



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 3 December 2001 (05.12)
(OR. fr)**

14767/01

**Interinstitutional File:
2000/0238 (CNS)**

LIMITE

ASILE 57

NOTE

from : Presidency

to : Council

No. prev. doc. : 14615/01 ASILE 56

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 on the above subject as amended following the discussions of the Permanent Representatives Committee.

The following questions have still to be discussed by the Council:

- the number of appeals under the regular procedure (point 3.1.2(a));
- the powers of the appeal bodies under the accelerated procedure (point 3.2.2(c));
- the suspensory effect of appeals under the regular procedure (point 3.1.3(a));
- the effect of appeals on expulsion where there is no automatic suspensory effect (points 3.1.3(b) and 3.2.3(b)).

I. Introduction

- (1) In October 2000 the Commission lodged a proposal for a Directive on the minimum standards for granting and withdrawing refugee status in the Member States on the basis of Article 63 of the Treaty establishing the European Community. 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, of establishing a common European asylum system.
- (2) At the Council meeting on 27 September 2001, 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.
- (3) 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.
- (4) 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

- (5) The future Directive will have to apply to all applications for protection made to a Member State under the Geneva Convention of 28 July 1951.
- (6) The question whether the Directive should apply to applications for asylum made at the border of a Member State remains open.
- (7) The question of the mandatory application of the Directive to other forms of protection remains open.
- (8) The future Directive will have to 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 that are inadmissible and/or manifestly unfounded under the criteria which it defines. It will only be possible for an unfounded application to be rejected as manifestly unfounded.
- (9) The criteria proposed in this connection by the Commission will have to be supplemented in order to take account of, for example, the asylum applicant's refusal to cooperate and any abuse of the procedure through the submission of applications for asylum as a delaying tactic.
- (10) Consideration should be given to the possibility whereby applications for asylum submitted after an earlier application was rejected by a Member State are processed in the context of admissibility.

2. Quality of the decision-making process

- (11) It is important that applicants for asylum should receive substantial guarantees with regard to the decision-making process and that the decisions should be of optimum quality.
- (12) The future instrument should make it possible to guarantee:
- individual examination of each asylum application;
 - correct information to applicants;
 - the possibility of conducting a personal interview should be envisaged, taking account of the applicants' interest and without prejudice to their duty to cooperate. The interview should be conducted in conditions enabling the applicant as far as possible to present correctly any facts he wishes to invoke in support of his application, with the aid of an interpreter if necessary;
 - 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 on the sole ground that he is applying for asylum;
 - special attention to the needs of vulnerable groups and minors.
- (13) Having regard to the principle of subsidiarity, 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 nature of the applications for asylum. It will therefore be necessary to simplify the provisions concerned without calling into question the fairness of the procedures and quality of the decision-making process.

3. Procedures

- (14) It is important to allow for sufficient differentiation between the regular and accelerated procedures.
- (15) This differentiation should *inter alia* concern minimum standards relating to the time limits for processing applications for asylum, the number of appeals, the nature and powers of the appeal bodies and the effect of the expected appeals.

3.1. Regular procedure:

3.1.1. Time limits

Non-mandatory time limits indicating an objective to be achieved by the Member States should be established for the processing of applications for asylum, at the very least by the competent authority at first instance.

3.1.2. Number of appeals; nature and powers of the appeal bodies

- (a) if his application is rejected, an applicant for asylum is entitled, at the very least, to bring an action before an appeal body and then, if the decision is again unfavourable, before a third body;
- (b) an appeal body should at least be a judicial body ¹, whatever the number of bodies competent under national law;
- (c) an appeal body should at least make an examination of the substance of the application for asylum.

¹ The term "judicial body" covers the concept of "*quasi-judicial*" in certain Member States.

3.1.3. Effect of appeals

- (a) the first appeal should have automatic suspensory effect;
- (b) a derogation from the rule of automatic suspensory effect should be possible for subsequent appeals. In such cases, the applicant should have the option of requesting suspensory effect for the appeal or of challenging the expulsion order before the competent authority in accordance with national law. The effect of this request or challenge on the execution of the expulsion order should be regulated by the law of the Member State concerned.

3.2. Accelerated procedure:

3.2.1. Time limits

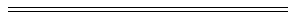
The time limit for processing the application for asylum at first instance should not exceed three months as from the lodging of the application. However, an extension for a legitimate reason should be possible. Furthermore, the Member States should be able to decide that an applicant who is at the origin 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 regular procedure;

3.2.2. Number of appeals; nature and powers of the appeal bodies

- (a) applicants should be able to lodge an appeal at least against any rejection decision issued at first instance;
- (b) an appeal body should at least be a judicial body ¹, whatever the number of bodies competent under national law;
- (c) Member States should be able to decide that an appellate court acting in last instance must 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.

3.2.3. Effect of appeals

- (a) the appeals should not automatically have suspensory effect;
- (b) where the appeal does not have automatic suspensory effect, the applicant should have the option of requesting suspensory effect for the appeal or of challenging the expulsion order before the competent authority in accordance with national law. The effect of this request or challenge on the execution of the expulsion order should be regulated by the law of the Member State concerned.



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