



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 31 October 2002**

**13596/02**

**LIMITE**

**ASILE 58**

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

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**PRESIDENCY NOTE**

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to : Strategic Committee on Immigration, Frontiers and Asylum / Coreper

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No. prev. doc.: 9305/1/02 REV 1 ASILE 29, 13365/02 ASILE 56

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No. Cion prop.: 11355/01 ASILE 41 – COM(2001) 447 final

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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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Delegations will find the text of the draft Regulation in Annex I, as modified following JHA Counsellors meeting on 29 October 2002 and Permanent Representatives Committee meeting on 30 October 2002. A draft statement to the Council minutes is included in Annex II.

Delegations' comments are set out in footnotes.

The Strategic Committee is invited to discuss outstanding issues, in particular Articles 1, 4, 8, 9 and 23 at its meeting on 5-6 November 2002.

The Permanent Representatives Committee is invited to discuss Articles 10 and 16 to 22 at its meeting on 7 November 2002.

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.

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

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

**The Chair** asked the opinion of the Council Legal Service on whether Article 63(1) TEC does constitute a legal basis for legislating on forms of protection other than applications for asylum.

## 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>

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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.

**The Chair** suggested that, since this proposal has not been adopted yet, a statement to the Council minutes, based on the one agreed concerning draft Directive on reception conditions of asylum seekers could be entered :

"The Council and the Commission state that after the entry into force of the future Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, the Council, acting on a proposal from the Commission, shall examine the provisions of Article 2 (e) and (f) and adapt them as necessary in full compliance with the Treaty."

- (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;
- (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 is a minor and unmarried;

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<sup>1</sup> I/NL: scrutiny reservations linked to the final draft of Article 16.

- (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> **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. (deleted)<sup>1</sup>

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<sup>1</sup> **D/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/E/F/I/P:** opposed reinstating Cion text.

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. Scrutiny reservation linked to the final draft of Article 16.

<sup>3</sup> **S:** scrutiny reservation. It should be taken into consideration the minor's opinion, depending on the age and level of maturity.

## Article 7

Where the asylum seeker has a family member [...] <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> **D** : scrutiny reservation.

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

<sup>3</sup> **EL/I** : scrutiny reservations linked to the final draft of Article 16.

<sup>4</sup> **EL/I** : scrutiny reservations linked to the final draft of Article 16.

## 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.<sup>1</sup>

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.

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<sup>1</sup> NL : proposed the following alternative text :

"4. Where the asylum seeker was in possession of a valid visa but has failed to leave the territory before the expiry date of the visa, the Member State which issued the document shall be responsible for examining the application for asylum."

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

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 19(3), including the data referred to in Chapter III of Council Regulation (EC) number 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third State, the Member State thus entered shall be responsible for examining the application for asylum.
2. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 19(3), that an asylum seeker - who has entered the territories of the Member States irregularly<sup>2</sup> - at the time of lodging the application has been previously living for a continuous period of at least five months<sup>3</sup> in a Member State, that Member State shall be responsible for examining the application for asylum.

If the applicant has been living for periods of time of at least five months<sup>4</sup> in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application.<sup>5</sup>

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<sup>1</sup> **B/F** : the present drafting blurs the hierarchy of criteria, irregular entry should take precedence. For as long as crossing an external border illegally can be established, paragraph 1 should always apply. Nevertheless, these delegations were prepared to consider the introduction of another time-limit concerning illegal stay. Once such time-limit had been exhausted, the Member State in which the illegal stay took place would be responsible for examining the application for asylum.

<sup>2</sup> **UK** : delete the words "who has entered the territories of the Member States irregularly" and add the word "illegally" after "living" in fourth line.

<sup>3</sup> **EL/I** : wanted a shorter period.

<sup>4</sup> **EL/I** : wanted a shorter period.

<sup>5</sup> **A** : this five month period should cease to apply when expulsion measures have been undertaken by the Member State, although the illegal migrant still remains in the territory of this Member State.

## **Article 11**

- 1. If a third country national enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for asylum.**
- 2. The principle set out in paragraph 1 does not apply, if the third country national lodges his or her 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 Member State shall be responsible for examining the application for asylum.**

## **Article 11 A**

Where the application for asylum is made in an international transit area of an airport of a Member State by a third-country national, [...] that Member State shall be responsible for examining the application.

## **Article 12**

(deleted)

## **Article 13**

(deleted)

## **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.

## 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.
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 shall normally 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 shall if possible 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).



## 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.

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

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

## 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.

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. This period shall be at least one week.

3. In both cases, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 19(3) and/or relevant elements 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).

## 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.
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:
  - (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.
  - (b) Circumstantial evidence
    - (i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the proof value attributed to them.
    - (ii) Their force as proof, in relation to the responsibility for processing the asylum procedure, will be seen case by case.
    - (iii) (deleted)<sup>2</sup>

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<sup>1</sup> NL : want one month.

<sup>2</sup> I : scrutiny reservation on the deletion.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.
5. If there is no formal proof, the requested State shall acknowledge its responsibility 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 make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested State may give the reply after the time limit requested, but in any case within one month. In such situations the requested State must communicate its decision to postpone a reply to the requesting State within the time limit originally requested.
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, including the provisions for proper arrangements for arrival.

## 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 could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.
5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 28(2).

### **Article 21**

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;
  - (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 as quickly as possible and under no circumstances exceeding a period of one month from the referral. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks;
  - (c) Where the requested Member State does not communicate its decision within the one month period or the two weeks period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;

- (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 by another Member State 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 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 imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.



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, including relevant information from reliable sources on the ways and means asylum seekers enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.<sup>1</sup>
5. The requested Member State shall be obliged to reply within six weeks.<sup>2</sup>

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<sup>1</sup> This wording has been taken from Article 1(2) of Decision N° 1/98 of 30 June 1998 of the Committee set up by Article 18 of the Dublin Convention.

<sup>2</sup> A : prefers one week when based on Eurodac data.

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.
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.
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**

- 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. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 28 (2) [within six months of the entry into force of the present Regulation].**

## 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.<sup>2</sup>

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

<sup>2</sup> The Council Legal Service will examine whether it is necessary to have a similar provision for the Dutch overseas territories.

## **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> I/NL : scrutiny reservations.



## Article 30<sup>1</sup>

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

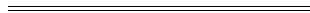
It shall apply to asylum applications lodged as from the first day of the sixth month following its entry into force **and, from that date, it will apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the request was made.**<sup>2</sup> The Member State 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> NL : scrutiny reservation.

**Draft Statement to the Council minutes**

THE COUNCIL OF THE EUROPEAN UNION,

CONSIDERING that the Dublin II Regulation introduces more effective procedures for determining the Member State responsible for examining an application for asylum,

WELCOMING the imminent practical implementation of the EURODAC system for the exchange of finger prints of asylum seekers, which in turn will facilitate an effective application of the Dublin II Regulation,

TAKING INTO ACCOUNT the concerns of certain Member States, whose geographical position exposes them to illegal immigration, that an effective application of the Dublin II Regulation, in particular Article 10 of the Regulation, may lead to an overburdening of their asylum systems,

UNDERLINING the strong commitment of the European Council in Seville to combat illegal migration and ensure effective control of the external border of the Member States

HAS ADOPTED THE FOLLOWING DECLARATION:

In addition to the adoption of the Dublin II Regulation and in order to express its solidarity with Member States particularly exposed to irregular crossing of the external borders, the Council is committed to supplement an effective implementation of the Dublin II Regulation by the following measures:

Before the end of 2002:

- Continuing enhanced cooperation on effective control at the external borders of Member States following the conclusions of the European Council in Seville and the plan for the management of the external borders of the Member States of the European Union as outlined in particular in already initiated common projects aiming at combating and deterring illegal migration such as
  - airport control project to include uniform control procedures, common training courses, exchange of personnel, increase detection of false documents - led by Italy;
  - project on the control of the sea borders to provide joint operational action to combat illegal migration in the Mediterranean Sea - led by Greece, Italy, Spain and UK;
  - project on the control of Eastern external land borders, introducing a mechanism for verification of immigration pressure at Eastern external land border - led by Greece;
  - visa control project in Schengen International Airports to reveal false and forged visa through enhanced cooperation between airport control authorities and consular services - led by Denmark;

Before June 2003:

- Implementing the already initiated project on establishing a common core curriculum for border guard training - led by Austria and Sweden;
- Implementing the already initiated project on coordinated criminal investigation related to cross-border crime to dismantle international illegal immigration networks - led by France;

- Upon receiving the study by the Commission concerning burden-sharing between Member States and the Union for the management of external borders, considering financial support for administrative operational and other measures required for the effective implementation of the Regulation;<sup>1</sup>
- Continuing the ongoing project on establishing a common risk analysis model, in order to achieve common integrated risk assessment with regard to illegal immigration - led by Finland;
- Considering financial support for enforcement measures e.g. with regard to travel costs for returnees and escorts, as set out in the Commission Green Paper on a Community return policy on illegal residents;

In the short and medium term:

- Establishing cooperation with third countries from where or through which illegal migratory flows into the Community originate or transit;
- Providing assistance by the European Union to third countries of transit to counter illegal migratory flows, including assistance to carry out returns/expulsions of illegal migrants to their countries of origin;

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<sup>1</sup> **EL** : prefer previous version, which read as follows:  
 "- *Upon receiving the study by the Commission concerning burden-sharing between Member States and the Union for the management of external borders, deciding upon the establishment of such a mechanism;*"