



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : French delegation

to : Asylum Working Party

Subject : Conditions for the reception of asylum seekers

Delegations will find attached a discussion paper on conditions for the reception of asylum seekers.

I. GENERAL PRESENTATION

Since the entry into force of the Amsterdam Treaty, asylum and immigration matters have come within the sphere of Community competence, under the new Title IV of the amended Treaty establishing the European Community (TEC). Article 63 of the TEC lists the asylum-related measures which the Council is to adopt within five years from entry into force of the Amsterdam Treaty. The Council is asked to adopt "measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties" (Article 63(1)), and specifically in the area of "minimum standards on the reception of asylum seekers in Member States" (Article 63(1)(b)).

The European Council, meeting in Tampere on 15 and 16 October 1999, showed its determination to develop the European Union as an area of freedom, security and justice, by making full use of the possibilities offered by the Treaty of Amsterdam, and it agreed to a number of policy orientations and priorities which will speedily make this area a reality. The European Council reaffirmed the objective of establishing a Common European Asylum System which, in the short term, should include common minimum conditions for the reception of asylum applicants.

The harmonisation of conditions for the reception of asylum applicants is an essential objective in European asylum policy. It makes a clear contribution to the creation of an area of freedom, security and justice by making it possible to prevent the flow of asylum applicants being influenced by the variety of conditions for their reception. The disparity between reception arrangements in Europe makes certain Member States more attractive than others for asylum applicants. Harmonisation in this respect would reduce these secondary movements and thus relieve pressure on the mechanism for determining the responsible State.

Conditions for the reception of asylum seekers should be harmonised in the spirit of the fundamental principles recognised by all Member States and guaranteed, in particular, by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950. Those who have fled their country of origin and are seeking international protection in another country are in a precarious situation, and unfortunately physical or psychological violence has often been inflicted on them.

Exile, with its accompanying trials and problems, also renders the individual very vulnerable. Thus it is extremely important that Member States should welcome these people in dignified conditions and offer them favourable surroundings for the examination of their asylum applications.

A good standard of reception, freeing asylum applicants from the most basic worries, allows them to present their applications to the relevant authorities under the best possible conditions. Furthermore, if refugee status is granted, it promotes the subsequent integration of those individuals into the society of the host State.

II. PRINCIPLES APPLYING TO THE RECEPTION OF ASYLUM SEEKERS

Minimum standards for the reception of asylum seekers should cover the following areas: information, stay, conditions as to movement, financial and material assistance, work, access to health care, family unity and the schooling of children. Particular care should also be provided for vulnerable persons such as minors, single women, the disabled and victims of serious violence.

The basic principle to keep in mind is that Member States' **care** for asylum applicants during the asylum procedure **should be as comprehensive as possible**, in the form of benefits in kind or of financial assistance allowing individuals to live with dignity. This care should also include medical costs and the schooling of minors.

Another principle which should be observed is that of asylum applicants' **right to stay** in the host Member State when their request is recognised as admissible. This right should not be brought into question for as long as a decision on the asylum application is awaited, unless it is established that the application is fraudulent, abusive or a delaying tactic.

As regards work, **the principle should be that asylum applicants do not have access to the labour market** since experience shows that, if the opposite is the case, then many asylum applications are made for purely economic reasons. Given the employment situation in the European Union, there should be no incentive to circumvent procedures. It is only in exceptional circumstances, particularly when the competent authorities of the host Member State have been unable to decide on the asylum application within a reasonable period, which could be set at one year, that the exercise of any occupation could be authorised. Recourse to work on the black market should be discouraged by granting direct material or financial assistance.

Faithful to their traditions as regards human rights, Member States should pay **quite particular attention to vulnerable asylum seekers** such as minors, single women, the disabled and victims of serious violence. These people should be among the first to benefit from protection and assistance and to receive appropriate care.

Measures on behalf of **minors** should be based on the principles of the overriding interest of the child and of family unity. In this respect, the fundamental importance of the Convention on the Rights of the Child signed on 20 November 1989 should be stressed.

The important role of **non-governmental organisations** in the area of the reception of asylum seekers should not be neglected. Their activities should be coordinated with those of the competent public bodies. Regular coordination meetings to promote the exchange of information should be encouraged. The UNHCR could usefully be involved in these meetings.

III. PROPOSED GUIDELINES FOR THE FUTURE COMMUNITY INSTRUMENT

The following guidelines might be envisaged for the future Community instrument defining minimum standards for the reception of asylum seekers in Member States.

(1) Scope

- (a) The planned instrument should cover asylum applicants claiming the benefit of the Geneva Convention. This proposal is in accordance with Article 63(1) of the Treaty. At this stage it seems difficult to include forms of protection other than the Geneva Convention in this text, since these are not the subject of a common definition at European level.
- (b) The asylum applicant should be identified as the person who submitted an asylum application after being admitted to the territory of a Member State and whose application has not yet been the subject of a final decision either granting refugee status or refusing that status and for which appeals do not have suspensive effect.

Thus this would cover those who are in the territory of a Member State and who have submitted an asylum application which has been recognised as admissible and which has led to admission to the territory. Specific provisions could, however, be laid down for those seeking asylum at border posts before their admission to the territory (see point 12 below) and for the stage of determining which Member State is responsible for considering the application (see point 13).

Asylum applicants could benefit from these arrangements pending a decision either to grant refugee status or a decision to reject the application which would not be liable to appeal with suspensory effect under national law.

- (c) The host Member State should be the Member State where the asylum applicant submitted his application and which has allowed him to stay.

(2) Information

It is important that asylum applicants should be rapidly informed of all the rights and benefits which they may claim, and be told how to contact organisations or associations which might be able to help them. Member States should therefore ensure that, as soon as their applications have been submitted, asylum applicants are given information relating to the conditions of their reception. This information should be given in writing and as far as possible in a language which the asylum applicant can understand.

(3) Right to stay

The principle should be stated that asylum applicants as previously defined have a right to stay in the host Member State. They should receive documents from the competent authorities confirming that their stay in the territory of that State is in order. However, in the case of applications which are fraudulent, abusive or made as a delaying tactic, the authorities of the host Member State would not issue any document and if one had been issued would withdraw it.

(4) Conditions for movement

Asylum applicants should be able to move freely about the territory of the host Member State. However, their place of residence may be decided by the competent authorities of that State, for reasons of general interest or public policy.

Given the suffering which it entails, detention of asylum seekers simply because they are asylum seekers should not occur. However, detention should remain possible for any other reason stipulated by the law, particularly the criminal law, of the host State.

(5) Financial and material assistance

The host Member State should ensure decent living conditions throughout the procedure for asylum applicants and accompanying family members. To this end, either an allowance should be paid, supplemented if need be depending on the composition of the family, or accommodation should be provided by the competent authorities in the host Member State to include lodging, food and basic daily expenses.

The application of the principles of subsidiarity and proportionality should mean that the Community instrument does not set the amount of the allowance: this assessment can only be made by each Member State, depending on the cost of living and minimum social standards, if any, applied in its territory. Similarly, determination of arrangements for housing asylum must come within the competence of Member States.

(6) Work

Asylum applicants should not receive permission to work. However, in exceptional circumstances, the host Member State could allow them to take up employment, particularly when no decision has been taken on their asylum application within one year. If applicants do work, the competent authorities in the host Member State should reexamine the asylum applicant's situation with a view to determining whether he should continue to benefit from financial and material assistance.

(7) Health care

Asylum applicants' access to health care should be ensured, and entirely paid for by the host Member State, in a manner which it determines.

(8) Family unity

When asylum applicants are admitted to the territory of the host Member State with their minor children, family unity should be preserved as regards accommodation provided by the host Member State.

(9) Schooling of minors

Minor children of asylum applicants and minor asylum applicants of school age should be sent to school. It is important that children's schooling should not be interrupted during the period when the asylum application is being considered.

Minors should have access to public primary educational institutions under the same terms as nationals of the host Member State, or be offered opportunities for appropriate special instruction, particularly where a lack of knowledge of the language of the host State makes normal schooling impossible.

(10) Vulnerable individuals

The host Member State should ensure extra protection for those who are particularly vulnerable such as minors, single women and the disabled. It should be prepared to meet their special educational or medical needs. This increased protection might for example be ensured by equipping rooms appropriately in the case of housing provided by the host Member State, and by greater involvement of staff responsible for looking after them.

The host Member State should provide special medical help for asylum applicants who have been the victims of torture, rape or other serious acts of violence.

(11) Coordination with non-governmental organisations

Non-governmental organisations play an important role in the reception of asylum seekers. It is therefore important that Member States should organise cooperation between these NGOs and the competent public bodies in their territory as regards the reception of asylum applicants.

(12) Requests for asylum at border posts

Individuals requesting asylum at border posts who, by virtue of national provisions, have to stay in particular places until a decision has been taken on their possible admission to national territory, should be provided, in dignified conditions, with their food, accommodation with sanitary facilities, and the opportunity to communicate with the outside world. In general, hotel-type accommodation should be provided, particularly in specially equipped premises near border posts, for example in airport areas.

Those involved should also receive the health care they require.

(13) Emergency assistance while awaiting determination of the responsible Member State

Emergency assistance should be provided for asylum applicants while awaiting determination of the Member State responsible for their application. This emergency assistance might take various forms (emergency accommodation, provision of food, etc.) and should be provided until transfer (where applicable) of those involved to the State finally responsible. Coordination with the efforts of NGOs might be sought in this area.
