



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

ASILE 5

OUTCOME OF PROCEEDINGS

of: Asylum Working Party

on: 9 January 2001

No. prev.doc. : 14531/00 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

I

At its meeting on 9 January 2001, the Asylum Working Party continued its reading of the above proposal.

Delegations will find enclosed under II the text of Articles 1 and 2 (paragraphs (a) to (e)) with the comments made by delegations during the meeting shown in footnotes.

II

Proposal for a COUNCIL DIRECTIVE

on minimum standards on procedures in Member States for granting and withdrawing refugee status

CHAPTER I

Scope and definitions

Article 1

The purpose of this Directive is to establish minimum standards¹ on procedures in Member States for granting and withdrawing refugee status.

Article 2

For the purposes of this Directive:

- (a) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as complemented by the New York Protocol of 31 January 1967;

¹ **The D, E, F and A delegations** pointed out that the proposal was too detailed and did not take sufficient account of the mandate of Article 63(1) (d) EC and of the principle of subsidiarity.

The NL delegation, on the contrary, welcomed the proposal and, recalling the Tampere conclusions, considered that a certain degree of ambition was needed for the harmonisation of this subject.

The D delegation thought that the concept of "minimum standards" should be better defined. It stated that the proposal provides for too detailed rules in some aspects on the one hand and leaves several "grey zones" on the other hand. Supported by **A**, it wanted the Council Legal Service to take a view on the meaning to be given to the expression "minimum standards".

- (b) “Application for asylum” means a request whereby a person asks for protection from a Member State and which can be understood to be on the grounds that he is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any application for protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately; ¹
- (c) “Applicant” or “applicant for asylum” means a person who has made an application for asylum in respect of which a final decision has not yet been taken. A final decision is a decision in respect of which all possible remedies under this Directive have been exhausted; ²

¹ **The D, GR, E, F, IRL, NL, A, FIN and UK delegations** asked for a more precise wording such as : *"application for refugee status under the Geneva Convention"* or *"application introduced by a person invoking one of the protection motives of the Geneva Convention"*. They felt that a clearer distinction should be made between asylum and other forms of protection. They opposed the automatic assumption that any application for protection is an application for asylum. In this context :

- D recalled that certain situations were not covered by the text. It asked for a distinction between political persecution and humanitarian protection due to other reasons (e.g. health reasons),
- E entered a reservation and stated that if the aim was to cover other forms of protection, it should be specified in the text,
- F asked to cover other forms of protection which give rise to similar rights on asylum (e.g. "constitutional asylum" in France).
- IRL entered a reservation,
- A asked to refer, in the second sentence, to *"any request for protection from persecution"*. It wondered also about the treatment of the members of the family (in connection with Article 4(4)),
- FIN preferred to delete the second sentence and recalled that some persons asking for protection may not want to be considered as asylum seekers.

² **The B, D, F, FIN and UK delegations** wanted a more detailed and clearer wording referring to the *"final decision"*.

- **D and FIN** preferred to refer to a legal decision which can be executed.
- **D** also asked to refer in the second sentence to *"all possible appeals under national law"* instead of *"all possible remedies under this Directive"*.

In this context, **the NL delegation** asked to add, in the second sentence *"or which cannot be challenged"*.

The S delegation was satisfied with the wording proposed by the Commission.

- (d) “Determining authority” means any judicial, quasi-judicial or administrative body in a Member State responsible for examining the admissibility and/or substance of applications for asylum and competent to take decisions in first instance in these cases. Any authority responsible for controlling the entry into the territory cannot be considered as a determining authority;¹
- (e) “Reviewing body” means any judicial, quasi-judicial or administrative body in a Member State which is independent of and different from the relevant determining authority in that Member State and responsible for review of the decisions of this determining authority on facts and points of law;²
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¹ **The D, E, F, IRL, A, P and UK delegations** expressed concerns related to the legal, administrative and judicial organisation in their countries and the risk of having to introduce constitutional modifications if such a text was adopted.

- D recalled that in its country the first instance in these cases could not be a Court of Law. It also stated that border authorities should be allowed to refuse the entry in the territory of persons coming from safe third countries.
- E considered that the main item was to recall that the authorities examining the admissibility and/or substance of applications and those deciding on possible expulsion could not be the same.
- F, supported by P, asked to change in the second sentence the word *"authority"* by *"service"* in order to avoid legal problems.
- IRL entered a reservation and P a scrutiny reservation linked to the judicial organisation of their countries.
- A stated that a better solution would be to establish that at least two instances should exist and leave the details to national legislation.
- UK suggested replacing the second sentence by the words : *"Any authority taking such decisions must be specifically trained for that purpose"*.

² **The D delegation** entered a scrutiny reservation linked to its national judicial organisation. **The A delegation** stated that the second instance must always be a judicial body.