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THE EUROPEAN UNION**

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ASILE 55

NOTE

from : Presidency

to : Coreper/Council

No. Cion prop. : 11622/00 ASILE 46 (COM(2000) 578 final)

Subject : Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status
– Draft conclusions

Delegations will find attached draft conclusions prepared by the Presidency on the above subject.

I. Introduction

Article 63 of the Treaty establishing the European Community calls on the Council to adopt, within a period of five years after the entry into force of the Treaty of Amsterdam, "measures on asylum, in accordance with the Geneva Convention of 28 July 1951 ... and other relevant treaties" (Art. 63(1)), in particular within the area of "minimum standards on procedures in Member States for granting or withdrawing refugee status" (Art. 63(1)(d)).

The objective of establishing a common European asylum system was defined by the European Council meeting in Tampere on 15 and 16 October 1999.

In November 2000 the Commission lodged a proposal for a Directive on the minimum standards for granting and withdrawing refugee status in the Member States. It was the subject of discussions which led to confirmation of Member States' willingness to adopt as soon as possible the key measures for achieving the objective set in Tampere.

At the Council meeting on 27 September, the Member States recalled the need to introduce simple, rapid, efficient and fair asylum procedures. The Presidency also attempted to identify issues for consideration in order to speed up the discussion.

A draft was then prepared, in cooperation with the Commission, which obtained the Member States' support with regard to the approach taken by the future Directive.

The approaches presented below must be taken into account in further discussions with a view to the prompt adoption of a Directive, in particular in the drafting of an amended proposal by the Commission.

II. Approaches for the future Directive on minimum standards for granting and withdrawing refugee status

1. Scope and structure

The future Directive should apply to all applications for protection made under the Geneva Convention of 28 July 1951 at the border of a Member State or on its territory.

The future Directive should also reserve the possibility for Member States to apply it to applications for other forms of protection.

The question of mandatory application of the Directive to other forms of protection should be considered in the context of examining the Directive on subsidiary protection.

The future Directive should define the minimum standards for a regular procedure for examining applications for asylum and make it possible to adopt or retain an accelerated procedure for processing applications for asylum which are inadmissible and/or manifestly unfounded under the criteria set out in that instrument.

The criteria proposed in this connection by the Commission should be supplemented in order to take account, in particular, of the refusal of the applicant for asylum to cooperate and any abuse of the procedure through the submission of applications for asylum as a delaying tactic.

Furthermore, the possibility of adopting or retaining specific waivers should be considered for applications for asylum submitted at the border of a Member State or applications for asylum lodged after an earlier application was rejected by a Member State.

2. Quality of the decision-making process

It is important for applicants for asylum to receive substantial guarantees with regard to the decision-making process and for the decisions to be of optimum quality.

The future instrument should make it possible to guarantee, as proposed by the Commission:

- individual examination of each asylum application;
- correct information to applicants;
- a personal interview conducted in conditions enabling the applicant as far as possible to comply with his duty to cooperate;
- reasonable legal assistance;
- the possibility to communicate with the UNHCR;
- protection of the information contained in each file, in particular concerning the applicant's country of origin;
- basic training for staff responsible for implementing the future instrument;
- exclusion of an applicant from detention simply because he is applying for asylum;
- special attention to the needs of vulnerable groups and minors.

The proposed common minimum standards should be formulated in accordance with the objective of efficiency and rapidity in examining applications for asylum and should take account of the type of the applications for asylum. It will therefore be necessary to simplify the provisions concerned without calling into question the fairness of the procedures.

The Presidency's proposal, drawn up in cooperation with the Commission, is consistent with the desired approach in this respect.

3. Procedures

It is important to allow for sufficient differentiation between the regular and accelerated procedures.

This differentiation should inter alia concern the time limits for processing applications for asylum at first instance, the number of bodies required to be involved and the effect of the expected appeals.

(a) Time limits

Regular procedure:

- indicative dates should be determined for the processing of applications, at the very least by the competent authority at first instance.

Accelerated procedure:

- the time limit for processing the application for asylum at first instance should not exceed three months as from the lodging of the application. However, an extension for a legitimate reason should be possible. Furthermore, the Member States should be able to decide that an applicant who is at the origin of non-compliance with the deadlines by the competent authority cannot invoke the consequences of non-compliance with those deadlines, i.e. an examination of his application according to the procedure;
- indicative dates could be determined for the processing of the application by the appeal bodies.

(b) Competent bodies

Regular procedure:

- at least three bodies should examine the applications for asylum;
- the last body should be a judicial one, whatever the number of bodies competent under national law.

Accelerated procedure:

- at least two bodies should examine the applications for asylum;
- the last body should be a judicial one, whatever the number of bodies competent under national law.

(c) Effect of appeals

Regular procedure:

- the first appeal should have automatic suspensory effect and should be a full judicial review;
- a derogation from the rule of automatic suspensory effect should be possible for subsequent appeals;
- where a Member State derogates, by law or regulation, from the rule that appeals have automatic suspensory effect, the applicant should have the possibility of asking the competent authority, in accordance with national law, for authorisation to remain at the border of the Member State concerned or on its territory. The effect of submitting that request should be governed by the law of the Member State concerned.

Accelerated procedure:

- a derogation from the general rule that appeals have automatic suspensory effect should be possible;
- where a Member State decides, by law or regulation, to derogate from the rule that appeals have automatic suspensory effect, the applicant should have the possibility of asking the competent authority, in accordance with national law, for authorisation to remain at the border of the Member State concerned or on its territory. The effect of submitting that request should be governed by the law of the Member State concerned;
- Member States should be able to decide that an appellate court should limit its examination of decisions to points of law, on condition that it carries out a verification of the manifest error of appraisal of the facts by the lower-level body.

