



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : Presidency

to : Strategic Committee on Immigration, Frontiers and Asylum

on : 13 May 2003

No. prev.doc. : 8327/03 ASILE 25

No. Cion prop. : 10279/02 ASILE 33 + REV 1 (de, en, fr) - COM(2002) 326 final/2

Subject : Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

I. INTRODUCTION

1. On 24 October 2000, the Commission presented a proposal for a Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. This proposal was the subject of discussions which led the Council to adopt Conclusions on this item at its meeting on 6 and 7 December 2001.¹ In these Conclusions, the Commission was invited to present an amended proposal taking into account the approaches defined by the Council.

When drafting the Conclusions, the Council took into account the Opinions of the European Parliament and the Economic and Social Committee, delivered respectively on 20 September 2001 and 21 April 2001.

¹ 15107/1/01 ASILE 59 REV 1.

2. In order to comply with the Council's invitation, the Commission convoked several meetings with national experts during the first quarter of 2002.
3. In June 2002, the Commission forwarded its amended proposal.

The Asylum Working Party started the examination of the amended proposal in January 2003. It completed two readings and focussed on the first two Chapters (Articles 1 to 22 - General provisions and Basic principles and Guarantees).

It is recalled that following the Seville European Council, an agreement concerning this proposal should be reached by the Council by the end of 2003.

4. The text of Articles 1 to 22 of the proposal, as they result from the Working Party's discussions, is set out in the addendum to this note, with delegations' comments in the footnotes.

II. OUTSTANDING QUESTIONS

The work of the Working Party has shown that while a number of technical issues remain to be solved, some questions having a political character need further discussion at a higher level. These questions are the following :

1. Non-application of the Directive to asylum applications by EU nationals (Article 2(b))

One delegation (E) insisted that, given the Protocol on asylum annexed to the Treaty, the scope of the Directive should be limited to applications of asylum by third country nationals or stateless persons.

To solve this problem, the Presidency suggested that the above request be included in the text and a new Recital be inserted in the Preamble of the Directive to address the rights EU nationals enjoy under Community law (see relevant text in the Addendum to this note, p. 3, footnote 2).

2. Definition of the determining authority (Article 2(e))

In the course of the discussions, it has not been possible to arrive at a solution to the Irish difficulties in relation to the definition of the determining authority.

To address the Irish position, the Presidency suggested the inclusion of an Annex in the Directive (see text annexed in the Addendum to this note).

3. Scope of the Directive (Article 3)

Four delegations (F/FIN/NL/S) consider that the scope of the Directive should be extended to all forms of international protection and not only to those under the Geneva Convention

The Presidency drew the attention of these delegations to the fact that as the Commission proposal was drafted to deal only with requests of international protection under the Geneva Convention, should the Council decide to extend the scope of the Directive to other forms of protection, considerable changes would be needed in the text, in order, inter alia, to take into account the interrelation between the different forms of protection in the context of the procedure.

It is also recalled that the current text opens the possibility for Member States to do so, but does not oblige them to such an enlarged scope, as the above-mentioned delegations want.

4. Detention (Article 17)

The Directive states that a person shall not be held in detention for the sole reason that he/she is an asylum applicant.

A number of cases where an applicant may be held are stated which follow the spirit of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Four delegations (**A/B/D/P**) want to exclude the applicability of this Article to applications made at the border.

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The Strategic Committee is invited to consider the remaining questions.
