



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 25 June 2002**

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**REV 1**

**LIMITE**

**ASILE 29**

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**Interinstitutional File:  
2001/0182 (CNS)**

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**OUTCOME OF PROCEEDINGS**

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of :	Strategic Committee on Immigration, Frontiers and Asylum
on :	23 and 24 May 2002
No. prev. doc.:	8752/02 ASILE 24
No. Cion prop.:	11355/01 ASILE 41 – COM(2001) 447 final
Subject :	Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national

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**I**

The Strategic Committee on Immigration, Frontiers and Asylum discussed the above proposal at its meeting on 23 and 24 May 2002.

Delegations will find the text of the draft Regulation in section II.

Delegations' comments are set out in footnotes.

## II

Draft

### COUNCIL REGULATION

**establishing the criteria and mechanisms for determining the Member State responsible  
for examining an application for asylum lodged in one of the Member States by  
a third-country national <sup>1</sup>**

### CHAPTER I

#### Subject-matter and definitions

#### Article 1

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for asylum <sup>2</sup> lodged in one of the Member States by a third-country national.

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<sup>1</sup> **NL:** parliamentary scrutiny reservation.

<sup>2</sup> **FIN/NL/S:** this proposal should apply to all forms of international protection, not just asylum.

**NL:** in order to solve this question, a statement for the Council minutes should be entered in terms similar to the statement on the draft Directive on reception conditions for asylum seekers.

**FIN/S:** scrutiny reservations on the solution suggested by NL.

**D/EL/I:** opposed to the solution suggested by NL.

## Article 2

For the purposes of this Regulation,

- (a) "third-country national" shall mean anyone who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;
- (b) "Geneva Convention" shall mean the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;
- (c) "application for asylum" shall mean the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately;
- (d) "applicant" or "asylum seeker" shall mean a third country national who has made an application for asylum in respect of which a final decision has not yet been taken;
- (e) "examination of an asylum application" shall mean any examination of, or decision or ruling concerning, an application for asylum by the competent authorities in accordance with national law except for procedures for determining the State responsible in accordance with this Regulation; <sup>1</sup>
- (f) "withdrawal of the asylum application" shall mean the actions by which the applicant for asylum terminates the procedures initiated by the submission of his application for asylum, in accordance with national law, either explicit or tacitly; <sup>2</sup>
- (g) "refugee" shall mean any third-country national qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;

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<sup>1</sup> NL: include a reference to the proposal for a Directive on asylum procedures.

<sup>2</sup> NL: include a reference to the proposal for a Directive on asylum procedures.

- (h) "unaccompanied minor" shall mean unmarried persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;
- (i) "family members" shall mean insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States: <sup>1</sup>
- (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
  - (ii) the minor children of the couple referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
  - (iii) the father, mother or guardian when the applicant or refugee <sup>2</sup> is a minor and unmarried;

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<sup>1</sup> **I/NL:** the concept of family should be broader, as proposed by **Cion**.

<sup>2</sup> **EL:** scrutiny reservation.

- (j) "residence document" shall mean any authorisation issued by the authorities of a Member State authorising a third-country national to stay in its territory, including the documents substantiating the authorisation to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the responsible Member State as established in this Regulation or during examination of an application for asylum or an application for a residence permit;
- (k) "visa" shall mean the authorisation or decision of a Member State required for transit or entry for a proposed stay in that Member State or in several Member States. The nature of the visa is determined in accordance with the following definitions: <sup>1</sup>
- (i) "long-stay visa": the authorisation or decision of a Member State required for entry for a proposed stay in that Member State of more than three months;
  - (ii) "short-stay visa": the authorisation or decision of a Member State required for entry for a proposed stay in that State or in several Member States for a period whose total duration does not exceed three months;
  - (iii) "transit visa" shall mean the authorisation or decision of a Member State for entry for a transit through the territory of that Member State or several Member States, excluding transit at an airport; <sup>2</sup>
  - (iv) "airport transit visa" shall mean the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight.

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<sup>1</sup> **NL/UK:** use the wording of the relevant EC visa instruments and of the rules applicable to Member States which are not parties to the Schengen Convention.  
**Cion:** all visa definitions are based on Regulation (EC) No 539/2001, except for "airport transit visa" which is based on the "Common Consular Instructions". In due time, the legal linguistic experts should verify this terminology and the consistency of the various linguistic versions.

<sup>2</sup> **I:** include a reference to Article 11(b) of the Schengen Convention.

## **CHAPTER II**

### **General principles**

#### **Article 3**

1. Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.
2. By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that State shall become the State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the State conducting a procedure for determining the State responsible or the State which has been requested to take charge of or take back the applicant.
3. Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third State, in compliance with the provisions of the Geneva Convention.
4. The asylum seeker shall be informed in writing in a language that he/she may reasonably be expected to understand regarding the application of this Regulation, its time limits and its effects.

## Article 4

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.
2. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.
3. [...] <sup>1</sup>

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<sup>1</sup> **NL/FIN/S/UK:** reinstate the text proposed by **Cion** which read as follows :  
"The substitution of a request for protection on a basis other than the Geneva Convention for an application for asylum that has been duly lodged shall not stop the procedure for determining the State responsible from continuing".  
**A/EL/F/I/P:** opposed reinstating Cion text.  
**D:** scrutiny reservation.

4. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point (i), shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for asylum of the said parent or guardian, even if the minor is not individually an asylum seeker. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.
5. Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for asylum was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

6. An asylum seeker who is present in another Member State and there lodges an application for asylum after withdrawing his application during the process of determining the State responsible shall be taken back, under the conditions laid down in Article 21, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the State responsible for examining the application for asylum.

This obligation shall cease, if the asylum seeker has since left the territories of the Member States for a period of at least three months or has obtained a residence document from a Member State.



## CHAPTER III

### Hierarchy of criteria <sup>1</sup>

#### Article 5

1. The criteria for determining the Member State responsible that are established by this Chapter shall be applied in the order in which they are presented.
2. The State responsible in accordance with the criteria shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State.

#### Article 6

Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his/her family is legally present <sup>2</sup>, provided that this is in the best interest of the minor. <sup>3</sup>

In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his application for asylum.

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<sup>1</sup> **EL/I:** general reservations on the hierarchy of criteria established in Chapter III.

<sup>2</sup> **I:** it should be possible for the minor to be placed in the custody of a member of his family in the broad sense of the term. Reservation linked to its reservation concerning Article 2(i).

<sup>3</sup> **S:** Also take the minor's opinion into consideration, depending on the age and level of maturity.

## Article 7

Where the asylum seeker has a member of his family [regardless of whether the family was previously formed in the country of origin]<sup>1</sup> who has been allowed to reside as a refugee<sup>2</sup> in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.<sup>3</sup>

## Article 8

If the asylum seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance,<sup>4</sup> that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.

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<sup>1</sup> **NL/UK:** reservations.

<sup>2</sup> **NL:** add "or enjoys another form of protection".

<sup>3</sup> **I,** supported by **EL:** replace text by: "Where the spouse, father or mother, or a child, a brother or a sister of the asylum seeker has been allowed to reside in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the applicant so desires".

<sup>4</sup> **EL:** refer to an application which is being examined while there is not yet a decision allowing the removal of the applicant.

**I:** refer to a "final decision".

## Article 9

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum.
2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, unless the visa was issued when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision.

3. Where the asylum seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:
- (a) the State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the State which issued the residence document having the latest expiry date;
  - (b) the State which issued the visa having the latest expiry date where the various visas are of the same type;
  - (c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the State which issued the visa having the latest expiry date.
4. Where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him actually to enter the territory of a Member State, paragraphs 1, 2 and 3 of this Article shall apply for such time as the applicant has not left the territories of the Member States.

Where the asylum seeker is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application is lodged shall be responsible.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the State issuing the residence document or visa shall not be responsible if it can establish that a fraud was committed after the document/visa had been issued.

## Article 10<sup>1</sup>

Where it can be established,<sup>2</sup> on the basis of the two lists mentioned in Article 19(3), including<sup>3</sup> the data referred to in Chapter III of Council Regulation (EC) No 2725/2000 of 11 December 2000, concerning the establishment of “Eurodac” for the comparison of fingerprints,<sup>4</sup> that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Union, the Member State thus entered shall be responsible for examining the application for asylum.

That State shall cease to be responsible, however, if it is established that the applicant has been living in the Member State where the application for asylum was made for at least six months before making his application for asylum. In that case it is the latter Member State which shall be responsible for examining the application for asylum.

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<sup>1</sup> **EL/I:** this provision should appear after Article 13. Avoid penalising Member States due to their geographical situation.

<sup>2</sup> **EL/I:** say "proved" instead of "established", as provided for in Article 6 of the Dublin Convention.

<sup>3</sup> **NL:** scrutiny reservation.

<sup>4</sup> OJ L 316, 15.12.2000, p. 1.

## Article 11

1. Responsibility for examining an application for asylum shall be incumbent upon the Member State responsible for controlling the entry of the alien into the territory of the Member States, except where, after legally entering a Member State in which the need for him or her to have a visa is waived, the alien lodges his application for asylum in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter State shall be responsible for examining the application for asylum. <sup>1</sup>
2. Where the application for asylum is made in an international transit area of an airport of a Member State by a third-country national whose final destination is in a third State, that Member State shall be responsible for examining the application.
3. Airport transit not involving access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of a journey, shall not give rise to any responsibility on the part of the transit Member State if another Member State is the final destination. <sup>2</sup>

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<sup>1</sup> **EL/I:** reservations.

**D/F:** scrutiny reservations.

<sup>2</sup> **B/NL:** reservations on this new paragraph.

## Article 12 <sup>1</sup>

A Member State which has knowingly tolerated the unlawful presence in its territory of a third-country national in its territory for more than **two** months without taking any reasonable measure to put a stop to this situation, such as the order to leave the territory, shall be responsible for examining the application for asylum.

States will provide verifiable evidence to prove the illegal stay.

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<sup>1</sup> **F:** reservation. Delete this Article.

**UK:** wanted text as originally proposed by Cion:

"A Member State which has knowingly tolerated the unlawful presence of a third-country national on its territory for more than two months shall be responsible for examining the application for asylum".

### **Article 13<sup>1</sup>**

Where it can be established that a third-country national has remained unlawfully for six months or more in the territory of a Member State, that State shall be responsible for examining the application for asylum.

That State shall cease to be responsible, if the applicant has subsequently remained unlawfully for six months or more in the territory of another Member State, or if he has left the territories of the Member States for a period of more than three months.

### **Article 14**

Where no Member State responsible for examining the application for asylum can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for asylum was lodged shall be responsible for examining it.

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<sup>1</sup> **F:** reservation. Delete this Article.



## Article 15

Where several members of a family submit applications for asylum in the same Member State simultaneously, or on dates close enough for the procedures for determining the State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to them being separated, the State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the applications for asylum of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

## CHAPTER IV

### Humanitarian clause

#### Article 16

1. Any Member State, even where it is not responsible under the criteria set out in this Regulation, may reunite family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case this Member State will, at the request of another Member State, examine the application for asylum of the person concerned. Both persons concerned must consent. <sup>1</sup>
2. In cases in which the person concerned is dependent on the assistance of the other on account of pregnancy or a new-born child, serious illness, severe handicap or old age, Member States may <sup>2</sup> keep together or reunite the asylum seeker with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin.
3. If the asylum seeker is an unaccompanied minor who has (a) relative(s) in another Member State who can take care of him/her, Member States will endeavour to unite the minor with his relative(s), unless this is not the best interest of the minor.
4. Where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.
5. The conditions and procedures for implementing this Article including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, shall be adopted in accordance with the procedure referred to in Article 28(2).

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<sup>1</sup> I, supported by EL: add: "Where the asylum seeker is suffering from a serious health problem, the Member State shall, regardless of the criteria laid down in this Regulation, be obliged to assume responsibility for examining the application for asylum".

<sup>2</sup> NL: say "shall" instead of "may".

**CHAPTER V <sup>1</sup>**  
**Taking charge and taking back**

**Article 17**

1. The Member State responsible for examining an application for asylum under this Regulation shall be obliged to:
  - (a) take charge, under the conditions laid down in Articles 18 to 20, of an asylum seeker who has lodged an application in a different Member State;
  - (b) complete the examination of the application for asylum;
  - (c) take back, under the conditions laid down in Article 21, an applicant whose application is under examination and who is in the territory of another Member State without permission;
  - (d) take back, under the conditions laid down in Article 21, an applicant who has withdrawn the application under examination and made an application in another Member State;
  - (e) take back, under the conditions laid down in Article 21, a third-country national whose application it has rejected and who is in the territory of another Member State without permission. <sup>2</sup>

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<sup>1</sup> **A:** reservation on the whole of Chapter V – simplify it and add electronic data transmission equipment. **D** supports A on the electronic transmission issue.

**Chair:** this request is already reflected in Article 25A(2).

<sup>2</sup> **EL/I:** reservations linked to their reservations on the structure of Chapter III.

2. Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.<sup>1</sup>
3. The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.
4. The obligations specified in paragraph 1(d) and (e) shall likewise cease once the State responsible for examining the application has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.

## **Article 18**

1. Where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the State in which the application was lodged.

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<sup>1</sup> I: reservation for the same reasons as above.

2. The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. <sup>1</sup>

3. In both cases, the request that charge be taken shall be made using a standard form and including proofs, evidence and/or relevant elements <sup>2</sup> from the asylum seeker's statement, enabling the authorities of the requested State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 28(2).

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<sup>1</sup> I: delete paragraph (2).

<sup>2</sup> I: add fingerprints.

**D/NL/A:** scrutiny reservations on such an addition.

**Cion:** it would be excessive to add fingerprints in all cases.

## Article 19

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months <sup>1</sup> of the date on which the request was received.
2. For the processing of the procedure for determining the State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence will be used. These constitute a fundamental point for its application.
3. The Committee provided for in Article 28 will establish two lists to be periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria: <sup>2</sup>

(a) Proof

- (i) This refers to formal proof which determines responsibility pursuant to the Regulation, as long as it is not refuted by proof to the contrary.
- (ii) The Member States will provide the Committee provided for in Article 28 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proof.

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<sup>1</sup> **NL/S/UK/Cion:** stipulate one month, as in Decision No 1/97 of 9 September 1997 of the Committee set up by Article 18 of the Dublin Convention (OJ L 281, 14.10.97, p. 1).

<sup>2</sup> **D/NL:** scrutiny reservations.

**I:** more precise indications concerning the level of proof are necessary.

In order to meet these concerns, **the Chair** suggests replacing the beginning of this paragraph by the following:

"The Committee provided for in Article 28 will establish two lists to be periodically reviewed, indicating the elements of proof and circumstantial evidence. To that effect the Committee shall adapt and update the lists provided for in the Annex to Decision 1/97 of the Committee set up by Article 18 of the Dublin Convention.

The list shall distinguish between proof and circumstantial evidence in accordance with the following principles: (rest unchanged)."

(b) Circumstantial evidence

- (i) This refers to indicative elements which may be sufficient, in certain cases, according to the proof value attributed to them. In any case, they will be refutable.
- (ii) Their force as proof, in relation to the responsibility for processing the asylum procedure, will be seen case by case.
- (iii) They will never be assimilable as formal proof.

- 4. The requirement of proof will be <sup>1</sup> as limited as possible. <sup>2</sup>
- 5. If there is no formal proof, the requested State <sup>3</sup> shall acknowledge its responsibility <sup>4</sup> if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.
- 6. Where the requesting State has pleaded urgency, in accordance with the provisions of Article 18 (2), the requested State shall do all it can to reply within the time limit requested. In any event it shall give a decision on the request to take charge of an applicant within one month of the date on which it was made. <sup>5</sup>
- 7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person.

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<sup>1</sup> EL: add "in principle".

<sup>2</sup> I: delete this paragraph.

<sup>3</sup> EL: add "may".

<sup>4</sup> EL: add "in individual cases".

<sup>5</sup> I: delete this sentence.

UK: say "within two weeks" instead of "within one month".

## Article 20

1. Where the requested State accepts that it should take charge of an applicant, the State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.
2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.
3. The transfer of the applicant from the Member State in which the application for asylum was lodged to the Member State responsible shall be carried out in accordance with the national law of the first Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken or of the decision on an appeal **or review** where there is a suspensive effect.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez passer of the design adopted in accordance with the procedure referred to in Article 28(2).

The Member State responsible shall inform the requesting State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.



4. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to serious illness or detention of the asylum seeker.<sup>1</sup>
5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 28(2).

## **Article 21**<sup>2</sup>

1. An asylum seeker shall be taken back in accordance with Article 4(6) and Article 17(c), (d) and (e) as follows:
  - (a) the request for the applicant to be taken back must contain information enabling the requested State to check that it is responsible;<sup>3</sup>
  - (b) the State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it within one month<sup>4</sup> of the referral;
  - (c) where the requested Member State does not communicate its decision within the one month<sup>5</sup> period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;

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<sup>1</sup> **D/L/NL/A/S/UK:** add the cases where the applicant has disappeared. To this end, S suggests to add the following:

"These time limits shall not apply in cases where the asylum seeker has gone into hiding".

**EL/F/I:** opposed to this addition.

**B:** scrutiny reservation.

<sup>2</sup> **A:** scrutiny reservation linked to its reservation to the entire Chapter V.

<sup>3</sup> **I:** include fingerprints.

<sup>4</sup> **UK:** say "within eight days" instead of "within one month".

<sup>5</sup> **UK:** say "within eight days" instead of "within one month".

- (d) a State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken or of the decision on an appeal or review where there is a suspensive effect;
- (e) the requesting State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case by case basis if the national legislation allows for this.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez passer of the design adopted in accordance with the procedure referred to in Article 28(2).

The Member State responsible shall inform the requesting State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

2. Where the transfer is not carried out within the six months' time limit, the State responsible shall be relieved of its obligation to take back the asylum seeker, and responsibility shall then be transferred to the requesting State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to serious illness or detention of the asylum seeker.

3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 28(2).
4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 28(2).

## **CHAPTER VI**

### **Administrative cooperation**

#### **Article 22**

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
  - (a) the determination of the Member State responsible for examining the application for asylum;
  - (b) examining the application for asylum;
  - (c) implementing any obligation arising under this Regulation.
2. The information referred to in paragraph 1 may only cover:
  - (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
  - (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
  - (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000;
  - (d) places of residence and routes travelled;

- (e) residence documents or visas issued by a Member State;
- (f) the place where the application was lodged;
- (g) the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for asylum, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for asylum.
4. Any request for information shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, [shall state on what evidence or what specific and verifiable part of the applicant's statements it is based].<sup>1</sup>

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<sup>1</sup> **UK:** reservation concerning the words between brackets. The rules on requests for information should be less strict.

5. The requested Member State shall be obliged to reply within six weeks. Where particular difficulties arise, the requested Member State may, within no more than two weeks <sup>1</sup>, give a provisional reply stating the period in which it will be possible to give a definitive reply. Such period should be as brief as possible and may in no case be longer than six weeks. <sup>2</sup> If the searches carried out by the requested Member State which has exercised the right to give a provisional reply yield information which shows that it **or another Member State** is liable, that State may not invoke the expiry of the time limit provided for in Article 18(1) as a reason for refusing to comply with a request to take charge of an applicant. <sup>3</sup>
6. The exchange of information shall be effected at the request of a Member State [and may only take place between authorities whose designation by each Member State has been communicated to the Commission, which shall inform the other Member States thereof]. <sup>4</sup>
7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
- (a) the determination of the Member State responsible for examining the application for asylum;
  - (b) examining the application for asylum;
  - (c) implementing any obligation arising under this Regulation.
8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

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<sup>1</sup> **EL/I:** four weeks instead of two.

<sup>2</sup> **EL/I:** twelve weeks instead of six.

<sup>3</sup> **D/NL/A/S:** simplify this provision and fix a uniform time limit (e.g. one month or six weeks).

<sup>4</sup> **A:** delete words between brackets.

9. The asylum seeker has the right to be informed, on request, of any data that is processed concerning him.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC, in particular because it is incomplete or inaccurate, he is entitled to have it corrected, erased or blocked.

The authority correcting, erasing or blocking the data shall inform, as appropriate, the State transmitting or receiving the information.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.
11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.
12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State should take appropriate measures to ensure compliance with this Article through effective checks.

## Article 23

Member States shall ensure that the departments responsible for fulfilling the obligations arising under this Regulation shall have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers.<sup>1</sup>

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<sup>1</sup> A: replace this text by the following:

- "1. Member States shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Regulation and shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers.
2. Member States shall set up electronic communication channels to the authorities pursuant to paragraph 1. Each Member State shall communicate to the Commission an electronic mail address of this authority. In this respect, Member States shall ensure that senders transmitting requests to this mail address automatically receive an electronic proof of delivery."

A statement by the Council and Commission should be entered in the Council minutes in order to charge the Committee established by Article 28 to lay down the modalities of electronic data transmission.

**D/F/I:** scrutiny reservations on such a solution.



## Article 24

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of the Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
  - (a) exchanges of liaison officers;
  - (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back asylum seekers;
2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall verify that the arrangements referred to in subparagraph b) do not infringe this Regulation.

## **CHAPTER VII**

### **Transitional provisions and final provisions**

#### **Article 25**

1. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990.
2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, where an application has been lodged after the date mentioned in the second paragraph of Article 30, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.
3. Where, in Regulation (EC) No 2725/2000 reference is made to the Dublin Convention, such reference shall be taken to be a reference made to this Regulation.

## **Article 26<sup>1</sup>**

1. Any period of time prescribed in this Regulation shall be calculated as follows:
  - (a) Where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;
  - (b) A period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;
  - (c) Time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.
2. Requests and replies shall be sent using any method that provides proof of receipt.

## **Article 27**

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

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<sup>1</sup> New text presented by the Chair based on provisions regarding time limits as laid down in the rules of procedure of the Court of First Instance of the European Communities.  
S: scrutiny reservation.

## Article 28<sup>1</sup>

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.
2. In those cases where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in accordance with Article 7 thereof.
3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

## Article 29

At the latest three years after the date mentioned in the first paragraph of Article 30, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

Having submitted that report, the Commission shall report to the European Parliament and the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 24(5) of Regulation (EC) No 2725/2000.

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<sup>1</sup> **D/I:** a list of elements of proof and circumstantial evidence relevant for the application of this Regulation should be annexed.  
**D:** such a list should be based on that provided for Decision 1/97 of 9 September 1997 of the Committee set up by Article 18 of the Dublin Convention (OJ L 281, 14.10.1997, p. 1).

## Article 30

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

It shall apply to asylum applications lodged as from the first day of the sixth month <sup>1</sup> following its entry into force. <sup>2</sup> The Member State responsible for the examination of an asylum application submitted before that date shall be determined in accordance with the criteria set out in the Dublin Convention.

This Regulation shall be binding in its entirety and directly applicable in the Member States in conformity with the Treaty establishing the European Community.

Done at Brussels,

*For the Council*  
*The President*

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<sup>1</sup> I: scrutiny reservation.

<sup>2</sup> L: add "and, from that date, it will apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the request was made."