



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.03.1999
SEC(1999) 271 final

COMMISSION WORKING DOCUMENT

Towards common standards on asylum procedures

Preface

The Treaty establishing the European Community as amended by the Treaty of Amsterdam will require the Council to adopt measures on minimum standards on procedures in Member States for granting or withdrawing refugee status. The Commission intends to bring forward a proposal for a Community legal instrument on asylum procedures after the entry into force of the new treaty.

This working document is intended to launch a discussion on asylum procedures which will take place in the Council and the European Parliament. After this debate has taken place, the Commission will finalise a proposal for a Community legal instrument on asylum procedures. The paper will also serve as the basis for a dialogue with the United Nations High Commissioner for Refugees and with the non-governmental sector. This is consistent with declaration number 17 on the Treaty of Amsterdam, which states that consultations shall be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy.

A. Introduction

1. The European Union has already taken the first steps towards creating common standards for asylum procedures in the Member States. A number of non-binding "soft law" instruments relating to asylum procedures have been adopted. Prior to the entry into force of the Treaty on European Union, when European co-operation in the field of asylum operated on a purely intergovernmental basis outside the framework of the treaties, Ministers responsible for Immigration adopted conclusions on countries in which there is generally no serious risk of persecution, the resolution on manifestly unfounded applications for asylum, and the resolution on a harmonized approach to questions concerning host third countries (the so-called "London Resolutions" of 30 November and 1 December 1992)¹. Since the entry into force of the Treaty on European Union, the Council has adopted the resolution of 20 June 1995 on minimum guarantees for asylum procedures². In addition, its resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries³ contains specific provisions on asylum procedures.
2. In its 1994 Communication to the Council and the European Parliament on immigration and asylum policies, the Commission identified the need for a legally binding instrument on asylum procedures.⁴ The Commission originally intended to bring forward a proposal for a convention on asylum procedures under the Treaty on European Union. After the signing of the Treaty of Amsterdam, however, the Commission concluded that it is preferable for its proposal on asylum procedures to take the form of a binding Community legal instrument. Indeed the new treaty will require the Council to adopt, within five years of its entry into force, measures on minimum standards on procedures in Member States for granting or withdrawing refugee status⁵.
3. In its 1994 Communication, the Commission argued that a legally binding instrument was required in order to ensure legal certainty for both asylum applicants and the Member States. The Commission suggested that a general approach might be to define objective criteria for fairness and efficiency, which would set a certain general framework, while leaving it to each Member State to fill in the exact nature of the asylum procedure. The importance of an approach focusing on criteria for fairness and efficiency has not diminished. Guarantees must be in place to ensure that persons in need of protection under the 1951 Geneva Convention relating to the status of refugees have access to asylum procedures and that all the circumstances of

¹ These conclusions and resolutions have not been published in the Official Journal of the European Communities. The texts can, however, be found in the publication "Collection of international instruments and other legal texts concerning refugees and displaced persons", Volume II, Regional Instruments, UNHCR, Geneva 1995.

² OJ C 274, 19 September 1996, page 13.

³ OJ C221, 19 July 1997, page 23.

⁴ COM(94) 23 final, Brussels, 23 February 1994, paragraphs 86 – 90.

⁵ Article 63(1)(d) of the Treaty establishing the European Community as amended by the Treaty of Amsterdam.

their claims are examined on an individual basis, in order to protect people who are refugees within the meaning of Article 1A of that Convention. At the same time, procedures must be efficient, so that refugees can be identified as quickly as possible, and applications from people who are not in need of international protection can be processed expeditiously.

B. The Treaty of Amsterdam: a work programme on asylum and protection issues

4. In considering the possible scope of a Community legal instrument on asylum procedures, it is important to take account of the work programme on asylum contained in the Treaty of Amsterdam. The new treaty will require the Council to adopt measures in a number of specific areas of asylum and protection policy, mostly within five years of its entry into force. In its Communication of July 1998 entitled "Towards an area of Freedom, Security and Justice", the Commission indicated a number of priorities in the field of asylum, including minimum standards for asylum procedures⁶. Further indications on priorities are contained in the "Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom security and justice" of December 1998 (hereafter referred to as the "Action Plan")⁷. In particular, the Action Plan identifies a number of measures in the field of asylum, including the adoption of minimum standards on procedures in Member States for granting or withdrawing refugee status, which should be taken within two years of the entry into force of the new treaty⁸.
5. The legislative programme on asylum and protection issues following the entry into force of the Treaty of Amsterdam can be divided into the following eight topics⁹:
 - (1) Criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States (Article 63(1)(a) TEC). This area is covered by the Dublin Convention, which will in due course need to be replaced by an instrument of Community law. In this context, it will be necessary to determine whether it will be sufficient simply to address certain weaknesses which have been identified in the Dublin system, or whether a fundamentally different approach is required.
 - (2) Eurodac (Article 63(1)(a) TEC). This is a fingerprint comparison system which will be established for the purpose of implementing the Dublin Convention. It has been under negotiation in the form of a draft Convention and Protocol, but in December 1998 the Council asked the Commission to

⁶ COM(1998) 459 final, Brussels, 14.07.1998, page 6.

⁷ OJ C19, 23 January 1999, pages 1-15.

⁸ See paragraph 36 of the Action Plan.

⁹ Paragraph 36(b)(iv) of the Action Plan also refers to measures in the field of asylum to limit "secondary movements" by asylum seekers between Member States, but does not specify what form such measures would take.

bring forward a proposal for Eurodac in the form of a Community regulation shortly after the entry into force of the Treaty of Amsterdam.

- (3) Minimum standards on the reception of asylum seekers in Member States (Article 63(1)(b) TEC). The scope of an instrument in this field will cover such matters as accommodation, means of subsistence, medical care, education, employment and access to the labour market for asylum seekers.
- (4) Minimum standards with respect to the qualification of nationals of third countries as refugees (Article 63(1)(c) TEC). An instrument in this area will be concerned with interpretation of the refugee definition contained in Article 1 of the Geneva Convention i.e. with substantive questions of who is a refugee. Issues such as persecution by non-state agents, which has been a controversial feature of the 1996 Joint Position on the harmonized application of the term "refugee" in Article 1 of the Geneva Convention, will need to be revisited in the context of this instrument.
- (5) Minimum standards on procedures in Member States for granting or withdrawing refugee status (Article 63(1)(d) TEC). The existing soft law is referred to in the introduction to this paper. The possible content of a future Community instrument is the subject of this Working Document.
- (6) Minimum standards for complementary/subsidiary protection for persons in need of international protection (Article 63(2)(a) second part TEC). An instrument in this area will deal with the provision of protection on an individual basis to persons who are not refugees within the meaning of the Geneva Convention, but who are nevertheless in need of international protection in accordance with other international obligations or for humanitarian reasons.
- (7) Minimum standards for giving temporary protection to displaced person from third countries who cannot return to their countries of origin (Article 63(2)(a) first part TEC). The Commission has already made a proposal on this subject¹⁰, on the basis of the Treaty on European Union. After the entry into force of the new Treaty, the Commission will revise and represent its proposal as a draft Community instrument, with appropriate modifications.
- (8) Promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons (Article 63(2)(b) TEC). This is also referred to as "solidarity" or "burden sharing". The Commission has already made a proposal on this subject in relation to the beneficiaries of temporary protection¹¹. This proposal will

¹⁰ Proposal to the Council for a Joint Action based on Article K.3(2)(b) of the Treaty on European Union concerning temporary protection of displaced persons, COM(97) 93 final, 5 March 1997, also OJ C 106, 4 April 1997, page 13; amended proposal for a joint action concerning temporary protection of displaced persons, COM(98) 372 final, 24 June 1997, also OJ C268, 27 August 1998, page 13.

¹¹ Proposal for a joint action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons, COM(98) 372 final, 24 June 1997, also OJ C268, 27 August 1998, page 22.

also be revised and represented as a draft Community instrument after the entry into force of the new treaty.

Since the European Union has, in drawing up the existing soft law, already made progress on minimum standards for asylum procedures, and the Treaty of Amsterdam will allow the use of binding Community legal instruments in this area for the first time, the Commission considers that it is appropriate to start work under the new treaty with a proposal on asylum procedures.

The scope and content of an instrument on asylum procedures must be considered in the light of the overall work programme under the Treaty of Amsterdam. In some cases, it will be necessary to decide where the dividing line between asylum procedures and reception conditions lies. In other cases, it will similarly be necessary to draw a dividing line between asylum procedures and questions of interpreting the refugee definition.

Questions also arise on the relationship between guarantees for asylum procedures and the application of the Dublin Convention, and on the link between asylum procedures and procedures for examining claims for other forms of protection. These issues are addressed in section C of this Working Document.

6. The Treaty establishing the European Community as amended by the Treaty of Amsterdam specifically states that measures on asylum, including on asylum procedures, must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties. The Treaties thus enshrine the basic principle that Community legislation on asylum must be compatible with the key international refugee and human rights instruments.

Proposals under Title IV of the amended Treaty establishing the European Community will be treated at variable geometry, in accordance with the relevant protocols. In this context, it should be noted that a proposal for a Community instrument on minimum standards on procedures in Member States for granting or withdrawing refugee status would not constitute a proposal or initiative to build upon the Schengen acquis.

7. The new treaty talks in terms of "minimum standards" in the field of asylum, in relation to procedures, to reception conditions, and to the refugee definition. Common minimum standards will support several objectives. In the first place, they are necessary in order to ensure that any individual asylum applicant would receive the same decision on his or her application, irrespective of the Member State in which he or she lodges the asylum claim. If the European Union is to maintain a system of determining which Member State is responsible for considering an asylum application and transferring asylum applicants from one Member State to another, it is important to ensure that this does not affect the individual's chances of receiving protection. In the second place, common minimum standards have a role to play in preventing secondary migration of asylum applicants between Member States.

C. Scope and content of a Community legal instrument on asylum procedures

