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PRESIDENCY NOTE

to:	Strategic Committee on Immigration, Frontiers and Asylum
on:	25 September 2002
No. prev. doc.:	11139/02 ASILE 39
No. Cion prop.:	11355/01 ASILE 41 – COM(2001) 447 final
Subject :	Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national

1. The conclusions of the European Council in Seville decided to speed up the implementation of all aspects of the programme adopted in Tampere for the creation of an area of freedom, security and justice in the European Union. The European Council also urged the Council to adopt the Dublin II Regulation by December 2002.
2. On 22 – 23 July 2002 the Strategic Committee for Immigration, Frontiers and Asylum decided that an informal drafting group chaired by the Presidency and consisting of representatives from Member States, the Commission and the General Secretariat of the Council should convene in order to explore and draft compromise proposals for certain provisions of the Dublin II Regulation.
3. On 11 and 19 September 2002 the informal drafting group met to discuss compromise proposals for Articles 10, 11, 12, 13, 16, 18, 19, 20, 21, 22 and 24a drafted by the Presidency.

4. The drafting group agreed to postpone further discussions on the wording of Article 11, since the outstanding issues relating to this article are of a technical nature and can easily be dealt with at a later stage, whereas it decided to delete the safety clause in Article 24a.
5. In order to strike a balanced compromise regarding the hierarchy of criteria the Presidency proposes to merge Articles 10, 12 and 13 into one single provision thereby not giving precedence to any of the three responsibility criteria set out in these articles.
6. After consultations within the informal drafting group and in order to meet the concerns raised by several Member States, the Presidency, as part of the compromise proposal, also suggests to strengthen the obligations of Member States to preserve family unity and to unite unaccompanied minors with their relatives outside the scope of Article 6, by changing the wording of the humanitarian clause in article 16 using language from the Decision 1/2000 of 31 October 2000 of the Committee set up by Article 18 of the Dublin Convention.
7. Considering the upcoming implementation of “Eurodac”, the Presidency in accordance with the views put forward by delegations in the informal drafting group proposes to shorten the time limits for taking charge of an applicant and for taking an applicant back. This shortening is done partly by reducing the deadlines directly and partly by using more binding language taken from the Decision 1/1997 of 9 September 1997 of the Committee set up by Article 18 of the Dublin Convention.
8. The Presidency invites the Strategic Committee for Immigration, Frontiers and Asylum to approve the attached draft compromise proposals for Articles 10, 16, 18, 19, 20, 21 and 22 put forward by the Presidency after consultations within the informal drafting group.

Draft proposal**Hierarchy of criteria****Article 10**

1. Where it is established, on the basis of **proof or circumstantial evidence as described in the two lists mentioned in Article 19(3)**, including the data referred to in Chapter III of Council Regulation (EC) number 2725/2000 of 11 December 2000 concerning the establishment of “Eurodac” for the comparison of fingerprints, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third State [...], the Member State thus entered shall be responsible for examining the application for asylum.
2. **Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 19(3), that an asylum seeker - who has entered the territory of the Member States irregularly - at the time of lodging the application has been previously living for a continuous period of at least three months in a Member State, that Member State shall be responsible for examining the application for asylum.**

If the applicant has been living for periods of time of at least three months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application.

Article 12

(deleted)

Article 13

(deleted)

Humanitarian clause

Article 16

1. Any Member State, even where it is not responsible under the criteria set out in this Regulation, may reunite family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case this Member State will, at the request of another Member State, examine the application for asylum of the person concerned. Both persons concerned must consent.
2. In cases in which the person concerned is dependent on the assistance of the other on account of pregnancy or a new-born child, serious illness, severe handicap or old age, Member States **shall normally** keep together or reunite the asylum seeker with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin.
3. If the asylum seeker is an unaccompanied minor who has (a) relative(s) in another Member State who can take care of him/her, Member States **shall if possible** unite the minor with his relative(s), unless this is not the best interest of the minor.
4. Where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.
5. The conditions and procedures for implementing this Article including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, shall be adopted in accordance with the procedure referred to in Article 28(2).

Article 18

1. Where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. **This period shall be at least one week.**

3. In both cases, the request that charge be taken **by another Member State** shall be made using a standard form and including **proof or circumstantial evidence as described in the two lists mentioned in Article 19(3)** and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 28(2).

Article 19

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two month of the date on which the request was received.
2. For the processing of the procedure for determining the State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence will be used. [...]
3. The Committee provided for in Article 28 will establish two lists to be periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:
 - (a) Proof
 - (i) This refers to formal proof which determines responsibility pursuant to the Regulation, as long as it is not refuted by proof to the contrary.
 - (ii) The Member States will provide the Committee provided for in Article 28 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proof.
 - (b) Circumstantial evidence
 - (i) This refers to indicative elements which, **while being refutable**, may be sufficient, in certain cases, according to the proof value attributed to them. [...]
 - (ii) Their force as proof, in relation to the responsibility for processing the asylum procedure, will be seen case by case.
 - [(iii) They will never be assailable as formal proof.]

4. The requirement of proof will be as limited as possible **by not exceeding what is necessary for the proper application of this Regulation.**
5. If there is no formal proof, the requested State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
6. Where the requesting State has pleaded urgency, in accordance with the provisions of Article 18 (2), the requested State shall **make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested State may give the reply after the time limit requested, but in any case within one month. In such situations the requested State must communicate its decision to postpone a reply to the requesting State within the time limit originally requested.**
7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, **including the provisions for proper arrangements for arrival.**

Article 20

1. Where the requested State accepts that it should take charge of an applicant, the State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.
2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.
3. The transfer of the applicant from the Member State in which the application for asylum was lodged to the Member State responsible shall be carried out in accordance with the national law of the first Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken or of the decision on an appeal or review where there is a suspensive effect.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez passer of the design adopted in accordance with the procedure referred to in Article 28(2).

The Member State responsible shall inform the requesting State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

4. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of **two** years if the transfer could not be carried out due to [...] **imprisonment of the asylum seeker or if the asylum seeker absconds.**
5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 28(2).

Article 21

1. An asylum seeker shall be taken back in accordance with Article 4(6) and Article 17(c), (d) and (e) as follows:
 - (a) the request for the applicant to be taken back must contain information enabling the requested State to check that it is responsible;
 - (b) the State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it **as quickly as possible and under no circumstances exceeding a period of one month from the referral. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks;**
 - (c) Where the requested Member State does not communicate its decision within the one month period or the **two** weeks period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;
 - (d) a State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken **by another Member State** or of the decision on an appeal or review where there is a suspensive effect;

- (e) the requesting State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case by case basis if the national legislation allows for this.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez passer of the design adopted in accordance with the procedure referred to in Article 28(2).

The Member State responsible shall inform the requesting State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

2. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of **two** years if the transfer **or the examination of the application** could not be carried out due to [...] **imprisonment of the asylum seeker or if the asylum seeker absconds.**
3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 28(2).
4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 28(2).

CHAPTER VI

Administrative cooperation

Article 22

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
 - (a) the determination of the Member State responsible for examining the application for asylum;
 - (b) examining the application for asylum;
 - (c) implementing any obligation arising under this Regulation.
2. The information referred to in paragraph 1 may only cover:
 - (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
 - (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
 - (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000;
 - (d) places of residence and routes travelled;
 - (e) residence documents or visas issued by a Member State;
 - (f) the place where the application was lodged;

(g) the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for asylum, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for asylum.
4. Any request for information shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, **including relevant information from reliable sources on the ways and means asylum seekers enter the European Union**, or on what specific and verifiable part of the applicant's statements it is based.
5. The requested Member State shall be obliged to reply within six weeks. [...]
6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission, which shall inform the other Member States thereof.
7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
 - (a) the determination of the Member State responsible for examining the application for asylum;

- (b) examining the application for asylum;
- (c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.
9. The asylum seeker has the right to be informed, on request, of any data that is processed concerning him.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC, in particular because it is incomplete or inaccurate, he is entitled to have it corrected, erased or blocked.

The authority correcting, erasing or blocking the data shall inform, as appropriate, the State transmitting or receiving the information.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.
11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.
12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State should take appropriate measures to ensure compliance with this Article through effective checks.
