



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 23 April 2002 (02.05)
(OR. fr)**

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

8207/02

LIMITE

ASILE 22

OUTCOME OF PROCEEDINGS

of : Asylum Working Party

on : 16 April 2002

No. prev. doc.: 6485/02 ASILE 12

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 asylum application lodged in one of the Member States by a third-country national

I

The Asylum Working Party continued discussing the above proposal at its meeting on 16 April 2002.

Delegations will find the text of the draft Regulation (Articles 1 to 13) in section II. Changes to 6485/02 ASILE 12 are in bold.

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 asylum application lodged in one of the Member States by a third-country national¹

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 asylum application² lodged in one of the Member States by a third-country national.

Article 2³

For the purposes of this Regulation,

- (a) "third-country national" means anyone who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;

¹ **NL:** parliamentary scrutiny reservation.

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

³ **B/I:** general reservations on the whole of Article 2.

Pres.: the wording of (b), (c), (d), (g), (h) and (i) would be aligned on that of the draft Directive concerning the reception conditions for asylum applicants once the Council had reached agreement on that Directive.

NL: include definitions of "transfer", "taking charge" and "taking back".

Pres.: NL should provide a text for the new definitions it wanted.

Cion: the questions raised by NL needed to be settled in the body of the Regulation and not in the definitions.

- (b) "Geneva Convention" means the Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967;
- (c) "asylum application" means the request submitted by a third-country national or a stateless person which can be regarded as a request for international protection made to a Member State under the Geneva Convention. Any request for protection shall be deemed to be an asylum application, unless the third-country national or stateless person concerned explicitly seeks another type of protection for which a separate request can be submitted;
- (d) "applicant" or "applicant for asylum" means a third-country national or a stateless person 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" means any examination of, or decision or ruling concerning, an asylum application by the competent authorities in accordance with **national law**, except for procedures for determining the State responsible in accordance with this Regulation;
- (f) "withdrawal of the asylum application" means the action by which the applicant for asylum terminates the procedures initiated by the submission of his asylum application; [...]
- (g) "refugee" means a third-country national **who fulfils the requirements laid down by Article 1(A) of the Geneva Convention**;
- (h) "unaccompanied minor" means any third-country national under the age of eighteen who arrives or is present in the territory of a Member State without being accompanied by an adult responsible for him whether by law or by custom ¹, and for as long as he is not effectively in the care of such a person;

¹ I: reservation on the reference to custom.

- (i) "family members" **are included provided that the family was previously formed in the country of origin as regards the following members of the applicant's family group**¹:
- (i) the applicant's spouse or unmarried partner in a stable relationship, where the legislation of the Member State in which the application is lodged or examined treats unmarried couples in the same way as married couples under its law relating to aliens²;
 - (ii) the minor children of the couple referred to in (i) or of the applicant, on condition that they are unmarried and dependent and without distinction according to whether they were born in or out of wedlock or adopted as defined under national law;
 - (iii) [...] ³
- (j) "residence document" means 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 procedure for determining the State responsible within the meaning of this Regulation or during examination of an application for a residence document or of an asylum application;

¹ **NL/S:** the concept of family should be broader, as proposed by **Cion**.
S: delete the requirement that the family must have been previously formed in the country of origin.

B/D: include the parents of minor children.

² **B:** for unmarried couples, reference should be made to "legal arrangements for aliens" instead of "law relating to aliens".

³ **NL:** reinstate this subparagraph.

- (k) "visa" means 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:
- (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" means 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;
 - (iv) "airport transit visa" means 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.

CHAPTER II

General principles

Article 3

1. Member States shall examine the application of any third-country national or stateless person 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. The application shall be examined by the Member State responsible in conformity with its national law ¹.
3. In derogation from paragraph 1, each Member State may ² examine an asylum application lodged with it by a third-country national, even if such examination is not its responsibility under the criteria of 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.
4. The applicant shall be informed in writing, **in a language he can reasonably be expected to understand**, of the application of this Regulation and of its time limits and effects. ³

¹ **The Working Party** has requested the Council Legal Service's opinion on the wording of this provision.

² **I:** add "for humanitarian reasons, based in particular on family circumstances".

³ **D/FIN/L:** scrutiny reservations.

Article 4 ¹

1. The process of determining the Member State responsible under this Regulation shall start as soon as an asylum application is first lodged with a Member State.
2. An asylum application shall be deemed to have been lodged once a form ² 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 ³ should be as short as possible.
3. The lodging of a request for protection on a basis other than the Geneva Convention [...] shall not stop the procedure for determining the State responsible from continuing ⁴.
4. For the purposes of this Regulation, the situation of a minor who accompanies the applicant for asylum 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 asylum application of the said parent or guardian, even if the minor is not individually an applicant for asylum. The same treatment shall be applied to children born after the applicant for asylum arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

¹ **A:** add the possibility provided for in Article 3(5) of the Dublin Convention, as follows:
"Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol".

Cion: nothing prevents a Member State from using the safe-third-country clause. The addition proposed by A is unnecessary. This matter would need to be settled in the proposed Directive on asylum procedure.

² **FIN:** the applicant should be free to write what he wants. Delete the reference to a form.

³ **FIN:** avoid the term "report", which was suggestive of police procedures.

⁴ **EL/I:** delete this paragraph, which broadened the Regulation's scope too much.

NL/P/S: reinstate the text proposed by **Cion**.

5. Where an asylum application 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. 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 asylum application was lodged.

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

6. An applicant for asylum who is in another Member State and there lodges an asylum application 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 asylum application was lodged, with a view to completing the process of determining the State responsible for examining the asylum application.

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

CHAPTER III
Hierarchy of criteria ¹

Article 5

1. The criteria for determining the Member State responsible 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 applicant for asylum first lodged his application with a Member State.

Article 6 ²

Where the applicant for asylum is an unaccompanied minor, the Member State **where his father, his mother or his guardian is shall be responsible for examining his application.**

In the absence of a father, mother or guardian, the Member State where the minor has lodged his application shall be responsible; [if there are other members of his family in that Member State who, by law or custom, wish to and may take charge of him that Member State shall, in his best interests, do what it can to unite them].

¹ **EL/I:** general reservations on Chapter III, particularly on the hierarchy of criteria.

² **D/S:** scrutiny reservations. Also take the minor's opinion into consideration, depending on age and level of maturity.

D: reservation linked to its reservations on Articles 2(i) and 7.

B/F/IRL/UK: preferred a text on the lines of working doc. ASILE 6/02.

P: preferred a text on the lines of 6485/02 ASILE 12.

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.

Cion: delete the words in square brackets.

Pres.: a new form of words would be proposed at the Working Party's next meeting.

If the members of the minor's family referred to in the previous subparagraph are in another Member State, the Member States shall do what they can to unite them; the Member State of residence of these family members shall then be responsible for examining the asylum application¹.

Article 7

Where the applicant for asylum has a member of his family who has been allowed to reside as a refugee² in a Member State, that Member State shall be responsible for examining the asylum application, provided that the persons concerned so desire³.

¹ **Cion:** include this paragraph in Article 16.

² **NL:** add "or enjoys another form of protection".

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

D, supported by **Cion:** include the applicant's father and mother, as provided for in Article 4(2) of the Dublin Convention.

Article 8 ¹

1. **Where a member of the family of an applicant for asylum has lodged an asylum application in a Member State and that application is under administrative review,** ² that Member State shall be responsible for examining the asylum application, provided that the persons concerned so desire.

¹ I, supported by EL, proposed the following text:

"Where the applicant for asylum has a member of his family whose asylum application is being examined in a Member State under a normal procedure within the meaning of Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] and has not yet been the subject of a final decision, that Member State shall be responsible for examining the asylum application, provided that the persons concerned so desire.

Determination of that Member State's responsibility shall be deferred pending completion of such admissibility procedure as may be applied to the family member who is in the requested Member State."

² F: spell this out, as follows: "Where the applicant for asylum has a member of his family whose asylum application ..."

NL/UK: refer to "first instance" and not to "administrative".

B/I: refer to an application "being examined as to substance" instead of "under administrative review".

2. Where a family member submits an asylum application in the same Member State simultaneously, or on dates sufficiently close 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 ¹:
- (a) responsibility for examining the asylum applications of all the members of the family group shall lie with the Member State which the criteria indicate is responsible for examining the applications of the largest number of them;
 - (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.

¹ **A/B/IS:** include this provision in Article 15, as proposed by **Cion**.
NL: the applicant's parents should be included on two conditions only: that there is a dependency link and that the family was previously formed in the country of origin.
UK: scrutiny reservation on the broad meaning given to "family members".

Article 9

1. Where the applicant for asylum is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the asylum application.
2. Where the applicant for asylum is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the asylum application, except if 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 asylum application. When 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 ¹.
3. Where the applicant for asylum is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the asylum application 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;

¹ **UK**, supported by **IRL**: amend paragraph 2 to read as follows:

- "2. If the applicant is the holder of a valid visa the Member State which issued this visa is responsible for examining the asylum application, except in the following cases:
- (a) if this visa was issued in representation or on the written authorisation of another Member State, this State is responsible for examining the asylum application. When a Member State first consults the central authority of another Member State, inter alia for security reasons, the response of the latter to the consultation does not constitute written authorisation in the meaning of this provision;
 - (b) where the asylum applicant is in possession of a transit visa and lodges the application for asylum in another Member State in which he is not subject to a visa requirement, that State is responsible for examining the application for asylum;
 - (c) where the asylum applicant is in possession of a transit visa and lodges his application in the State which issued him or her with this visa and which has received written confirmation from the diplomatic or consular authorities of the destination Member State that the third-country national for whom the visa requirement was waived meets the conditions for entry to that State, the latter State is responsible for examining the asylum application."

B: the text suggested by UK did not fit in well with current visa rules. A simple provision should be included, and any reference to representation arrangements avoided.

- (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 applicant for asylum 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 applicant for asylum 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 fraud was committed after the document/visa had been issued.

Article 10¹

1. Responsibility for examining the asylum application of a third-country national not subject to a visa requirement shall lie with the Member State in which he lodges his application.
2. When the asylum application is presented during transit at an airport of a Member State by a third-country national whose final destination is a third country, that Member State shall be responsible for examining the application.²

¹ **D/NL/S/UK:** put the criteria back in the order (Articles 10 to 13) proposed by the Commission.

UK, supported by **IRL:** amend paragraph 2 to read as follows:

- "1. The responsibility for examining the asylum application of a third-country national who has entered the territory of those Member States where he is not a visa national lies with the Member State in which he lodges his application. However, where the latter Member State in which the application was lodged imposes a visa requirement on the third country of which the applicant is a national, responsibility will fall to the Member State responsible for controlling entry to the territory of the Member States.
2. When the asylum application is presented during transit at an airport of a Member State by a third-country national whose final destination is another Member State that does not apply the same visa requirements, the Member State where transit takes place is responsible for examining the application, unless it requires the third-country national to hold an airport transit visa. In this case the destination Member State will be responsible.
3. When the asylum application is presented during transit at an airport of a Member State by a third-country national whose final destination is a third country, the Member State is responsible for examining the application."

B: (referring to the UK request): the matter of responsibility for airport transit visas should not be included, because it would give rise to disputes.

² **I:** insert a paragraph 3 reading as follows: "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."

Article 11¹

Where it can be shown², in particular³ by means of 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 fingerprints⁴ that an applicant for asylum has irregularly crossed the border into a Member State by land, sea or air, [...] from a non-Member State of the European Union, the Member State thus entered shall be responsible for examining the asylum application.

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

Article 12⁵

A Member State which has knowingly tolerated the unlawful presence 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 shall be responsible for examining the asylum application.

Such tolerance may be assessed by means of verifiable evidence.⁶

¹ **EL/I:** this provision should appear at the end of Chapter III.

² **EL:** "established" instead of "shown".

³ **NL/S/UK:** "for instance" instead of "in particular".

⁴ OJ L 316, 15.12.2000, p. 1.

⁵ **EL/F/IRL:** reservations. Delete this Article.

B: scrutiny reservation.

⁶ **S:** such evidence would be hard to produce in practice.

Article 13¹

Where it can be shown 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 asylum application.

Such responsibility cannot be imposed upon that State 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.



¹ **EL/F/IRL:** reservations. Delete this Article.
I: add an extra provision on means of proof and indicative evidence.