responsible for guarding the interests of the unaccompanied minors and for their upbringing and development. The Nidos Foundation is subsidised by the Ministry of Justice.

H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

The reception of unaccompanied minors is provided by the Nidos Foundation and by the COA.

For unaccompanied minors aged 0-12, Nidos has contracted foster parents. Unaccompanied minors who are not placed with a foster family (> age 12) will be accommodated by the COA in children's communal units (Kinderwoongroepen (KWG) of Kinderwooneenheden (KWE)) or in special 'AMA campuses' (Leek, Drachten, Baexem, Oisterwijk and Middelburg). Since the beginning of 2006, as a result of the disappearance of unaccompanied minors from reception facilities, several security measures have been implemented at these AMA campuses, like 24-hour protection and supervision, implementation of keycards and camera surveillance (TK 2005-2006, 27 062, nr. 49, 20 April 2006).

Within the different facilities, the reception conditions of each unaccompanied minor will be either directed at return or at integration, depending on the prospect of the unaccompanied minor and the stage of his or her (asylum) procedure (TK 2005-2006, 27 062, nr. 48, 13 December 2005).

However, in order to make sure that as much as possible homogeneous groups (orientation or return) will be accommodated in the different reception facilities, the new system implies that within a few weeks after the unaccompanied minor has filed an application, the COA (in consultation with the IND and the Nidos) will decide on the basis of the perspective of the unaccompanied minor whether he will be sent to a reception facility directed at orientation or to a reception centre directed at return.

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

At the request of a minor (and with the permission of his guardian) the Dutch Red Cross and the international Red Cross investigate whether a minor has parents or other family members. Minors can complete questionnaires providing information about their parents and other family members that they are looking for. The investigation procedure will then be put in progress. Most minors however do not use this procedure. Contact between the minor and his parents could lead to the IND concluding that the minor should be returned to his country of origin and be reunited with his parents. The IND and the Dutch Red Cross do not work together (Dutch Country Report on separated children in Europe, 2001-2003, Defence for Children).

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. **Apart from detention covered by the next question, are there exceptional modalities in the following cases and if yes, which ones and for how long are they applicable, knowing that it should be “as short as possible” (see article 14, §8)?**

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

There are exceptional modalities for unaccompanied minors and also for asylum seekers with psychiatric problems. There are three categories for accomodating asylum seekers with psychiatric or behavioural problems:

- *Intensive supervised living (Intensief Begeleid Wonen (IBW));*
- *Psychiatric Intensive Homecare (Psychiatrisch Intensieve Thuiszorg (PIT));*
- *Asylum seekers with unacceptable behaviour (asielzoekers met onacceptabel gedrag) are accommodated in special AMOG-centres.*

B. Non availability of reception conditions in certain areas

According to the Dutch Council for Refugees this is not the case.

C. Temporarily exhaustion of normal housing capacities

This is not the case anymore. In the past asylum seekers were put in hotels or pensions (AVO – aanvullende opvang asielzoekers), ordinary houses were rented (COW - Centrale Opvangwoningen) or asylum seekers were allowed to live with family or friends (ZZA, Self Care Arrangement).

D. The asylum seeker is confined to a border post

An asylum seeker who arrives in the Netherlands through Schiphol Airport (Amsterdam) or one of the seaports and who has been refused entry may be required to stay in a space or place designated by a border control officer (article 6 of the Aliens Act). When he declares that he wants to file an asylum application he will be transferred to the AC Schiphol which is secured against unauthorised departure. There is no legal regulation which says for what period of time such a ‘detention measure’ may be imposed. This depends on the ground for detention and whether the Minister has already decided on the asylum application.

When it appears to be impossible to reach a decision within 48 hours in AC Schiphol because more investigation is needed (e.g. because the authenticity of documents has to be checked), the detention measure can be prolonged and the asylum seeker will be transferred to a detention centre called Border Hostel ('Grenshospitium'), in the vicinity of Schiphol Airport. In that case the asylum application has to be dealt with speedily. When this will not be the case this can lead to the annulment of the detention measure. According to the Aliens Circular (WBV 2004/32) a period of 6 weeks is 'speedily'. When the Minister wants to continue the detention measure after these 6 weeks this continuance has to be the result of balancing the interest of the asylum seeker in remaining at liberty and the interest of the state to guard the frontiers. This 6 weeks-rule is however only an internal guideline for the IND. It is not a maximum which can be enforced in legal proceedings. According to the UNHCR, in many cases the 'research period' (and therefore the detention) is expanded considerably.

When the asylum request has been rejected within the AC-procedure, the detention measure will also be continued in the Border Hostel. In practice this detention measure may last for 6 months or more. The rules relating to the regime applicable to this Border Hostel are laid down in the Border Accomodation Regime Regulations (Reglement Regime Grenslogies) (Bulletin of Acts, Orders and Decrees 1993, nr. 45). The fundamental rule (article 4) is that a resident of the Border Hostel will not be subjected to any other restriction than the one that forbids him to leave the building. Within the Border Hostel the asylum seeker is free to move (except for the night). He is allowed to have visitors and to make telephone calls (article 5 and 7). Furthermore he is entitled to medical and mental care and can take part in recreational activities (article 8).

- E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

To our knowledge there are no other exceptional modalities.

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

A. In which cases or circumstances and for which reasons (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

See for a recent research report on detention and alternatives to detention: UNHCR, Legal and Protection Policy Research Series, Alternatives to Detention of Asylum Seekers and Refugees by Ophelia Field with the assistance of Alice Edwards, external consultants (April 2006).

1. Aliens refused entry to the Netherlands (see answer Q32D)

Article 6 of the Aliens Act is specifically aimed at those aliens who are refused access to the Netherlands upon arrival by aircraft or boat at the border of the Schengen area (i.e. Schiphol Airport and the sea harbours of Rotterdam and Amsterdam). Such persons are required to leave the Netherlands and may be detained at the border until they can be put back on a plane or boat. When the asylum seeker declares that he wants to file an asylum application he will be transferred to the AC Schiphol which is secured against unauthorised departure.

2. Asylum seekers registered at in-country application centre in Ter Apel

Asylum seekers registered at the AC Ter Apel are instructed, on the basis of Article 55 of the Aliens Act, to remain at the disposal of the IND and, if necessary, available for processing through an accelerated procedure. In practice, this means that their movement is restricted almost continuously for a maximum of five days. They have to leave the AC after 48 processing hours from the moment that the asylum interview starts, but the hours between 6:00 pm and 8:00 am are not counted as processing hours (paragraph C3/12 of the Aliens Circular).

In 2001, the National Ombudsman requested more openness in the AC, as it considered the situation similar to detention, but without adequate legal safeguards. The government was at that time not willing to meet this request. However, the Court of Appeal in The Hague ruled, in a judgment of 31 October 2002, that restrictions on movement during the accelerated procedure at an AC constitute 'detention' in the sense of article 5 of the ECHR, which finds no legal basis in article 55 of the Aliens Act. In a first reaction to this ruling, the Minister for Alien Affairs and Integration announced, in November 2002, that an application can no longer be rejected on the sole ground that an asylum seeker has left the AC during the accelerated procedure. As of March 2004, the Ministry of Justice is

working on several general adjustments to the accelerated procedure, but so far the nature and timing of these adjustments remains unknown.

3. Asylum seekers detained during the asylum procedure

If necessary in the interests of public policy or national security, with a view to expulsion, administrative detention on the basis of article 59(1)(b) of the Aliens Act can be used with regard to asylum seekers who are legally resident in the Netherlands pending a decision on their asylum application or on their appeal. Detention pursuant to this ground shall in any event last for no longer than four weeks. According to paragraph A5/5.3.3.6 of the Aliens Circular detention of asylum seekers during their asylum procedure should be limited as far as possible. As an example the Aliens Circular mentions an asylum seeker who lodges a clearly fraudulent asylum application. In this situation a comparative assessment has to be made regarding the enforcement of the detention in relation to the asylum application.

B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be “confined” in such a place?

Ad 1) Asylum seekers who are refused entry to the Netherlands may be required to stay in a space or place designated by a border control officer. When an asylum seeker declares that he wants to file an asylum application he will be transferred to AC Schiphol which is secured against unauthorised departure. When the asylum request has been rejected within the accelerated 48 hours procedure the detention measure can be continued in a detention centre, the Border Hostel, in the vicinity of Schiphol Airport. The asylum seeker has to stay in the detention centre during the appeal and higher appeal (if he appeals at all) until his deportation. If the authorities do not succeed in deporting the rejected asylum seeker, he will eventually be released (this can take more than a year).

Ad 2) Asylum seekers registered at the AC in Ter Apel have to remain at the AC when their availability is necessary for the investigation into the allowability of the application. In practice this means that the asylum seeker has to remain at the AC during working hours from 7:30 am to 6:00 pm (paragraph C3/12.2.5 of the Aliens Circular).

Ad 3) In exceptional cases (e.g. in case of manifest fraud) an asylum seeker can be detained in a detention centre.

C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

Asylum seekers who stay in a reception centre run by the COA, but also asylum seekers who make use of the 'administrative registration', have a duty to report weekly to the Aliens Police (article 54(1)(f) of the Aliens Act juncto article 4.51 of the Aliens Decree) and the COA (article 19(e) of the Rva 2005). See answer Q20E.

D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

Ad 1) Asylum seekers are refused entry to the Netherlands by border control officers. According to article 3(3) of the Aliens Act these border control officers shall not, save in accordance with a special direction issued by the IND, refuse entry into the Netherlands to an alien indicating that he wishes to have asylum.

Ad 2) An asylum seeker has to keep himself available in connection with the screening of his asylum application at a place which is designated by the Minister for Alien Affairs and Integration (=AC) and where he has to comply with the directions given to him by the IND.

Ad 3) The IND is the competent authority to order the remand in custody of an asylum seeker on the ground of article 59(1)(b) of the Aliens Act.

E. For how long and till which stage of the asylum procedure can an asylum seeker be detained? Is this in line with the requirement of "a reasonable period which shall be as short as possible" set by article 14, §8 of the directive?

Ad 1) Regarding asylum seekers who are referred to AC Schiphol and the Border Hostel: see answer Q 32D.

Ad 2) The so-called AC-procedure lasts for a maximum period of 48 'processing' hours (spread over 3-5 working days). During this period the asylum seeker has to remain available at the AC during working hours from 7:30 am to 6:00 pm (paragraph C3/12.2.5 of the Aliens Circular).

Ad 3) Detention pursuant to article 59(1)(b) of the Aliens Act shall in any event last for no longer than four weeks (article 59(4) of the Aliens Act).

F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

Ad 1) Asylum seekers who are refused entry to the Netherlands and want to file an asylum application are referred to AC Schiphol. This is a so-called closed centre reserved only to this category of asylum seekers. When the asylum request has been rejected within the accelerated 48 hours procedure the detention measure can be continued in the Border Hostel. The rules relating to the regime applicable to the Border Hostel are laid down in the Border Accommodation Regime Regulations (Reglement Regime Grenslogies) (Bulletin of Acts, Orders and Decrees 1993, nr. 45).

Ad 2) Asylum seekers who report to AC Ter Apel in order to file an asylum application have to stay in this AC. The AC Ter Apel is a ‘half-open centre’ in that sense that the asylum seeker has to remain available in connection with the screening of this asylum application during working hours (7:30 am – 6:00 pm).

Ad 3) Pursuant to article 5.4 of the Aliens Decree detention on the ground of article 59(1)(b) of the Aliens Act will be executed in a police station (maximum period of 10 days), a house of detention or a place to which the Border Accommodation Regime Regulations are applicable (see ad 1).

G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

The Dutch Council for Refugees has offices both in AC Schiphol and AC Ter Apel and also in the Border Hostel. UNHCR has also access to these places by appointment. This right of access to detention centres for UNHCR is not laid down in any formal document, but in practice UNHCR has not encountered any problems when access was requested.

H. What appeal(s) can asylum seekers introduce against the fact he is detained?

The IND will notify the District Court of an order imposing a detention measure pursuant to article 6 or 59 of the Aliens Act no later than 28 days after communication of the order if the person detained has not already appealed against the decision himself (article 94 of the Aliens Act). This

notification is viewed as an appeal. The court-session will take place not later than fourteen days after the notification or the appeal has been received, the court will then reach a decision within another seven days. Both the IND and the detained person can appeal against this decision of the court to the Council of State. The detained person can appeal against the prolongation of the detention at any time. This decision of the District Court is not open to appeal at the Council of State.

I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

As mentioned before the Rva 2005 is the main norm of transposition of the Reception Conditions Directive. According to article 1(d) of the Rva 2005 the Rva 2005 is not applicable to an asylum seeker who is in detention.

The rules relating to the regime applicable to the Border Hostel are laid down in the Border Accommodation Regime Regulations (Reglement Regime Grenslogies) (Bulletin of Acts, Orders and Decrees 1993, nr. 45). The fundamental rule (article 4) is that a resident of the Border Hostel will not be subjected to any other restriction than the one that forbids him to leave the building. Within the Border Hostel the asylum seeker is free to move (except for the night). He is allowed to have visitors and to make telephone calls (article 5 and 7). Furthermore he is entitled to medical and mental care and can take part in recreational activities (article 8).

According to a report of the Application of Sanctions Inspectorate (Inspectie voor de Sanctietoepassing) on 'Parents and children in aliens detention' (August 2005) asylum seekers who will be placed together with their children in the Border Hostel will not be informed about the circumstances in the Border Hostel beforehand. Once they are placed within the Border Hostel the parents are informed about the (house) rules.

With regard to access to medical care in the Border Hostel: there are doctors available although not all of them are qualified as general practitioners. In cases of infant welfare, parents will be referred to a child-health centre outside the Border Hostel. Dental treatment also takes place outside the Border Hostel. Finally, there is a psychologist available.

Asylum seekers staying in the Border Hostel will be assisted in their procedure by members of the Dutch Council for Refugees which has offices in the Border Hostel. They also have access to lawyers by appointment.

J. Apart from freedom of movement, what are the main differences between normal reception conditions and reception conditions in case of detention? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which “*Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention*” respected)?

Freedom of movement within the (closed) centre is restricted. Within the ACs asylum seekers have to keep themselves available in connection with the screening of their asylum application. In practice, this means that during working hours they have to remain in a waiting room.

Reception facilities in case of detention are in general more basic than normal reception centres. This can manifest itself for instance with regard to housing, education and recreational activities. Asylum seekers who have special needs (e.g. minors) will not always be offered the appropriate facilities. Upon arrival of asylum seekers with children in the Border Hostel no information is available with regard to composition, country of origin, (legal) status, health or expected length of stay of the family.

K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

In a judgment of 24 February 2003 the Council of State stated that pursuant to article 37 of the International Convention on the Rights of the Child and article 9 of the Youth Custodial Institutions (Framework) Act (Beginselenwet justitiële jeugdinrichtingen)(Bjj), detention of (unaccompanied) minors has to be executed as far as possible in a special detention centre for young people (separated from adults)(NAV 2003/128). According to the UNHCR it is however not uncommon that children are detained in the Border Hostel either to await the outcome of an age assessment or with their family members. According to the report of the Application of Sanctions Inspectorate of August 2005 (see also answer Q33M) the Border Hostel is not truly suitable for children.

According to the report of Human Rights Watch “The Netherlands, fleeting refuge: The triumph of efficiency over protection in Dutch asylum policy (2003)” the AC procedure (especially the one carried out in AC Schiphol) is by its nature unlikely to ensure that unaccompanied children’s special characteristics and needs are taken into account.

L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there

special measures which take into account that children are concerned?

Minor asylum seekers can be detained together with relatives in the Border Hostel.

Unaccompanied minors are detained in practice, for example when they enter the Netherlands through Schiphol Airport or a seaport and are refused entry. A detention measure pursuant to article 6 of the Aliens Act will be imposed. According to a judgment by the Council of State of 24 February 2003 (see answer Q 33K) unaccompanied minors have to be detained – as far as possible – in special detention centres for young people or in detention centres to which the Youth Custodial Institutions (Framework) Act (Bjj) is applicable. Unaccompanied minors of whom the IND has no doubts about their stated age have to be regarded as minors and cannot be detained in the Border Hostel (C5/24.4.2 of the Aliens Circular). In a judgment of 5 March 2004 (NAV 2004/130) the Council of State stated that the IND can treat unaccompanied minors of whom the IND has serious doubts about the stated minority (e.g. in case of false documents, diverse statements about identity and age) as being of age. In that case they can be detained in the Border Hostel pending an age assessment.

In the Border Accomodation Regime Regulations which is applicable to asylum seekers staying in the Border Hostel no rules specifically directed at minors are laid down: the Regulations only cover 'aliens in general'.

M. In particular is article 10 regarding access to education of minors respected in those places?

According to the report of the Application of Sanctions Inspectorate (August 2005) in the Border Hostel education to children will only be provided during a few hours a week. The nature of the education is very basic / elementary. The question arises whether this is in accordance with a.o. the 1969 Compulsory Education Law (Leerplichtwet) which applies to all children on Dutch territory (also to those who are refused entry). According to this Law all children between the age of 5 and 16 residing in the Netherlands have to be entered into a school by their parents or legal guardian. These children have to attend complete daytime classes. All children aged 16 and 17 have a partial obligation to education.

N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

No itemized figures available.

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

- Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 4 about the competence to make rules about reception conditions).

Since 1992 the Netherlands have a centralised reception system. According to the Wet COA the Minister for Alien Affairs and Integration is responsible for the reception of asylum seekers in central reception centres run by the COA.

- Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)¹³

Accommodation centres in the Netherlands are public (run by the COA). NGOs do not manage reception centres. However, NGOs can provide emergency reception for rejected asylum seekers.

- Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?¹⁴

There is one TNV in Ter Apel (and one temporary TNV in Bellingwolde, situated at a distance of 45 kilometers from Ter Apel). There are two ACs: one in Ter Apel and one at Schiphol Airport. According to information provided by the COA, at 1 June 2006 there were about 60 (public) reception centres.

As mentioned in the answer to Q31H, unaccompanied minors are sometimes housed in foster homes, in children's communal units (Kinderwoongroepen (KWG) of Kinderwooneenheden (KWE)) or in one of the special 'AMA campuses' (Leek, Drachten, Baexem, Oisterwijk and Middelburg), and sometimes in the COA's central reception centres. In 2004, 1,287 unaccompanied minors were staying at foster families. Nidos used 296 houses as small-scale children's communal units, capable of housing 1,529 children. The COA housed 525 unaccompanied minors in the 5 reception centres for return.

- Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their

¹³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no specific legislation about the spreading of asylum seekers. The procedure is as follows: the Ministry of Justice distributes financial means to the COA. The COA decides the amount of places that have to be made available, based on numbers of intake of asylum seekers. Locations are offered by local authorities or COA looks for areas itself. After that negotiations with local authorities start. In practice, more asylum seekers live in the northern part of the country, because it proved to be easier to establish reception centres in less populated areas (Dutch Council for Refugees).

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?¹⁵

There is no central body representing all the actors involved in reception conditions. Occasionally, there are bilateral meetings between the Dutch Council for Refugees and the COA on different levels (management, regional, policy).

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

According to the Wet COA, the board of the COA has to provide the Minister for Alien Affairs and Integration with all the necessary information regarding the system of reception conditions (article 14) and with a report containing all the relevant activities of the COA in the previous year (article 15). The Minister will send this report to both chambers of parliament. The COA also has to submit an estimate and to supply the Minister with a financial report (article 16-19) both of which have to be approved by the Minister.

But apart from this kind of (financial) control, the only part of the reception system which is regularly monitored is the health care for asylum seekers by the National Health Inspection (Inspectie voor de Gezondheidszorg). With regard to the quality of reception conditions there is no control or monitoring. About the reception of unaccompanied minors the National Youth Inspection has done some reports in the last years. The most recent one in May 2006. These reports are public.

¹⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,...) to be respected in particular in accommodation centres?¹⁶

As mentioned above (Q24A), the COA laid down prescribed dimensions for the different housing facilities (TNV, reception centres) in a so-called Program of Demands (Programma van Eisen)(PvE) which is of a highly technical nature and contains technical minimum standards for the construction or renovation of reception centres, based on building and fire preventing regulations. For example bedrooms will be for a maximum of four individuals, measuring at least 5m²; for each eight inhabitants there will be at least one toilet and 3,25m² of bathroom space (including a washer and dryer) and for each eight inhabitants there has to be 5,72m² of kitchen space. According to the Minister for Alien Affairs and Integration, these standards meet the minimum standards for the reception of asylum seekers as laid down in the Directive (TK 2004-2005, 19 637, nr. 913, 30 March 2005). The Dutch Council for Refugees expresses its concern that this Program of Demands does not mention anything about common rooms and access to computers and telephone. The Dutch Council for Refugees refers to the fact that in many reception centres there is no quite place for children to do their homework or a recreation room with activities for children.

C. **How is this system of guidance, control and monitoring of reception conditions organised?**¹⁷

See answer under Q39A.

D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?¹⁸

¹⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁷ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

¹⁸ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

No, apart from the reports by the National Health Inspection no reports on the level of reception conditions are produced. The general reports of the National Health Inspection are public, but the reports drawn up in individual cases (e.g. in case of the death of an asylum seeker or illness) are not public. About the reception of unaccompanied minors the National Youth Inspection has done some reports in the last years. The most recent one in May 2006. These reports are public.

- Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

On 1 January 2006, 28,732 people stayed in the central reception facilities run by the COA, a 29,5 % drop from 1 January 2005. Of these 28,732 people, 3,472 people held a residence permit. The majority of the total number of 28,732 is male (16,420)(www.coa.nl).

- B. What is the total budget of reception conditions in euro for the last year for which figures are available?¹⁹

Based on a capacity of 24 142 places, the COA's total costs for 2006 are estimated at € 418.4 million (Minister of Justice and Minister for Alien Affairs and Integration: Determination of the budget of the Ministry for Justice (VI) for the year 2006 (published in the Bulletin of Acts, Orders and Decrees 2006, 63): Explanatory Memorandum). This includes amongst others the costs for COA's products and services and the costs for benefits provided to asylum seekers.

- C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?²⁰

No itemized figures available.

- D. Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

¹⁹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²⁰ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

The budget of the COA is mainly provided through a yearly subsidy by the Minister of Justice which is based on output financing.

- E. Is article 24 § 2 of the directive following which “Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive” respected?²¹**

According to the Dutch Council for Refugees there are no sufficient financial means to ensure an adequate standard of living for asylum seekers at least until 2009. With regard to the situation of the level of (food) allowances (answer Q12), the Minister for Alien Affairs and Integration claimed that there was not enough money to raise all the allowances at once. So they will be gradually raised over three years. According to the Minister the allowances will comply with the standards of the NIBUD in 2009.

- Q.41. A. What is the total number of persons working for reception conditions?²²

The total number of people employed by the COA is 1,950 persons which count for 1,733 fte (date: 15 June 2006).

The total number of people working for the Dutch Council for Refugees is an estimated 70 people (date: 15 June 2006).

- B. How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?²³**

Employees of the COA receive training relevant for their work (e.g. to guide unaccompanied minors, to deal with violence and aggression, etc.). According to the COA's Annual Report 2004, as a result of the Investigation toward the Safety of Women and Girls in the Reception Centres initiated by the Minister for Alien Affairs and Integration in response to a motion in parliament (TK 2003-2004, 19 637, nr. 779), the

²¹ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²² To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

²³ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

COA decided to improve the safety of women and girls in reception centres amongst others by the training of assistants in the detection of danger to women and girls.

The Dutch Council for Refugees has an extended training programme about among other things the asylum procedure, family reunification, information on countries of origin, pointing out sociological and psychological problems, cultural and diversity aspects.

D. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?²⁴

The COA employs a Code of Conduct (Gedragscode). The Dutch Council for Refugees asks all her volunteers and employees to sign a confidentiality statement.

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

After comparing the Dutch and the English language version of the Directive we have not come across any noteworthy problems with the translation of the Directive into the Dutch language.

Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,...))?

Yes. Before the adoption of the Rva 2005, the Rva 1997 was in force. This regulation regarding the provisions for asylum seekers, like the Rva 2005, was a regulatory measure issued by the Minister for Alien Affairs and Integration pursuant to article 12 of the Wet COA.

Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms

²⁴ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

(for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?)

Whether the legal rules in the Rva 2005 in comparison with the legal rules laid down in the Rva 1997 became more clear, precise, coherent or detailed is difficult to say. The Rva 2005 is to a large extent a revised version of the Rva 1997. Through the years the Rva 1997 has been revised several times because of national reception developments (coming into force of the Aliens Act 2000 and a new return policy, policy regarding unaccompanied minors, etc.). After a while these amendments became so extensive that there was a need for a complete revision. In the explanatory memorandum to the Rva 2005, the Minister for Alien Affairs and Integration states that at some points the Rva is adjusted because of the transposition of Directive 2003/9/EC. In our opinion the Directive was actually an important reason for revision of the Rva 1997. In order to comply with the minimum norms laid down in the Directive, the Minister for Alien Affairs and Integration saw the need for a revision of the Rva 1997 in order to avoid far-reaching changes of the Rva after the implementation of this Directive.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

In comparison with the Rva 1997, there have been a few changes in the Rva 2005:

Directive 2003/9/EC	Rva 1997	Rva 2005
<i>Article 5 (information)</i>	<i>no provisions relating to 'information'</i>	<i>Art. 2(3) and (4): COA should inform asylum seekers within at least 10 days after they have been placed in a reception facility</i>
<i>Article 8 (families)</i>	<i>no provisions concerning family unity</i>	<i>Art. 11(3): COA maintains with the agreement of the asylum seeker the family unity and endeavours to protect family life as much as possible</i>
<i>Article 14(2) and (7) (modalities for material reception conditions)</i>	<i>no provisions relating to 'communication'</i>	<i>Art. 9(6) and (7): possibility of communicating with relatives, legal advisers and representatives of the UNHCR and NGOs</i>

Another important change that occurred because of the transposition of the Directive is the eventual raising (in phases) of the weekly financial allowance and in particular the food allowance which was considered to be in breach of the criterion mentioned in article 13(2) of the Directive, namely that material reception conditions have to ensure a

standard of living adequate for the health of applicants and capable of ensuring their existence (see answer Q12B).

Before 1 January 2006, asylum seekers who filed a repeated asylum request had in principle no right to reception conditions (except in cases of humanitarian need) even though they were lawfully resident in the Netherlands (article 4 of the Rva 2005). Since 1 January 2006 this has been changed because of transposition of the Directive: asylum seekers who file a repeated asylum request which is not being rejected within the accelerated 48 hours asylum procedure have a right to reception conditions (see answer Q16).

Finally, as a result of the Directive, the Dutch government already in October 2002 decided that so-called Dublin claimants (asylum seekers about whom the Netherlands have made a 'Dublin claim' on a fellow Member State) were entitled again to reception facilities. Until October 2002 this category of asylum seekers was refused accommodation in reception centres because of capacity problems. Because according to the Directive the applicability of the Dublin procedure was no ground for a state to withhold reception conditions from an asylum seeker, the exclusion of this category was ended.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

About the transposition of the directive in its entirety there has neither been an important debate in the parliament, the government nor in the media. However, there has been debate in parliament (initiated by a.o. the Dutch Council for Refugees) about the level of the weekly financial allowance and in particular the food allowance which was not enough to provide for a responsible diet and therefore contrary to the criterion mentioned in article 13(2) of the Directive. This induced the Minister to re-examine the level of the allowances. As a consequence she decided to raise the level of the food allowance to the NIBUD standard with regard to all age-groups (including unaccompanied minors) in phases within a period of 4 years. There has also been debate in parliament about the fact that providing no reception conditions to Dublin claimants and asylum seekers who file a repeated asylum request was in breach of the Directive. As a consequence reception conditions are now provided to both categories of asylum seekers (under certain circumstances).

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

The transposition of the Directive contributed to make the existing internal rules laid down in Rva 1997 a bit more generous (see answer Q45). To our knowledge the transposition of the Directive is not used to abolish more favourable provisions of national law.

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?²⁵

A weakness of the Dutch system of reception conditions is that 'reception' is being used with the explicit aim to facilitate the return of an asylum seeker by placing him in a centre for return after a first negative decision. During the stay in a centre for return an asylum seeker is obliged to take part in a programme aimed at 'voluntary' return to the country of origin. Refusing to participate in this compulsory programme can be ground for the reduction or withdrawal of reception conditions. This ground is not mentioned as a possible ground for reduction or withdrawal of reception conditions in article 16 of the Directive. According to the official programme, the push and pull factors of return are to be discussed with the asylum-seeker. Information is provided on the role of IOM, the situation in the country of origin, specific possibilities of return, consequences of illegal stay in the Netherlands. Another aim of this phase is the elimination of possible obstacles for return. Access to Dutch language courses is denied. In our opinion the obligations of the COA employees, whose main task is the provision of reception conditions to asylum seekers, to engage in systematic conversations with asylum seekers about their return, may create ambivalence about their role and influence their behaviour towards asylum seekers living in reception centres.

Furthermore, these centres are in general located outside residential areas in order to hinder the asylum seeker as much as possible in establishing contacts with the Dutch municipality which is in accordance with the objectives of the return policy. This segregation does not contribute to good living conditions.

²⁵ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

According to the COA management, one of the strengths of the Dutch model is that asylum seekers are motivated to think about and work on their future. COA employees support them throughout the asylum procedure while confronting them with the reality of their supposed return. This happens right from the moment they arrive at an orientation and integration centre and continues when transferred to a return centre. A weakness of the system is the long duration of housing in reception centres as a result of the long asylum procedure and the high number of transfers from one reception centre to another as a result of the closure of centres.

The Dutch Council for Refugees points out that one of the strengths of the Dutch reception system is that every asylum seeker who is entitled to reception facilities gets a place to stay. The weakness of the system is that asylum seekers are not empowered to take care of themselves. They hardly have the possibility to work or to follow education. Asylum seekers have little privacy and they have to stay in facilities that are meant for a short stay far too long. The lack of privacy (also within families), the lack of money, having to move frequently and to live very close to people who are tensed, depressed and sometimes aggressive is especially harmful for children.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States²⁶

NGO's are closely involved in the reception of asylum seekers in any form of reception facility. The Dutch Council for Refugees for example has its seat in the TNV in Ter Apel, in the two AC's and in the reception centres run by the COA.

For asylum seekers in detention there is the possibility of being visited once a week or once very two weeks by a so-called 'visiting group' (bezoekgroep). These visiting groups particularly consist of volunteers and are an easily accessible form of social assistance.

A further example of good practice is given by the Dutch Council for Refugees. It mentions the existing of the MOA as a health care facility which makes the health care better accessible for asylum seekers in combination with Pharos (knowledge centre) which contributes to the specialist knowledge of refugee health care.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

²⁶ To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

As mentioned above, the Rva 2005 (and thus the Directive) is not applied to asylum seekers who stay in a TNV or in an AC, although these centres are in fact (temporary) material reception conditions. This situation can hardly be considered to be in conformity with the Directive.

According to article 3 of Directive 2003/9/EC 'this Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers...'. Article 2(b) defines 'application for asylum' as the application made by a third-country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention. Pursuant to article 2(c) an 'applicant' or 'asylum seeker' shall mean a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken.

If these provisions mean that as soon as an asylum seeker makes known to a police officer or an immigration officer that he wants to file an asylum claim he will be covered by the provisions of Directive 2003/9/EC, the reception conditions offered in a TNV and in an AC will fall under the scope of the Directive (and thus the Rva 2005). At present this is not the case in the Netherlands. The Rva 2005 as the main norm of transposition only applies to reception conditions offered in orientation and integration centres and return centres run by the COA.