COUNCIL OF THE EUROPEAN UNION

Brussels, 17 September 2001 (20.09)
(OR. fr)

11891/01

Interinstitutional File: 2000/0238 (CNS)

LIMITE

ASILE 46

NOTE

from :	The Presidency
to :	Coreper/the Council
No. prev. doc.	11701/01 ASILE 44
No. Cion prop. :	11622/01 ASILE 46 (COM(2000) 578 final)
Subject :	Proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

Introduction

The introduction of a harmonised asylum procedure is an important step towards the establishment of a common European asylum system based on Title IV of the Treaty establishing the European Community and confirmed at the Tampere summit on 15 and 16 October 1999.

The adoption of a Directive in this area will involve the Member States establishing in practice a harmonised procedure for granting and withdrawing refugee status which satisfies the two pre-requisites for any such procedure of observing the rights of prospective refugees and the right of asylum on the one hand, and of enabling applications to be processed in a simple, timely and efficient fashion on the other. The need to combat "*asylum shopping*" is also now more acute than ever before.

The Presidency seeks to strike a balance between these three needs, which it does not wish to present as contradictory.

The Presidency has identified three main points for the Council to study in depth with a view to arriving at a decision of a political nature, which should provide the experts on the Working Party on Asylum with clear and precise mandates and enable them to complete their work more swiftly by avoiding reservations being entered on each matter of substance.

Point 1: Structure

The structure described in the Commission's proposal distinguishes between:

– *Admissibility*: an application can be dismissed as inadmissible if
  ► another Member State is responsible for examining the application;
  ► another country is considered as a first country of asylum for the applicant;
  ► another country is considered as a safe third country for the applicant.

– *Substance*: if an application is found to be admissible, it is examined as to substance. In this respect, a distinction is drawn between the regular procedure and the accelerated procedure (which is intended for applications which are manifestly unfounded). An application can be declared manifestly unfounded if:
  ► the applicant has submitted, without reasonable cause, an application containing false information with respect to his nationality or identity;
  ► the applicant produces no identity or travel document to determine his nationality or the applicant has in bad faith destroyed his documents;

- ► the applicant makes the application at the last stage of a procedure to deport him and could have made it earlier;
- ► the applicant does not raise issues that justify protection on the basis of the Geneva Convention or Article 3 of the ECHR;
- ► the applicant is from a safe country;
- ► the applicant submits a new application raising no relevant new facts.

Question

With a view to ensuring that asylum applications are processed swiftly and efficiently:

– ***are the rules for admissibility appropriate? Are they complete?***

– ***are the rules for finding applications manifestly unfounded appropriate? Should they be supplemented?***

Point 2: Procedures

1. The proposal for a Directive establishes a three-tier examination system for each of the three procedures (i.e. the admissibility procedure, the accelerated procedure and the regular procedure):
   - – *the determining authority*: a decision-making body, which can be administrative;
   - – *the reviewing body*, which can be judicial or administrative;
   - – *the Appellate Court*, which is necessarily judicial. If the reviewing body is judicial, the Appellate Court may limit its examination to points of law. By contrast, if the reviewing body is administrative or quasi-judicial, the Appellate Court examines decisions on both facts and points of law.

   The Directive could therefore result in the same application being examined nine times.

However, the Directive also provides for derogation from the three-tier examination rule by authorising the *Appellate Court (at the third level)* to refuse leave to appeal against decisions by the reviewing body *(at the second level)* to dismiss applications as inadmissible or manifestly unfounded, or to examine them under an accelerated procedure.

Question

With a view to ensuring that asylum applications are processed swiftly and efficiently, should there be the same number of bodies for each of the procedures?
Would it not be sufficient for there to be one administrative body and one judicial body for each procedure?

2. The proposal for a Directive provides that referral to the reviewing body and to the Appellate Court automatically entails the suspension of any decision to expel the applicant, except in certain specific cases.

Question

Should an automatic suspensive effect of appeal be established for each of the procedures?

3. The Directive sets various time-limits for completing the examination of asylum applications. In theory, the aggregate time-limit should not exceed six months. Non-compliance with the established time-limits may give rise to penalties:
   – if the determining authority exceeds the time-limit for processing an application, responsibility for examining the application passes to the reviewing body.
   – if the time-limit is exceeded in the accelerated procedure, the application is processed under the regular procedure.

Question

– ***Should time limits for processing applications be established?***
– ***Should there be penalties for non-compliance with any such time-limits?***
– ***If so, how should non-compliance with any such time-limits be penalised?***

Point 3: Quality of decisions and of the decision-making process

By making decisions and the decision-making bodies subject to certain standards, the Directive aims to raise the quality of decisions and thus limit the number of appeals and curtail "asylum shopping".

Although the Member States see a need for minimum standards, some believe that too precise a definition of standards could lead to an increase in the number of appeals.

Certain articles also require Member States to comply with a range of fairly specific and detailed obligations in relation to:

- the information to be provided to the applicant;
- the quality of the interpreter;
- the possibility of contacts with the UNHCR and NGOs;
- notification of the applicant of the purpose of the decision taken in relation to him and the reasons for the decision in a language he understands;
- the arrangements for the personal interview and the transcript thereof to be agreed to by the applicant;
- legal assistance;
- the use of special procedures for certain target groups such as minors;
- the appointment of a legal guardian for minors;
- medical examinations to determine the applicant's age;
- the legal grounds for detention and appeals against detention orders;
- the human and material resources the competent authorities should have;
- the training of personnel responsible for examining asylum applications and their access to information;
- the need to treat the information contained in applicants' files confidentially, particularly with respect to their countries of origin;
- the access of the UNHCR and organizations acting on its behalf to airport transit zones and to information contained in personal files, and their right to make representations to the authorities responsible for examining applications.

Question

- ***What aspects should the minimum standards address?***
- ***What degree of precision and detail should they contain?***

Additional questions

– ***Should the procedures provided for in this Directive apply to applications for asylum made at the border?***

– ***Should the procedures provided for in this Directive be limited to asylum applications based on the Geneva Convention?***