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Contents

Page

Acts adopted under Title VI of the Treaty on European Union

96/C 274/01

Council Decision of 23 November 1995 on publication in the <i>Official Journal of the European Communities</i> of acts and other texts adopted by the Council in the field of asylum and immigration (since the entry into force of the Treaty on European Union)	1
— Council resolution of 20 June 1994 on limitations on admission of third-country nationals to the territory of the Member States for employment	3
— Council resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons	7
— Council resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes	10
— Council resolution of 20 June 1995 on minimum guarantees for asylum procedures	13
— Council recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals	18
— Council recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country	20
— Council recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements	25
— Council conclusions of 20 June 1994 concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy	34
— Means of proof in the framework of the Dublin Convention	35
— Form of a <i>laissez-passer</i> for the transfer of an asylum applicant from one Member-State to another	42

EN

2

(Continued overleaf)

- Circulation and confidentiality of joint reports on the situation in certain third countries 43
- Standard form for determining the State responsible for examining an application for asylum 44
- Council conclusions of 20 June 1994 on the Commission communication on immigration and asylum policies 49
- Council conclusions of 30 November 1994 on the organization and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi) 50
- Guidelines for joint reports on third countries 52
- Second activity report on the Centre for Information, Discussion and Exchange on Asylum (Cirea) 55
- Honorary consuls already empowered to issue visas who, as a transitional measure, will be allowed to issue uniform visas 58

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL DECISION

of 23 November 1995

on publication in the *Official Journal of the European Communities* of acts and other texts adopted by the Council in the field of asylum and immigration

(96/C 274/01)

The Council agrees that the acts and other texts in the field of asylum and immigration which have been adopted to date by the Council since the entry into force of the Treaty on European Union and which appear on the attached list and are reproduced in Annexes I, II, III and IV will be published in the *Official Journal of the European Communities*.

List of acts and other texts adopted by the Council in the field of asylum and immigration, to be published in the *Official Journal of the European Communities*

I. Resolutions

1. Council resolution of 20 June 1994 on limitations on admission of third-country nationals to the territory of the Member States for employment.
2. Council resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons.
3. Council resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes.
4. Council resolution of 20 June 1995 on minimum guarantees for asylum procedures.

II. Recommendations

1. Council recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals.
2. Council recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country.
3. Council recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements.

III. Conclusions and other texts

1. Council conclusions of 20 June 1994 concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy.

2. Means of proof in the framework of the Dublin Convention.
3. Form of a laissez-passer for the transfer of an asylum applicant from one Member State to another.
4. Circulation and confidentiality of joint reports on the situation in certain third countries.
5. Standard form for determining the State responsible for examining an application for asylum.
6. Council conclusions of 20 June 1994 on the Commission communication on immigration and asylum policies.
7. Council conclusions of 30 November 1994 on the organization and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi).

IV. *Miscellaneous*

1. Guidelines for joint reports on third countries.
 2. Second activity report on the Centre for Information, Discussion and Exchange on Asylum (Cirea).
 3. Honorary consuls already empowered to issue visas who, as a transitional measure, will be allowed to issue uniform visas.
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ANNEX I.1

COUNCIL RESOLUTION

of 20 June 1994

on limitations on admission of third-country nationals to the territory of the Member States for employment

THE COUNCIL OF THE EUROPEAN UNION,

It agreed to examine the matter at a later date.

Having regard to the Treaty on European Union, and in particular Article K.1 thereof,

- (v) Member States reserve the right to allow, in accordance with their national law, the spouse and dependent children to accompany persons admitted in accordance with this resolution.

HEREBY ADOPTS THIS RESOLUTION:

A. General considerations on policy

- (i) The Council recalls that, in the report adopted by the European Council held in Maastricht in 1991, priority was given to the harmonization of policies on admission for work as an employed or self-employed person, although it was emphasized that these policies should of necessity be restrictive.
- (ii) The Council acknowledges the contribution of migrant workers to the economic development of their respective host countries. At present, however, no Member State is pursuing an active immigration policy. All States have, on the contrary, curtailed the possibility of permanent legal immigration for economic, social and thus political reasons. Admission for temporary employment may therefore be considered only in terms of what is purely exceptional.
- (iii) The Council recognizes that the present high levels of unemployment in the Member States increase the need to bring Community employment preference properly into practice by making full use of the Eures system to improve the transparency of the labour markets and facilitate placement within the European Community. The Council further recognizes that the provisions within the European Community. The Council further recognizes that the provisions of the EC Treaty and the EEA Agreement enable job vacancies to be filled as far as possible by nationals of other Member States or of Member States or of EFTA countries which are parties to the EEA Agreement.
- (iv) The Council agreed not to regulate via this resolution the issue of third-country nationals lawfully resident on a permanent basis in the territory of a Member State, but who have no right of admission and residence in another Member State.

- (vi) In the light of these considerations, the Council resolves that the present restrictive measures should be continued and where necessary reinforced as regards the admission of third-country nationals for employment. To this end, the Council agrees that the national policies of Member States in respect of third-country nationals seeking admission to, or permission to remain in, their territories for employment should be governed by the principles set out below, which may not be relaxed by Member States in their national legislation. It agrees to have regard to these principles in any proposals for the revision of national legislation. The Member States will further endeavour to seek to ensure by 1 January 1996 that national legislation is in conformity with such principles. The principles are not legally binding on the Member States and do not afford a ground for action by individual workers or employers.

B. Persons to whom this resolution does not apply

The harmonization principles do not apply to:

- persons who have right of free movement under Community law, i.e. nationals of Member States, nationals of EFTA countries parties to the Agreement on the European Economic Area and members of their families,
- third-country nationals who have been allowed admission for the purpose of family reunification to join nationals of a Member State or of a third country resident in the Member State concerned,
- third-country nationals whose access to employment is covered by rights stemming from agreements governed by Community law concluded with third countries,

- persons undertaking casual work in the course of youth exchange or youth mobility schemes, including 'au pairs',
- persons entering Member States in order to pursue economic activities as self-employed persons or to set up and/or manage a business/undertaking which they effectively control. Such persons will be governed by the principles to be set out in a draft resolution covering the self-employed;
- persons who are lawfully present in a Member State as:
 - refugees under the terms of the Geneva Convention,
 - applicants for asylum,
 - third-country nationals admitted for asylum,
- displaced persons who are temporarily admitted,
- persons exceptionally allowed to stay on humanitarian grounds.

C. Principles governing Member States' policies

(i) *General criteria*

- Member States will refuse entry to their territories of third-country nationals for the purpose of employment,
- Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State's regular labour market. In this context they will apply the procedure laid down in Part II of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community⁽¹⁾, in the light of Commission Decision 93/569/EEC⁽²⁾ on the implementing of the Regulation, in particular with regard to Article 15 (16);

⁽¹⁾ OJ No L 257, 19. 10. 1968, p. 2. Regulation as last amended by Regulation (EEC) No 2434/92 (OJ No L 245, 26. 8. 1992, p. 1).

⁽²⁾ OJ No L 274, 6. 11. 1993, p. 32.

- without prejudice to the application of the above two criteria, third-country nationals may, if necessary, be admitted on a temporary basis and for a specific duration to the territory of a Member State for the purpose of employment where:

- such an offer is made to a named worker or named employee of a service provider and is of a special nature in view of the requirement of specialist qualifications (professional qualifications, experience, etc.),

- an employer offers named workers vacancies only where the competent authorities consider, if appropriate, that the grounds adduced by the employer, including the nature of the qualifications required, are justified in view of a temporary manpower shortage on the national or Community labour market which significantly affects the operation of the undertaking or the employer himself,

- vacancies are offered to:

- seasonal workers, whose numbers are strictly controlled on admission to the territory of the Member States and who undertake well-defined jobs, normally fulfilling a traditional need in the Member State in question. Member States will restrict the admission of these workers to cases where there is no reason to believe that the persons concerned will seek to stay within their territory on a permanent basis,

- trainees,

- frontier workers,

- the persons concerned are intra-corporate transferees being transferred temporarily by the company as key personnel.

(ii) *Procedure for admission employment*

A third-country national will not be admitted for employment unless prior authorization has been given for him to take up employment in the territory of the Member State concerned. Such prior authorization may be in the form of a work permit issued either to the employer or to the employee.

In addition, third-country nationals must also be in possession of any necessary visa or, if the Member State concerned so requires, of a residence permit.

(iii) *Restrictions as to the scope of employment*

Initial authorization for employment will normally be restricted to employment in a specific job with a specified employer.

(iv) *Restrictions as to the period of admission for employment*

A seasonal worker will be admitted for a maximum of six months in any 12-month period, and must remain outside the territories of the Member States for a period of at least six months before being readmitted for employment.

Trainees will be admitted for a maximum period of one year in the first instance. This period may be fixed at more than a year and extended exclusively for the time needed to obtain a professional qualification recognized by the Member State concerned in the sphere of their activity.

Other third-country nationals admitted to the territories of the Member States for employment will only be admitted for a period not exceeding four years in the first instance.

(v) *Applications to extend a stay for the purpose of employment*

A person already present in the territory of a Member State as a visitor or student will not in principle be permitted to extend his stay for the purpose of taking or seeking employment. Such persons must return to their own countries on conclusion of their visit or studies.

In principle, a person admitted as a trainee or service provider or employee of a service provider will not be permitted to extend his stay in authorized employment except in order to complete the training or activity under contract for which he was admitted.

A seasonal worker will not be permitted to extend his stay for the purpose of taking employment of a different type. An extension of the period of his stay may be authorized to allow him to complete the work for which the original authorization was granted. However, the total length of his stay may not exceed six months in any 12-month period.

Other workers may be permitted to extend their period to stay in authorized employment, but only if the criteria originally applied to the decision on

whether to admit them for authorized employment continue to be met, in any event when the first extension is granted.

The Member States will examine the desirability of issuing a permanent residence permit to third-country nationals who have had restrictions on their employment lifted.

(vi) *Business visitors*

Nothing in these principles prevents a Member State from admitting as workers third-country nationals not residing in the territory of a Member State who are seeking entry in particular to:

- negotiate for the supply of goods or services,
- deliver goods or assemble machinery manufactured in a third country as part of a supply contract,

provided that such persons will be dealing only with businesses in the territory of the Member State and not with the general public and that any one visit and possibly the work permit do not exceed six months.

(vii) *Third countries with close links with a Member State*

Nothing in these principles prevents a Member State from continuing to admit third-country nationals to its territory for the purpose of employment pursuant to arrangements concluded by that Member State by the date of adoption of this resolution for nationals of a third country with which it has especially close links.

The Member States will undertake as soon as possible to renegotiate such arrangements in accordance with the terms of this resolution.

Where these arrangements concern the employees of a service provider, the Member States undertake to examine them in the spirit of this resolution within a reasonable period of time not exceeding three years, and to arrive at an assessment.

When this examination is carried out, account should be taken of the economic development of the States with which the Member States concluded the agreements in question.

The above provisions do not apply to arrangements covering employment of persons for instruction and vocational training purposes.

*Annex to Annex I.1***Definitions**

'Trainees' means workers whose presence in the territory of a Member State is strictly limited in duration and closely connected with increasing their skills and qualifications in their chosen profession before returning to their own countries to pursue their careers.

'Seasonal workers' means workers who are resident in a third country but are employed in an activity dependent on the rhythm of the seasons in the territory of a Member State on the basis of a contract for a specified period and for specific employment.

'Frontier workers' means workers who are employed in the frontier zone of a Member State but who return each day or at least once a week to the frontier zone of a neighbouring country in which they reside and of which they are nationals.

'Intra-corporate transferee' means a natural person working within a legal person, other than a non-profit making organization, established in the territory of a WTO member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of a Member State of the Community; the legal persons concerned must have their principal place of business in the territory of a WTO member other than the Community and its Member States and the transfer must be to an establishment (office, branch or subsidiary) of that legal person, effectively providing like services in the territory of a Member State to which the EC Treaty applies. In Italy, 'intra-corporate transferee' is defined as a natural person working within a legal person constituted as a SPA (joint stock company) or an SRL (capital stock company with limited responsibility).

Annex I.2

COUNCIL RESOLUTION

of 30 November 1994

relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 thereof,

HEREBY ADOPTS THIS RESOLUTION:

A. General considerations on policy

1. The Council recalls that, in the report on immigration and asylum policy by the Ministers responsible for immigration adopted by the European Council held in Maastricht in 1991, priority was given to the harmonization of policies on admission for the purposes of pursuing self-employed occupation. In principle, these policies are restrictive. In any case, existing obligations and future developments for example in GATT, GATS and OECD agreements must be taken into account.
2. The Council notes that the 1994 programme of priority work in the field of justice and home affairs, adopted by the Council at its meeting in Brussels on 29 and 30 November 1993, included, as a priority measure, a decision to conclude work in the field of the admission of self-employed persons.
3. The Council welcomes the progress achieved as a result of the signing of the final act and agreements under the Uruguay Round in Marrakesh on 15 April 1994 towards free international trade for the promotion of investment and the creation of jobs.
4. The Council takes the view that, to a certain extent, the question of the admission of persons for the purposes of pursuing a salaried activity and that of the admission of self-employed persons can be treated distinctly. The admission of persons for the purpose of an independent economic activity who add value (investment, innovation, transfer of technology, job creation) to the economy of the host country is of benefit. Artists exercising an independent activity of significance may also be admitted.
5. The Council considers that third-country nationals should not be admitted to a Member State for the purposes of pursuing an independent economic activity when the latter is of no economic benefit to that State or any of its regions.
6. The Council considers it necessary to ensure that persons who are attempting to find employment in a dependent working relationship are not admitted as self-employed persons.
7. The Council also considers that it is necessary to avoid persons establishing themselves and embarking on a self-employed occupation without having the appropriate qualifications and/or financial means and to avoid their entering into a dependent working relationship.
8. The Council agrees not to deal in this resolution with the question of third-country nationals legally resident on a permanent basis in the territory of a Member State although they do not have the right to admission or residence in another Member State. It agrees to examine this question at a later date.
9. The Council accordingly agrees that the national policies of Member States in respect of third-country nationals seeking admission to, or permission to remain in, their territories in order to engage in a self-employed occupation should be governed by the principles set out below, which may not be relaxed by Member States in their national legislation. It agrees to have regard to these principles in any proposals for the revision of national legislation. The Member States will further endeavour to seek to ensure by 1 January 1996 that national legislation is in conformity with such principles. The principles are not legally binding on Member States and do not afford a ground for action by individuals.
10. The Council agrees that there shall be a regular review of the transposition of this resolution and of the need for amendments to it.
11. The Council also confirms that the application of these principles is no bar to the application of national rules on law and order, public health and national security.

B. Persons to whom this resolution does not apply

The harmonization principles do not apply to:

- persons who have right of free movement under Community law, i. e. nationals of Member States, nationals of EFTA countries parties to the Agreement on the European Economic Area and members of their families,
- third-country nationals who have been allowed admission for the purpose of family reunification to join nationals of a Member State or a third-country resident in the Member State concerned,
- third-country nationals whose access to employment is covered by rights stemming from agreements concluded with third countries which are governed by Community law and by bilateral and multilateral agreements, such as GATT, GATS or OECD agreements,
- third-country nationals entering the Member States in order to engage in paid employment. Such persons are covered by the principles set out in the resolution on limitations on admissions of third-country nationals to the Member States for employment adopted by the Council on 20 and 21 June 1994,
- third-country nationals entering the Member States for study purposes. Such persons are covered by the principles to be set out in the resolution on the admission of third-country nationals to the Member States for study purposes.

C. General principles*Point 1*

1. This Resolution concerns only individuals and does not affect the setting up of firms.
2. 'Activity as a self-employed person' means any activity carried out in a personal capacity or in the legal form of a company or firm within the meaning of the second paragraph of Article 58 of the EC Treaty without being answerable to an employer in either case.
3. Only those associates actively involved and whose presence is necessary in pursuing the company's or firm's aims and in its management may be authorized to establish themselves in the host Member State's territory. In cases where those associates do not have a majority or substantial shareholding in the company or firm, Member States may reserve the right not to admit them except in the case of salaried persons when they have received authorization to work.

Point 2

1. Member States may allow third-Country nationals wishing to pursue activities as self-employed persons to enter their territory where it has been duly established that that activity will produce the benefits referred to in Section A (4) or corresponds to the activity referred to in the last sentence of Section A (4) as required by each Member State and that general legal provisions governing entry and residence have been complied with.
2. The admission procedure should ensure that persons who quite obviously wish to engage in paid employment or whose partnership or directorship amounts to disguised paid employment are not admitted as self-employed persons. Without prejudice to the application of point 8 (2), once admitted, the admission to activities as a self-employed person does not extend to looking for or accepting a job on the labour market.

Point 3

1. Requests for admission must be submitted to the authorities of the host Member State which are competent under national law through the consular or diplomatic representation of the State or through another national competent authority designated for this purpose in the home country or the country of origin of the person seeking admission to pursue activities as a self-employed person.
2. Requests for admission must be accompanied by information which can be used to assess whether the planned activity meets the preconditions referred to under point 2, and also by documentary evidence that the activity will be carried out in accordance with the relevant national legislation.
3. The following could, for example, be required for assessing the preconditions referred to under point 2 in accordance with national legislation:
 - documents indicating the nature, scale and duration of the activity in which the person wishes to engage,
 - documents indicating the number of staff likely to be required,
 - a description of the premises where the activity will be carried out, which should be appropriate for it,
 - evidence of the funds available for the intended purpose.
4. The following could for example be required for assessing compliance with legislation in force, in accordance with national legislation:
 - proof that the self-employed person meets the conditions of the host Member State regarding professional qualifications and access to the occupation,

- in the case of companies or firms, the instrument of incorporation, evidence of publication or registration thereof, and the names of the directors and managerial staff and of the associates authorized to act on their behalf,
- proof such as police documentation or similar documents, showing the integrity of the person concerned.

Point 4

1. Authorization to engage in a self-employed occupation will be granted in accordance with the provisions of national aliens' legislation and in writing, for example in the form of a passport stamp or other document. Such authorization will be personal and non-transferable.
2. The validity of the initial authorization may be limited in time. Upon application, it may be extended for a further period and/or be of unlimited validity, if the conditions for access continue to obtain as provided for in national legislation.

Point 5

1. All requests for renewal must, where so required under Member States' national legislation, be accompanied by documentary evidence that the self-employed person offers guarantees for the continued orderly pursuit of his occupation.
2. At least at the time when any renewal application referred to under point 4 (2) is submitted, a check may be made on the bona fide nature of the activity engaged in, whether it still corresponds to the activity for which authorization was given, the ability of the person concerned to support himself by the income from that activity and its continuing compliance with the preconditions referred to under point 2 (1).
3. Any further checks which Member States may make thereafter could in principle be limited.

Point 6

1. Under the conditions laid down by national law, Member States may grant third-country nationals wishing to provide a service, leave to enter their territory with authorization to carry out the relevant work for the performance of the service.
2. 'Service provider' means a self-employed person (residing abroad) whose services are sought by a

person residing in a Member State in order to carry out, against remuneration, a specific task over a specific period.

Point 7

Persons already present in the territory of a Member State as students, trainees, seasonal workers, service providers, contract workers or for other reasons will not as a general rule be permitted to extend their stay for the purpose of establishing themselves as self-employed persons. Such persons must leave the country once the purpose of stay on the basis of which they were given leave to enter the country has ceased to apply.

Point 8

1. In principle, care must be taken to ensure that persons admitted to pursue activities as self-employed persons do not eventually enter into a paid employment relationship.
2. Member States may allow self-employed persons who have acquired the right to long-term/permanent residence to seek where appropriate a work permit in order to obtain paid employment.

Point 9

The spouse and unmarried children under a maximum age, varying between 16 and 18 years depending on the Member State concerned, of a self-employed person will in principle be admitted to join that person, subject to the conditions set out in the resolution concerning family reunification adopted by the Ministers responsible for immigration questions of the European Union on 1 June 1993.

Point 10

1. Member States' arrangements enabling them to refuse admission on grounds of public security and public order shall not be affected by this resolution.
2. The provisions of this resolution shall not affect Member States' provisions governing trades and professions or arrangements concerning the mutual recognition of vocational qualifications.

Point 11

Nothing in this resolution prevents a Member State from reserving the right to admit, subject to its national law, third-country nationals who make very substantial investments in the commerce and industry of that Member State where there are strong economic reasons justifying exemption from those principles in this resolution that limit the business activities in which the third-country national is engaged.

ANNEX I.3

COUNCIL RESOLUTION

of 30 November 1994

on the admission of third-country nationals to the territory of the Member States for study purposes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 thereof,

HEREBY ADOPTS THIS RESOLUTION:

A. General considerations

1. The Council recalls that, in the report adopted by the Maastricht European Council (December 1991) from the Ministers responsible for immigration and asylum policy, priority was given to the harmonization of rules for the admission of students from third countries. In the 1994 programme of work on justice and home affairs, which the Council approved at its meeting on 29 and 30 November 1993 in Brussels, the completion of work on the admission of students was also given priority status.
2. The Council confirms that the international exchange of students and academics is desirable; it acknowledges that the education of students and the exchange of academics have positive implications for relations between the Member States and the States of origin.
3. The Council agrees that, at the end of their studies, students must in principle return to their countries of origin so that the knowledge and skills they have acquired are made available to those countries.
4. The Council considers it is important to ensure that the admission of third-country nationals to study in the Member States for a limited period in principle does not turn into permanent immigration. Similarly, the Council considers it is necessary to devise suitable systems to prevent those who are mainly seeking employment from receiving authorization to stay on as students.
5. The Council agrees not to regulate via this resolution the issue of third-country nationals lawfully resident on a permanent basis in the territory of a Member State, but who have no right of admission and residence in another Member State.

This does not affect the position of third-country nationals who are already covered or who may, in the future, be covered by bilateral agreements between the Member States regarding the cooperation between institutions of higher education.

6. The Council agrees that the national policies of Member States in respect of the admission of third-country nationals for study purposes should be governed by the principles set out below, which may not be relaxed by Member States in their national legislation.

The Council agrees to have regard to these principles in any proposals for the revision of national legislation.

The Member States will further endeavour to seek to ensure by 1 January 1996 that national legislation is in conformity with such principles. The principles are not legally binding on Member States and do not afford a ground for action by individuals.

7. The Council agrees that there shall be a regular review of the transposition of this resolution and of the need for amendments to it.
8. The Member States should facilitate the admission and residence of students from third countries within the framework of special cooperation programmes, the financing of which is secured at national or Community level.
9. Application of the said principles does not prevent application of national rules on public policy, public health or safety.

B. Persons exempt from the scope of this resolution

The principles of harmonization will not apply to:

- individuals who enjoy the right of freedom of movement under Community law, i.e. nationals of the Member States, nationals of the EFTA countries which are parties to the Agreement on the European Economic Area and members of their families,

- third-country nationals who have been admitted for the purposes of family reunification to take up residence with nationals of a Member State or third country who reside in the Member State in question.

C. Principles by which the policies of the Member States will be guided

1. General criteria

Within the meaning of these principles, a student is a national of a third country admitted by a State or State-recognized higher education institution or a comparable institution in a Member State in order to:

- take up a course of study,
- study for a doctorate, or
- pursue academic activity following a course of higher education within the framework of further study or training, where the earning of income is not the principal aim.

It should also be noted that for the purposes of this resolution school pupils and apprentices are not included.

For the purpose of this resolution, a person who participates in a course aimed at preparing for a specific course of university studies (e.g. providing language training) shall also be deemed to be a student.

2. Requirements for admission

A national of a third country who requests admission as a student will have to prove to the competent authorities of the Member State that he/she:

- fulfils all the requirements applicable to foreigners as regards entry and stay in the territory of the Member State,
- has a firm offer of admission to a State or State-recognized higher education institution or a comparable institution appropriate to his/her studies for a course of study as a main activity and is so required by national legislation that this offer concurs with requirements made by the competent immigration authorities.

Member States may also request proof of continuity between previous studies and studies to be undertaken in the host country,

- has the financial means required to support the cost of his/her studies and subsistence for himself/herself so that during his/her stay the

student does not need to claim social assistance in the host Member State and the earning of an income is not the principal aim,

- if required by national legislation, has health cover for all risks in the host Member State.

A Member State may also require the student to satisfy the immigration authorities that he/she would return to his/her own country on completion of studies.

A Member State may permit persons to enter who are interested in preparing their application for studies in the respective State or who can demonstrate a genuine and realistic plan for undertaking a course of study. It may be permitted for the person concerned not to have to leave the country in order to obtain an extension of his/her authorization to stay.

Nationals of third countries who entered the Member State with the aim of working there in an employed or self-employed capacity shall on the basis of this resolution not be admitted in principle to engage in study as a main activity.

3. Authorization to reside

The duration of residence is limited to the length of the course.

The length of the course is dictated by the duration of studies in the chosen subject. At the end of the course of study, or if the student abandons his/her studies, authorization to reside expires. Any change in subject will involve a change in the reason for residence which, as a rule, argues against a fresh authorization or an extension of the existing one if it does not take place within the initial phase of the studies.

Proof of authorization to reside will take the form of an entry in the student's passport or a particular personal identity card.

If the period of study is longer than one year, the authorization can initially be limited to a one-year period; in that case it can be renewed on a yearly basis. Renewal will depend on the student's ability to prove that he/she fulfils the requirements for its original issue and that he/she has passed any tests or examinations set by the institution in which he/she is studying.

At the end of his/her course of study, or if the student abandons his/her studies, a national of a third country will in principle have to leave the territory of the Member State; if he/she wishes to return to that

country he/she will have to re-apply for authorization to re-enter.

4. *Employment authorization*

In principle a national of a third country who is studying in the territory of a Member State may not engage in gainful employment, either in a self-employed or employed capacity. Member States may allow short-term or subsidiary jobs. Such jobs must not affect the continuation of his/her studies; neither must they, in principle, represent an income vital for the subsistence of the student.

5. *Admission of family members*

National provisions will apply as regards the possible admission of family members and the taking-up of employment or study by the spouse.

Once the third country national has ended his/her studies, the spouse and children to whom authorization to stay was granted are also required to leave the territory of the Member State if they have no other authorization to remain.

ANNEX I.4

COUNCIL RESOLUTION

of 20 June 1995

on minimum guarantees for asylum procedures

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 thereof,

Determined, in keeping with the common humanitarian tradition of the Member States, to guarantee adequate protection to refugees in need of such protection in accordance with the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967,

Recalling the Member States' commitments under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,

Noting that, under national legislation, Member States may exceptionally allow aliens to stay for compelling reasons other than those covered by the 1951 Geneva Convention,

Affirming the intention of Member States to apply the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities,

Convinced that this requires decisions on asylum applications to be taken on the basis of equivalent procedures in all Member States and common procedural guarantees to be adopted for asylum-seekers to that end, taking into account the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) and Recommendation R (81) 16 of the Committee of Ministers of the Council of Europe,

HEREBY ADOPTS THIS RESOLUTION:

I. The guarantees provided for in this resolution will apply to the examination of asylum applications within the meaning of Article 3 of the Dublin Convention, with the exception of procedures to determine the Member State responsible under the said Convention. The specific guarantees applicable to those procedures will be determined by the Executive Committee set up by the Dublin Convention.

II. Universal principles concerning fair and effective asylum procedure

1. Asylum procedures will be applied in full compliance with the 1951 Geneva Convention, and the 1967 New York Protocol relating to the Status of Refugees and other obligations under international law in respect of refugees and human rights. In particular, the procedures will comply fully with Article 1 of the 1951 Convention concerning the definition of a refugee, Article 33 relating to the principle of 'non-refoulement' and Article 35 concerning cooperation with the Office of the UNHCR, including the facilitation of its duty of supervising the application of the Convention.
2. In order to ensure effectively the principle of 'non-refoulement', no expulsion measure will be carried out as long as no decision has been taken on the asylum application.

III. Guarantees concerning the examination of asylum applications

3. The regulations on access to the asylum procedure, the basic features of the asylum procedure itself and the designation of the authorities responsible for examination of asylum applications are to be laid down in the individual Member State's legislation.
4. Asylum applications will be examined by an authority fully qualified in the field of asylum and refugee matters. Decisions will be taken independently in the sense that all asylum applications will be examined and decided upon individually, objectively and impartially.
5. When examining an application for asylum the competent authority must, of its own initiative take into consideration and seek to establish all the relevant facts and give the applicant the opportunity to present a substantial

description of the circumstances of the case and to prove them. For his part the applicant must present all the facts and circumstances known to him and give access to all the available evidence.

Recognition of refugee status is not dependent on the production of any particular formal evidence.

6. The authorities responsible for the examination of the asylum application must be fully qualified in the field of asylum and refugee matters. To this effect, they must:
 - have at their disposal specialized personnel with the necessary knowledge and experience in the field of asylum and refugee matters, who have an understanding of an applicant's particular situation,
 - have access to precise and up-to-date information from various sources, including information from the UNHCR, concerning the situation prevailing in the countries of origin of asylum-seekers and in transit countries,
 - have the right to ask advice, whenever necessary, from experts on particular issues, e.g. a medical issue or an issue of a cultural nature.
7. The authorities responsible for border controls and the local authorities with which asylum applications are lodged must receive clear and detailed instructions so that the applications, together with all other information available, can be forwarded without delay to the competent authority for examination.
8. In the case of a negative decision, provision must be made for an appeal to a court or a review authority which gives an independent ruling on individual cases under the conditions laid down in paragraph 4.
9. Member States must ensure that the competent authorities are adequately provided with staff and equipment so that they can discharge their duties promptly and under the best possible conditions.

IV. Rights of asylum-seekers during examination, appeal and review procedures

10. An asylum-seeker must have an effective opportunity to lodge his asylum application as early as possible.

11. Declarations made by the asylum-seeker and other details of his application are very sensitive data, requiring protection. National law must therefore provide adequate data protection guarantees, particularly as against the authorities of the asylum-seeker's country of origin.

12. As long as the asylum application has not been decided on, the general principle applies that the applicant is allowed to remain in the territory of the State in which his application has been lodged or is being examined.

13. Asylum-seekers must be informed of the procedure to be followed and of their rights and obligations during the procedure, in a language which they can understand. In particular:

- they must be given the services of an interpreter, whenever necessary, for submitting their case to the authorities concerned. These services must be paid for out of public funds, if the interpreter is called upon by the competent authorities,
- in accordance with the rules of the Member State concerned, they may call in a legal adviser or other counsellor to assist them during the procedure,
- they must be given the opportunity, at all stages of the procedure, to communicate with the Office of the UNHCR or with other refugee organizations which may be working on behalf of the UNHCR in the Member State concerned, and vice versa.

In addition, asylum-seekers may enter into contact with other refugee organizations under procedures laid down by the Member States.

The opportunity for an asylum-seeker to communicate with the UNHCR and other refugee organizations need not necessarily prevent implementation of a decision,

- the representative of the Office of the UNHCR must be given the opportunity to be informed of the course of the procedure, to learn about the decisions of the competent authorities and to submit his observations.

14. Before a final decision is taken on the asylum application, the asylum-seeker must be given the opportunity of a personal interview with an official qualified under national law.
15. The decision on the asylum application must be communicated to the asylum-seeker in writing. If the application is rejected, the asylum-seeker must be informed of the reasons and of any possibility of having the decision reviewed. The asylum-seeker must have the opportunity, inasmuch as national law so provides, to acquaint himself with or be informed of the main purport of the decision and any possibility of appeal, in a language which he understands.
16. The asylum-seeker must be given an adequate period of time within which to appeal and to prepare his case when requesting review of the decision. These time limits must be communicated to the asylum-seeker in good time.
17. Until a decision has been taken on the appeal, the general principle will apply that the asylum-seeker may remain in the territory of the Member State concerned. Where the national law of a Member State permits a derogation from this principle in certain cases, the asylum-seeker should at least be able to apply to the bodies referred to in paragraph 8 (court or independent review authority) for leave to remain in the territory of the Member State temporarily during procedures before those bodies, on the grounds of the particular circumstances of his case; no expulsion may take place until a decision has been taken on this application.

Manifestly unfounded asylum applications

18. Manifestly unfounded asylum applications within the meaning of the resolution adopted by the Ministers responsible for immigration at their meeting on 30 November and 1 December 1992 will be dealt with in accordance with that resolution. Subject to the principles laid down therein, the guarantees laid down in the present resolution will apply.
19. By way of derogation from paragraph 8, Member States may exclude the possibility of lodging an appeal against a decision to reject an application if, instead, an independent body which is distinct from the examining authority has already confirmed the decision.
20. The Member States observe that, with due regard for the 1951 Geneva Refugee

Convention, there should be no *de facto* or *de jure* grounds for granting refugee status to an asylum applicant who is a national of another Member State.

On this basis, a particularly rapid or simplified procedure will be applied to the application for asylum lodged by a national of another Member State, in accordance with each Member State's rules and practice, it being specified that the Member States continue to be obliged to examine individually every application for asylum, as provided by the Geneva Convention to which the Treaty on European Union refers.

21. Member States may provide for exceptions to the principle in paragraph 17 in limited cases, under national law, when, in consideration of objective criteria extraneous to the application itself, an application is manifestly unfounded in accordance with points 9 and 10 of the resolution adopted by the Ministers responsible for immigration on 30 November and 1 December 1992. However, in such cases it should at least be guaranteed that the decision on the application is taken at a high level and that additional sufficient safeguards (e.g. the same assessment, before the execution of the decision, by another authority which must be of a central nature and have the necessary knowledge and experience in the field of asylum and refugee law) ensure the correctness of the decision.
22. Member States may provide for exceptions to the principle in paragraph 17 with respect to asylum applications where, under national law, the host third-country concept is applicable in accordance with the resolution adopted by the Ministers responsible for immigration at their meeting on 30 November and 1 December 1992. In such cases Member States may also provide, by way of derogation from paragraph 15, that the decision rejecting the application, its underlying reasons and the asylum-seeker's rights may be communicated to him orally instead of in writing. Upon request, the decision will be confirmed in writing. The third-country authorities must, where necessary, be informed that the asylum application was not examined as to substance.

Asylum applications at the border

23. Member States will adopt administrative measures ensuring that any asylum-seeker

arriving at their frontiers is afforded an opportunity to lodge an asylum application.

24. Member States may, inasmuch as national law so provides, apply special procedures to establish, prior to the decision on admission, whether or not the application for asylum is manifestly unfounded. No expulsion measure will be carried out during this procedure.

Where an application for asylum is manifestly unfounded, the asylum-seeker may be refused admission. In such cases, the national law of a Member State may permit an exception to the general principle of the suspensive effect of the appeal (paragraph 17). However, it must at least be ensured that the decision on the refusal of admission is taken by a ministry or comparable central authority and that additional sufficient safeguards (for example, prior examination by another central authority) ensure the correctness of the decision. Such authorities must be fully qualified in asylum and refugee matters.

25. In addition, where, under national law, the host third country concept is applicable in accordance with the resolution adopted by the Ministers responsible for immigration at their meeting on 30 November and 1 December 1992, Member States may provide for exceptions to the principles in paragraphs 7 and 17. Member States may also provide, by way of derogation from paragraph 15, that the decision rejecting the application, its underlying reasons and any possibility of appeal may be communicated to the asylum-seeker orally instead of in writing. Upon request, the decision will be confirmed in writing.

The procedure in the cases referred to in the first sentence of the preceding subparagraph may be carried out before the decision on admission has been taken. In such cases, admission may be refused.

V. Additional safeguards for unaccompanied minors and women

Unaccompanied minors

26. Provision must be made for unaccompanied minors seeking asylum to be represented by a specifically appointed adult or institution if they do not have capacity under national law. During the interview, unaccompanied minors

may be accompanied by that adult or representatives of that institution. These persons are to protect the child's interests.

27. When an application for asylum from an unaccompanied minor is examined, his mental development and maturity will be taken into account.

Women

28. Member States must endeavour to involve skilled female employees and female interpreters in the asylum procedure where necessary, particularly where female asylum-seekers find it difficult to present the grounds for their application in a comprehensive manner owing to the experiences they have undergone or to their cultural origin.

VI. Residence where the criteria for classification as a refugee are met

29. A Member State which, notwithstanding national provisions on application of the host third-country concept, has examined an asylum application must grant refugee status to an asylum-seeker fulfilling the criteria of Article 1 of the Geneva Convention. Member States may provide, in accordance with their national law, that they will not make full use of the exclusion clauses contained in the Geneva Convention.

The refugee should in principle be granted the right of residence in the Member State concerned.

VII. Other cases

30. This resolution does not affect the laws and regulations of the various Member States regarding the cases covered in point 11 of the resolution on manifestly unfounded asylum applications adopted by the Ministers responsible for immigration at their meeting on 30 November and 1 December 1992.

VIII. Further action

31. Member States will take account of these principles in the case of all proposals for

changes to their national legislation. In addition, Member States will strive to bring their national legislation into line with these principles by 1 January 1996. In conjunction with the Commission and in consultation with the UNHCR, they will periodically review the operation of these principles and consider whether any additional measures are necessary.

IX. More favourable provisions

32. Member States have the right to enact national provisions on guarantees provided by procedures applicable to asylum-seekers which are more favourable than those contained in the common minimum guarantees.
-

ANNEX II.1

COUNCIL RECOMMENDATION

of 30 November 1994

concerning the adoption of a standard travel document for the expulsion of third-country nationals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 (3) (c) thereof,

Whereas combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States is regarded as a matter of common interest;

Noting that consultation and cooperation on the execution of expulsion measures is considered a priority action in the 1994 work programme;

Acknowledging that a recent seminar on expulsion measures showed that the great majority of Member States experience difficulties in cases of third-country

nationals possessing no travel documents who are required to be expelled from their territory;

Desirous of improving the efficiency with which expulsion measures are executed,

HEREBY RECOMMENDS THAT:

- with effect from 1 January 1995 the attached standard travel document valid for a single journey shall be used as appropriate by all Member States in the case of third-country nationals being expelled from the territory of the Union,
- the document shall be established in the language of the Member State executing the expulsion order,
- the document, where appropriate, shall be translated into both French and English.



MEMBER STATE

.....

Reg. No:
N° d'enregistrement

Doc. No:
N° doc.

Valid for one journey from:
Valable pour un seul voyage de

to:
à

Name:
Nom

Forename:
Prénom

Date of birth:
Date de naissance

Height:
Taille

Distinguishing marks:
Signes particuliers

Nationality:
Nationalité

Address in home country (if known):

.....

Adresse dans le pays d'origine (si connu)

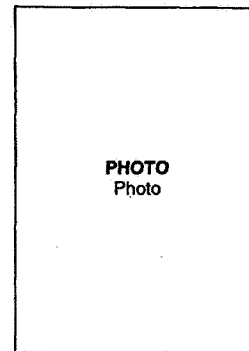
Issuing authority:
Autorité de délivrance

Issued at:
Lieu de délivrance

Seal/Stamp
Sceau:Cachet

Issued on:
Date de délivrance

Signature:
Signature



Remarks/Observations:

.....

.....

.....

ANNEX II.2

COUNCIL RECOMMENDATION

of 30 November 1994

concerning a specimen bilateral readmission agreement between a Member State and a third country

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 (3) thereof,

Recalling that these policies are regarded as matters of common interest under the Treaty,

Determined to combat unauthorized immigration to the Member States,

Noting that the laying down of principles which must appear in bilateral and multilateral readmission agreements appears in the action plan in the field of justice and home affairs which was approved by the Council and endorsed by the European Council in December 1993,

Recalling that these principles were approved by the Council in May 1994 and that it was agreed to devise a specimen readmission agreement on the basis of these principles at a later date,

Whereas the specimen readmission agreement is to be used flexibly by the Member States and that it may be adapted to the particular needs of the Contracting Parties;

Hereby RECOMMENDS that with effect from 1 January 1995 the specimen agreement attached should be used by the Member States as a basis for negotiation with third countries on the conclusion of readmission agreements.

Annex to Annex II.2

SPECIMEN

AGREEMENT

between the Government of (... Member State ...)
and
the Government of (... third country ...)
on the readmission of persons residing without authorization
(*Readmission Agreement*)

THE GOVERNMENT OF (... MEMBER STATE ...)

and

THE GOVERNMENT OF (... THIRD COUNTRY ...),

hereinafter referred to as the 'Contracting Parties', desirous of facilitating the readmission of persons staying illegally on the territory of the other Contracting Party, i.e. persons who do not, or who no longer, fulfil the conditions in force for entry or residence, and of facilitating the transit of persons in a spirit of cooperation and on the basis of reciprocity,

HAVE AGREED AS FOLLOWS:

*Article 1***Readmission of own nationals**

1. Each Contracting Party shall readmit at the request of the other Contracting Party and without any formality persons who do not, or who no longer, fulfil the conditions in force for entry or residence on the territory of the requesting Contracting Party provided that it is proved or may be validly assumed that they possess the nationality of the requested Contracting Party. The same shall apply to persons who have been deprived of the nationality of the requested Contracting Party since entering the territory of the requesting Contracting Party without at least having been promised naturalization by the requesting Contracting Party.

2. Upon application by the requesting Contracting Party, the requested Contracting Party shall without delay issue the persons to be readmitted with the travel documents required for their repatriation.

3. The requesting Contracting Party shall readmit such persons again under the same conditions if checks reveal that they were not in possession of the nationality of the requested Contracting Party when they departed from the

territory of the requesting Contracting Party. This shall not apply if the readmission obligation is based on the fact that the requested Contracting Party deprived the person in question of its nationality after that person had entered the territory of the requesting Contracting Party without that person at least having been promised naturalization by the requesting Contracting Party.

*Article 2***Readmission in the case of third-country nationals who entered via the external frontier**

1. The Contracting Party via whose external frontier a person can be proved, or validly assumed, to have entered who does not meet, or who no longer meets, the conditions in force for entry or residence on the territory of the requesting Contracting Party shall readmit the person at the request of that Contracting Party and without any formality.

2. For the purposes of this Article, the external frontier shall be deemed to be the first frontier to have been crossed which is not a frontier common to the Contracting Parties.

3. The readmission obligation pursuant to paragraph 1 shall not apply in respect of a person who was in possession of a valid residence permit issued by the requesting Contracting Party when the person entered the territory of that Contracting Party or who was issued with a residence permit by that Contracting Party after entering its territory.

4. The Contracting Parties shall make every effort to give priority to deporting nationals of an adjacent State to their country of origin.

Article 3

Readmission of nationals of third countries by the Contracting Party responsible for the entry

1. If a person who has arrived in the territory of the requesting Contracting Party does not fulfil the conditions in force for entry or residence and if that person is in possession of a valid visa issued by the other Contracting Party or a valid residence permit issued by the requested party, that Contracting Party shall readmit the person without any formality upon application by the requesting Contracting Party.

2. If both Contracting Parties issued a visa or a residence permit, responsibility shall reside with the Contracting Party whose visa or residence permit expires last.

3. Paragraphs 1 and 2 shall not apply where a transit visa was issued.

Article 4

Residence permits

A residence permit pursuant to Article 2 (3) and Article 3 means an authorization of any type issued by one Contracting Party, entitling the person to reside on the territory of that Contracting Party. This shall not include temporary permission to reside on the territory of one of the Contracting Parties in connection with the processing of an asylum application.

Article 5

Time limits

1. The requested Contracting Party shall reply to readmission requests addressed to it without delay, and in any event within a maximum of 15 days.

2. The requested Contracting Party shall take charge of persons whose readmission has been agreed to without delay, and in any event, within a maximum of one month. Upon application by the requesting Contracting Party, this time limit may be extended by the time taken to deal with legal or practical obstacles.

Article 6

Time limit after which the readmission obligation will lapse

The application for readmission must be submitted within a maximum of one year of the Contracting Party noting the illegal entry and presence of the said national of a third country on its territory.

Article 7

Transit

1. Without prejudice to Article 11, the Contracting Parties shall allow third-country nationals to pass through their territory in transit if the other Contracting Party so requests and if admission to other possible States of transit and to the State of destination is assured.

2. It shall not be essential for the requested Contracting Party to issue a transit visa.

3. Notwithstanding any authorization issued, persons taken in charge for transit purposes may be returned to the other Contracting Party if circumstances within the meaning of Article 11 subsequently arise or come to light which stand in the way of a transit operation or if the onward journey or admission by the State of destination is no longer assured.

4. The Contracting Parties shall endeavour to restrict transit operations to aliens who cannot be returned to their States of origin directly.

Article 8

Data protection

In so far as personal data have to be communicated in order to implement this Agreement, such information may concern only the following:

1. the particulars of the person to be transferred and, where necessary, of the members of the person's family (surname, forename, any previous names, nicknames or pseudonyms, aliases, date and place of birth, sex, current and any previous nationality);

2. passport, identity card and other identity and travel documents and *laissez-passer* (number, period of validity, date of issue, issuing authority, place of issue, etc.);
3. other details needed to identify the persons to be transferred;
4. stopping places and itineraries;
5. residence permits or visas issued by one of the Contracting Parties;
6. in the cases covered by Article 7, the place where the asylum application was submitted and the date of submission of any previous asylum application, the date of submission of the present asylum application, the present stage of the procedure and the content of any decision taken.

Article 9

Costs

1. The costs of transporting persons taken in charge pursuant to Articles 1, 2 and 3 shall be borne by the requesting Contracting Party as far as the border of the requested party.
2. The costs of transit as far as the border of the State of destination, and, where necessary, the costs arising from return transport, shall be borne by the requesting Contracting Party in accordance with Article 7.

Article 10

Committee of Experts

1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a Committee of Experts to:
 - (a) monitor application of this Agreement;
 - (b) submit proposals for resolving problems associated with the application of this Agreement;
 - (c) propose amendments and additions to this Agreement;
 - (d) prepare and recommend appropriate measures for combating illegal immigration.
2. The Contracting Parties shall reserve the right to agree to the proposals and measures or not to do so.
3. The Committee shall be composed of three representatives of each Contracting Party. The

Contracting Parties shall appoint the chairman and his deputies from among them, and shall also appoint alternate members. Additional experts may be associated with the consultations.

4. The Committee shall meet at the initiative of one of the chairmen and at least once a year.

Article 11

Clause stipulating that international agreements/conventions shall not be affected

These agreements shall not affect the Contracting Parties' obligations arising from:

1. the Convention of 28 July 1951 on the Status of Refugees as amended by the Protocol of 31 January 1967 on the Status of Refugees;
2. international conventions on extradition and transit;
3. the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms;
4. international conventions on asylum, in particular under the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in a Member State of the European Community;
5. international conventions and agreements on the readmission of foreign nationals.

Article 12

Entry into force

This Agreement shall enter into force on the first day of the second month following its signature. It shall not be applied until the date agreed upon by the Contracting Parties in an exchange of notes.

Article 13

Suspension, termination

1. This Agreement is concluded for an indefinite period.
2. After informing the other Contracting Party each Contracting Party may suspend this Agreement by giving

notification on important grounds, in particular on the grounds of the protection of State security, public order or public health. The Contracting Parties shall notify each other of the cancellation of any such measure without delay via diplomatic channels.

3. After informing the other Contracting Party, each Contracting Party may terminate this Agreement on important grounds by giving notification.

4. The suspension or termination of this Agreement shall become effective on the first day of the month following the month in which notification was received by the other Contracting Party.

Done at ... this ... day of ... 19..

in two originals, one in the ... language and one in the ... language, each text being equally authentic.

*On behalf of the Government of
(... Member State ...)*

*On behalf of the Government of
(... third country ...)*

ANNEX II.3

COUNCIL RECOMMENDATION

of 24 July 1995

on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.1 (3) thereof,

Recalling that the Council has adopted a recommendation concerning a specimen bilateral readmission agreement between a Member State and a third Country ⁽¹⁾;

Whereas such readmission agreements are often accompanied by protocols laying down certain technical details for their implementation; whereas a series of guiding principles should therefore be adopted for Member States to use as a basis when negotiating such protocols;

RECOMMENDS that, as from 1 July 1995, the Member States should use the following guiding principles as a basis for negotiations with third countries when drawing up protocols on implementing readmission agreements.

I. Readmission procedures

1. Common forms

For the return/readmission of persons residing without authorization, it is recommended that provision be made for the Contracting Parties to use common forms. The forms concerned are as follows:

- record of the return/readmission of a person under the simplified procedure,
- request for the readmission/transit of a person,
- record of the return/readmission of a person.

Member States could use the three documents annexed hereto as a basis for drawing up such forms, incorporating the relevant headings from them

⁽¹⁾ See page 20 of this Official Journal.

according to the specific nature of relations with the third country party to the agreement and the resulting information requirements.

The need for simplicity and speed should be the prime concern.

2. Return/readmission under the simplified procedure

Persons apprehended in a border area are to be returned/readmitted under the simplified procedure.

A provision allowing this should therefore be included in the protocol.

The Contracting Parties will determine the total time taken by the simplified readmission procedure (comprising the submission and answering of all requests), which should in any event be very short. Member States may take as a basis agreements already signed by some of them in which that time does not exceed 48 hours.

Formalities for the return of a person should be simplified in the case of this procedure. Notification of the return would be given in any form (by telephone, fax, telex or orally) and it would be carried out directly by the local border authorities.

If necessary, a record (see I.1) may be drawn up.

3. Return/readmission under the normal procedure

This procedure is applicable where a person cannot be returned or readmitted under the simplified procedure.

The readmission request should be made and the answer given in writing. The Parties could take as a basis the document annexed hereto.

Answers should be compulsory and be given within a short time determined by the Parties. In accordance

with the specimen draft bilateral agreement, the time in question must not exceed 15 days. However, it would be desirable for Member States to take as a basis agreements already signed in which this time is shorter.

II. Means of identifying persons to be readmitted

1. *Effect of proof or a presumption*

Proof produced of nationality and entry should have to be accepted by the Parties without further investigation.

A presumption established of nationality and entry should be deemed accepted by the Parties unless the requested party proves otherwise.

2. *Proof or a presumption of nationality or of entry via an external frontier*

The protocol should clearly lay down the means of proving or establishing a presumption of nationality.

Nationality may be proved by means of:

- nationality papers which can be definitely ascribed to a particular person,
- any type of passport (national, diplomatic or official duty passport or officially issued passport substitutes with a photograph) or any other travel document indicating nationality,
- consular registration cards,
- identity cards (even if provisional or temporary),
- a minor's travel document in lieu of passport,
- provisional identity papers,
- service record books and military passes.

A presumption of nationality may be established in particular by means of:

- specific information from the official authorities,
- an official service pass,

- a company pass,
- a driving licence,
- an extract from register office records,
- a seaman's book,
- a bargeman's identity document,
- photocopies of any of the above documents,
- statements by witnesses,
- particulars supplied by the person concerned,
- the language of the person concerned.

The protocol should also clearly lay down the means of proving or establishing a presumption of entry via an external frontier, under Article 2 of the specimen readmission agreement.

Entry via an external frontier may be proved by means of:

- an entry stamp or equivalent entry in a travel document,
- an exit stamp of a State adjacent to a Member State, taking into account the travel route and the date of the frontier crossing,
- an entry stamp in a false or falsified passport,
- travel tickets which can formally establish entry across an external frontier,
- fingerprints taken by authorities at the time of crossing an external frontier.

A presumption of entry via an external frontier may be established in particular by means of:

- statements by the person to be transferred,
- statements by officials and other persons,
- fingerprints other than those taken by the authorities at the time of crossing an external frontier,
- travel tickets,
- hotel bills,
- cards for access to public or private amenities in the Member States,
- appointment cards for doctors, dentists etc.,

- data showing that the person to be transferred has used the services of a facilitator or travel agency.

III. Designation of the competent authorities

The protocol should stipulate that Ministers with responsibility for border controls are to designate the border posts which may be used for aliens' readmission and entry in transit and the central or local authorities competent to deal with readmission and transit requests.

The choice should be geared to efficiency and speed.

IV. Conditions for transit of third-country nationals under escort

In their relations with third-country Contracting Parties, Member States could make provision for the use of a readmission/transit form for requests for transit under escort in accordance with Article 7 of the specimen readmission agreement. They could use the appropriate form annexed hereto as a basis.

However, the parties could dispense with such formalities for the transit of a third-country national being

repatriated by one of the Contracting Parties via an airport in the other Contracting Party. In that event, the competent authority of the requesting party would notify the competent authority of the other party in good time of the intended repatriation, informing it of the identity of the person concerned, the flight details and the particulars of any official escorts.

V. Data protection

An article on data protection could be inserted; its content will largely depend on the legislation in force within Member States.

It should in any event be stipulated that information must be supplied only for the purposes for which the agreement has been concluded.

VI. Conditions of applicability of the protocol

It should be stipulated that the protocol is to enter into force at the same time as the readmission agreement, that its application is to be suspended upon suspension of the agreement's application and that it will cease to be applicable once the agreement is no longer applicable.

Annex 1 to Annex II.3 (*)

RECORD
of the return/readmission of a person under the simplified procedure

1. On (date) at (time) in (place)

the following person was transferred to (Name of readmitting country)

Forename and surname:

Date and place of birth:

Place of residence (. . .):

Nationality:

Identity established on the basis of:

.....

(Designation, series and number of document; when, where and by whom issued; other means of establishing identity if any)

2. Time, place, manner and motive of illegal entry
.....
.....
.....

(Brief description of the act)

3. Other reasons for transfer (applies to nationals of the Contracting Parties)
.....
.....
.....

4. Evidence or circumstances substantiating presumption of illegal entry
.....
.....
.....

5. Documents, money and other items to be transferred with the transferee
.....
.....
.....

6. Minors (. . .) to be transferred together with the person referred to in point 1 (Forename, surname, date of birth)
.....
.....
.....

(*) Where space is insufficient write on separate sheets and list them in point 7.

7. Annexes:

- (a)
- (b)
- (c)
- (d)
- (e)

This record was drafted in

copies in the

language(s)

.....

.....

Forename, surname and position of the transferring official

.....

Forename, surname and position of the receiving official

.....

(Signature)

.....

(Signature)

Annex 2 to Annex II.3

From: (Place and date)

..... (Designation of requesting authority)

Reference

.....

To:

..... (Designation of receiving authority)

REQUEST FOR READMISSION/TRANSIT OF A PERSON

1. Personal details

1.1. Surname:

1.2. Forenames:

1.3. Maiden name:

1.4. Also known as:

1.5. Nationality: Language:

1.6. Date of birth: 1.7. Place of birth:

1.8. Residence in country of departure:

1.9. Designation and number of international travel document, by whom issued, expiry date:

2. Circumstances of entry into the transferring State

2.1. Date and time of entry:

2.2. Place:

2.3. Circumstances of entry (in detail):
.....
.....

3. Stay in receiving State:

3.1. Date and time of entry:

3.2. Place of entry:

3.3. Duration of stay:

3.4. Place of stay:

3.5. Route to frontier:

.....

.....

.....

.....

.....

.....

3.6. Proof or grounds for presumption that a person not meeting or no longer meeting entry or residence requirements (illegal entry) entered via the external frontier:

.....

.....

.....

.....

.....

.....

.....

4. Special circumstances relating to the transferee:

4.1. Interpreter required for (indicate language):

4.2. Accompanying items (documents, cash, etc.):

.....

4.3. Indication of particularly dangerous person: (e. g. suspected of a serious offence, aggressive behaviour):

.....

.....

4.4. State of health: (possible reference to special medical care):

.....

.....

4.5. Minors (. . .) being transferred together with the person referred to in point 1 (forenames, surname and date of birth):

.....

.....

.....

.....

4.6. Applications submitted to the competent authorities of the requesting State by the transferee and position of the competent authority, including any applications for recognition of refugee status or right of asylum:

.....

.....

.....

5. Transit: ⁽¹⁾

5.1. Is the person to be admitted in transit?

.....

5.2. State of destination:

5.3. Possible additional transit States

.....

5.4. Admission guaranteed in any transit States and the States of destination:

Yes/No

(Underline whichever applies)

5.5. Is direct repatriation of the person to the country of origin possible?

Yes/No

(Underline whichever applies)

6. Proposed place, date and time of transfer

.....

.....

.....

7. Annexes

.....

.....

8. Confirmation of receipt of request (place, date, signature)

.....

.....

.....
(Signature)

⁽¹⁾ In matters of transit, particular attention must be paid to the recommendation regarding transit for the purposes of expulsion adopted by Ministers in 1992 (OJ No C 5, 10. 1. 1996, p. 5), above all with respect to the protection of human rights.

Annex 3 to Annex II.3

RECORD OF THE RETURN/READMISSION OF A PERSON

Place of transfer

Time and date of transfer

Returning authority

Readmitting authority

In response to the request submitted on
(Date)

by the person(s) listed below was/were readmitted by
(Returning State)

.....
(Readmitting State)

1.
(Surname, forename(s)) (Date of birth)

2.
(Surname, forename(s)) (Date of birth)

3.
(Surname, forename(s)) (Date of birth)

4.
(Surname, forename(s)) (Date of birth)

5.
(Surname, forename(s)) (Date of birth)

The following Annexes were handed over:

1.

2.

3.

4.

5.

Remarks:

.....
(Forename(s), surname and position of returning official)

.....
(Forename(s), surname and position of readmitting official)

.....
(Signature)

.....
(Signature)

ANNEX III.1

COUNCIL CONCLUSIONS

of 20 June 1994

concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular, Article K.1 thereof,

NOTES the progress made in asylum policy cooperation in recent years on the basis, in particular, of the programme approved by the Maastricht European Council,

Aware of the need to intensify such cooperation, AGREES to implement as soon as possible the new instruments available to it under the Treaty on European Union. They will make it possible to improve the effectiveness of the measures adopted in the framework of the Union in implementation of the priority programmes to be drawn up.

HAS TAKEN cognizance of the Commission report on the application of Article K.9 to asylum policy, as provided for in paragraph 2 of the declaration contained in the Final Act of the Treaty on European Union.

NOTES that, in the Commission's view, application of Article K.9 would offer certain advantages. It considers however, like the Commission, that the time is not yet right to propose such application so soon after the entry into force of the Treaty on European Union. Nevertheless, it believes that it might be advisable to reconsider this matter at a later date in the light of experience and by the end of 1995 at the latest.

ANNEX III.2

Means of proof in the framework of the Dublin Convention

(Text adopted by the Council on 20 June 1994)

I. Principles regarding the collection of evidence

The way in which examples of proof are used to determine the State responsible for examining an asylum application is fundamental to the implementation of the Dublin Convention of 15 June 1990.

Responsibility for processing an asylum application should in principle be determined on the basis of as few requirements of proof as possible.

If establishment of proof carried excessive requirements, the procedure for determining responsibility would ultimately take longer than examination of the actual application for asylum. In that case, the Convention would fail totally to have the desired effect and would even contradict one of its objectives since the delays would create a new category of 'refugees in orbit', asylum-seekers whose applications would not be examined until the procedure laid down under the Dublin Convention had been completed.

Under too rigid a system of proof the Member States would not accept responsibility and the Convention would be applied only in rare instances, while those Member States with more extensive national registers would be penalized since their responsibility could be proved more easily.

A Member State should also be prepared to assume responsibility on the basis of indicative evidence for examining an asylum application once it emerges from an overall examination of the asylum applicant's situation that, in all probability, responsibility lies with the Member State in question.

The Member States should jointly consider in a spirit of genuine cooperation on the basis of all the evidence available to them, including statements made by the asylum-seeker, whether the responsibility of one Member State can be consistently established.

Lists A and B are drawn up on the basis of those considerations.

II. General considerations regarding lists A and B

It was considered necessary to draw up two lists of means of proof: probative evidence as in list A and indicative evidence as in list B (see Annex).

The first (list A) sets out the means of probative evidence. These, as in list A, conclusively prove responsibility under the Dublin Convention, save where rebutted by evidence to the contrary (e.g. showing documents not to be genuine).

The second (list B) is not exhaustive and contains means of proof consisting of indicative elements to be used within the framework of the Dublin Convention. These are means of proof having indicative value. Indicative evidence as in list B may be sufficient to determine responsibility, depending on the weighing-up of evidence in a particular case. It is by nature rebuttable.

These lists may be revised in the light of experience.

It seems useful to indicate that the weight of proof of these elements may vary according to the circumstances of each individual case. Items will be classified as probative evidence or indicative evidence according to the point to be proved. For instance, a fingerprint may provide probative evidence of any asylum-seeker's presence in a Member State, yet form only indicative evidence as to whether the asylum-seeker entered the Community at a particular external frontier.

This distinction made it necessary to draw up two separate lists of probative evidence (list A) and indicative evidence (list B) for each point to be proved under the Dublin Convention; thus, annexed hereto is a breakdown of means of proof according to the point to be proved.

By the same token, the degree of probative force of official documents is not always the same from one Member State to another. The same document can be drawn up for different purposes or by different authorities, depending on the Member State concerned.

(a) *List A*

The probative evidence in list A provides conclusive proof of a Member State's responsibility for examining an asylum application, save where rebutted by evidence to the contrary (e.g. showing a document to be forged).

For this purpose, Member States will provide examples of the various types of administrative documents, on the basis of a version of List A. Specimens of the various documents will be reproduced in the joint handbook for the application of the Dublin Convention. This will make for greater efficiency and help the authorities to identify any false documents produced by asylum-seekers. Some of the items of proof in list A constitute the best possible instruments to be used for the application of Articles 4 and 5 (1), (2), (3) and (4) of the Dublin Convention.

(b) *List B*

List B contains indicative evidence the probative value of which in determining responsibility for examining an asylum application will be weighed up on a case-by-case basis.

These indications could be very useful in practice. They could not, however, irrespective of their number, constitute items of proof of the kind laid down in list A, in order to determine the responsibility of a Member State.

While not proof, such items could nonetheless determine towards which Member State the search for the State responsible within the meaning of the Convention might justifiably be directed.

The Member State in question would consult its various records to determine whether its responsibility was involved.

Where more than one Member State is responsible, the Member State which first receive an application for asylum will ascertain which had the greater responsibility under the Dublin Convention, in accordance with the principle laid down in Article 3 (2) whereby criteria for responsibility apply in the order in which they appear.

This approach would prevent asylum-seekers being passed successively from one State to another, complicating the procedures and creating delay.

In particular, where an asylum-seeker passes through several Member States before submitting an application in the last one, the State applied to must not simply assume that responsibility lies with the State through which the applicant last passed.

Where there are specific reasons to believe that more than one State may be responsible, it is for the State in which the application was submitted to attempt to ascertain which of the States in question is required to examine the asylum application, having regard to the order of criteria for determining responsibility laid down in the Dublin Convention.

Annex to Annex III.2

LIST A

A. MEANS OF PROOF

I. Process of determining the State responsible for examining an application for asylum

1. Legal residence in a Member State of a family member recognized as having refugee status (Article 4)

Probative evidence

- Written confirmation of the information by the other Member State,
- Extracts from registers,
- Residence permits issued to the individual with refugee status,
- Evidence that the persons are related, if available,
- Consent of the persons concerned.

2. Valid residence permits (Article 5 (1) and (3)) or residence permits which expired less than two years previously (and date of entry into force) (Article 5 (4))

Probative evidence

- Residence permit,
- Extracts from the register of aliens or similar registers,
- Reports/confirmation of information by the Member State which issued the residence permit.

3. Valid visas (Article 5 (2) and (3)) and visas which expired less than six months previously (and date of entry into force) (Article 5 (4))

Probative evidence

- Visa issued (valid or expired, as appropriate),
- Extracts from the register of aliens or similar registers,
- Reports/confirmation by the Member State which issued the visa.

4. Illegal entry (first paragraph of Article 6) and legal entry at an external frontier (Article 7 (1))

Probative evidence

- Entry stamp in a forged or falsified passport,
- Exit stamp from a country bordering on a Member State, bearing in mind the itinerary taken by the asylum seeker and the date the frontier was crossed,
- Tickets conclusively establishing entry at an external frontier,
- Entry stamp or similar endorsement in passport.

5. Departure from the territory of the Member States (Article 3 (7))

Probative evidence

- Exit stamp,
- Extracts from third-country registers (substantiating residence),
- Tickets conclusively establishing exit at an external frontier,
- Report/confirmation by the Member State from which the asylum seeker left the territory of the Member States,
- Stamp of third country bordering on a Member State, bearing in mind the itinerary taken by the asylum seeker and the date the frontier was crossed.

6. Residence in the Member State of application for at least six months prior to application (Article 6 (2))

Probative evidence

Official evidence showing, in accordance with national rules, that the alien was resident in the Member State for at least six months before submitting an application.

7. Time of application for asylum (Article 8)

Probative evidence

- Form submitted by the asylum seeker,
- Official report drawn up by the authorities,
- Fingerprints taken in connection with an asylum application,
- Extracts from relevant registers and files,
- Written report by the authorities attesting that an application has been made.

II. Obligation on the Member State responsible for examining the application for asylum to re-admit or take back the asylum seeker

1. Procedure where an application for asylum is under examination or was lodged previously (Article 10 (1) (c), (d), and (e))

Probative evidence

- Form completed by the asylum seeker,
- Official report drawn up by the authorities,
- Fingerprints taken in connection with an asylum application,
- Extracts from relevant registers and files,
- Written report by the authorities attesting that an application has been made.

2. Departure from the territory of the Member States (Article 10 (3))

Probative evidence

- Exit stamp,
- Extracts from third-country registers (substantiating residence),
- Exit stamp from a third country bordering on a Member State, bearing in mind the itinerary taken by the asylum seeker and the date on which the frontier was crossed,
- Written proof from the authorities that the alien has actually been expelled.

3. Expulsion from the territory of the Member States (Article 10 (4))

Probative evidence

- Written proof from the authorities that the alien has actually been expelled,
- Exit stamp,
- Confirmation of the information regarding expulsion by the third country.

LIST B

B. INDICATIVE EVIDENCE

I. Process of determining the State responsible for examining an application for asylum

1. Legal residence in a Member State of a family member recognized as having refugee status (Article 4)

Indicative evidence ⁽¹⁾

- Information from the asylum applicant,
- Reports/confirmation of information by international organizations, such as UNHCR.

2. Valid residence permits (Article 5 (1) and (3)) or residence permits which expired less than two years previously (and date of entry into force) (Article 5 (4))

Indicative evidence

- Declaration by the asylum applicant,
- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by the Member State which did not issue the residence permit,
- Reports/confirmation of information by family members, travelling companions, etc.

3. Valid visas (Article 5 (2) and (3)) and visas which expired less than six months previously (and date of entry into force) (Article 5 (4))

Indicative evidence

- Declaration by the asylum applicant,
- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by the Member State which did not issue the residence permit,
- Reports/confirmation of information by family members, travelling companions, etc.

4. Illegal entry (first paragraph of Article 6) and legal entry at an external frontier (Article (7))

Indicative evidence

- *Declarations by the asylum applicant,*
- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by another Member State or a third country,
- Reports/confirmation of information by family members, travelling companions, etc.,
- Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
In such cases, they constitute probative evidence as defined in list A,
- Tickets,
- Hotel bills,
- Entry cards for public or private institutions in the Member States,
- Appointment cards for doctors, dentists, etc.,
- Information showing that the asylum applicant has used the services of a courier or a travel agency,
- Etc.

5. Departure from the territory of the Member States (Article 3 (7))

Indicative evidence

- Declarations by the asylum applicant,

⁽¹⁾ This indicative evidence must always be followed by an item of probative evidence as defined in list A.

- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by another Member State,
- Re Articles 3 (7) and 10 (3): exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least three months,
- Reports/confirmation of information by family members, travelling companions, etc.,
- Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
In such cases, they constitute probative evidence as defined in list A,
- Tickets,
- Hotel bills,
- Appointment cards for doctors, dentists, etc.,
- Information showing that the asylum applicant has used the services of a courier or a travel agency,
- Etc.

6. Residence in the Member State of application for at least six months prior to application (second paragraph of Article 6)

Indicative evidence

- Declarations by the asylum applicant,
- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by family members, travelling companions, etc.,
- Declaration issued to permitted aliens,
- Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
In such cases, they constitute probative evidence as defined in list A,
- Tickets,
- Hotel bills,
- Appointment cards for doctors, dentists, etc.,
- Information showing that the asylum applicant has used the services of a courier or a travel agency,
- Etc.

7. Time of application for asylum (Article 8)

Indicative evidence

- Declarations by the asylum applicant,
- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by family members, travelling companions, etc.,
- Reports/confirmation by another Member State.

II. Obligation on the Member State responsible for examining the application for asylum to re-admit or take back the asylum seeker

1. Procedure where an application for asylum is under examination or was lodged previously (Article 10 (1) (c), (d) and (3))

Indicative evidence

- Declarations by the asylum applicant,

- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by another Member State.

2. Departure from the territory of the Member States (Article 10 (3))

Indicative evidence

- Declarations by the asylum applicant,
- Reports/confirmation of information by international organizations, such as UNHCR,
- Reports/confirmation of information by another Member State,
- Exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least three months,
- Reports/confirmation of information by family members, travelling companions, etc.,
- Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
In such cases, they constitute probative evidence as defined in list A,
- Tickets,
- Hotel bills,
- Appointment cards for doctors, dentists, etc.,
- Information showing that the asylum applicant has used the services of a courier or a travel agency,
- Etc.

3. Expulsion from the territory of the Member States (Article 10 (4))

Indicative evidence

- Declarations by the asylum applicant,
 - Reports/confirmation of information by international organizations, such as UNHCR,
 - Exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least three months,
 - Reports/confirmation of information by family members, travelling companions, etc.,
 - Fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
In such cases, they constitute probative evidence as defined in list A,
 - Tickets,
 - Hotel bills,
 - Appointment cards for doctors, dentists, etc.,
 - Information showing that the asylum applicant has used the services of a courier or a travel agency,
 - Etc.
-

ANNEX III.3

Form of a laissez-passer for the transfer of an asylum applicant from one Member-State to another

(Text adopted by the Council on 20 June 1994)

(MEMBER STATE)
(COMPETENT AUTHORITY)

Reference No (*)

LAISSEZ-PASSER

Issued pursuant to Articles 11 and 13 of the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities

Valid only for transfer from (1) to (2), with the asylum applicant required to present him/herself at (3) by (4).

Issued at:

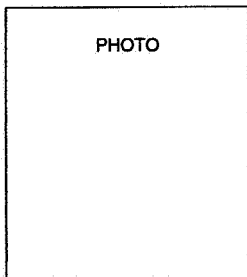
NAME:

FORENAMES:

PLACE AND DATE OF BIRTH:

NATIONALITY:

Date of issue:



SEAL

For the competent authority

The bearer of this *laissez-passer* has been identified by the authorities (5) (6).

This document is issued pursuant to Articles 11 and 13 of the Dublin Convention only and cannot under any circumstances be regarded as equivalent to a travel document permitting the external frontier to be crossed or to a document proving the individual's identity.

(*) Reference number to be given by the country from which the transfer takes place.
(1) Member State from which transferred.
(2) Member State to which transferred.
(3) Place at which asylum applicant has to present him/herself upon arrival in the second Member State.
(4) Deadline by which the asylum applicant has to present him/herself upon arrival in the second Member State.
(5) On the basis of the following travel or identity documents presented to the authorities.
(6) On the basis of a statement by the asylum applicant or of documents other than a travel or identity document.

ANNEX III.4

Circulation and confidentiality of joint reports on the situation in certain third countries

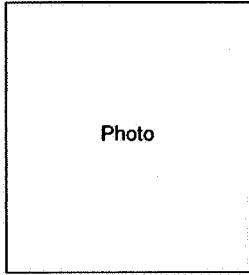
(Text adopted by the Council on 20 June 1994)

- The joint reports, possibly accompanied by an internal note from Cirea, addressed to Steering Group I (Asylum/Immigration) and containing its observations, will be sent to the heads of delegations in that Group and they will be responsible for deciding on national circulation of joint reports within the limits laid down in the two indents below.
 - The national authorities responsible for matters concerning asylum and third country nationals will be able to use the reports together with the other items of information at their disposal.
 - Depending on national procedures, these reports may be made available to the parties involved in a dispute when there is an appeal against a decision by the authorities responsible for matters concerning asylum or aliens.
-

ANNEX III.5

STANDARD FORM FOR DETERMINING THE STATE RESPONSIBLE FOR EXAMINING AN APPLICATION FOR ASYLUM

(Text adopted by the Council on 20 June 1994)



File number

Personal particulars of applicant

- 1. Surname (*)
Maiden name
- 2. Forename(s)
- 3. Does the applicant use/has he /she used other names?
What are/were they?
- 4. Date of birth
- 5. Place of birth
District/region
Country
- 6. Nationality(-ies) (indicate all)
(a) current
(b) previous
(c) none/stateless
- 7. Sex
- 8. Name of father
- 9. Name of mother
- 10. Marital status
- 11. Address
— current

— in country of origin
- 12. Language(s) of origin

.....

 Yes No

 Male Female

 Single Married Widowed Divorced

(*) In block capitals

Personal particulars of family members

- 13. *Spouse:* Surname (*), maiden name, forename(s), sex, date of birth, place of residence
(If the spouse is seeking asylum, a separate form should be completed)
.....
- 14. *Children:* Surname (*), forename(s), sex, date of birth, place of birth, place of residence
(indicate all children; a separate form should be completed for children over 16 years of age if asylum is sought)
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)
- 15. Place and date of the application for asylum in the country of residence

Previous asylum procedures

- 16. Has the asylum applicant ever previously applied for asylum or recognition of refugee status in the country of residence or in another country?
 Yes No
.....
.....
When and where?
.....
Was any decision taken on the application?
 No Not known Yes, refused
When was the decision taken?
.....

Identity papers

- 17. National passport Yes No
Number
Issued on
By
Valid until
- 18. Document replacing passport Yes No
Number
Issued on
By
Valid until
- 19. Other document Yes No
Number
Issued on
By
Valid until
- 20. In the absence of documents:
(specify whether they may have contained a valid visa or residence permit and, if so, indicate the issuing authority and date of issue as well as the period of validity)
 - Departed Lost Stolen
Without documents
(When, where?)
 - Other reasons
(Which?)

(*) In block capitals

Residence documents/visas

21. Does the asylum applicant possess a residence document/visa for the country of residence?

Yes No

Type

Residence permit Entry visa
 Transit visa

Issued on
by
Valid until

.....
.....
.....

22. Does the asylum applicant possess a residence document/visa for another EU Member State?

Yes No

Which State?

.....

Type

Residence permit Entry visa
 Transit visa

Issued on
By
Valid until

.....
.....
.....

23. Does the asylum applicant possess a residence document/visa for a non-member country?
Which country?

Yes No

Type

Residence permit Entry visa
 Transit visa

Issued on
By
Valid until

.....
.....
.....

Travel route

24. Country in which the journey was begun
(country of origin or of provenance)

.....
.....

— Route followed from country where journey was begun to point of entry into country in which asylum is requested

.....
.....

— Dates and times of travel

.....

— Crossed border on

— At the authorized crossing point, or

.....

— Avoided border controls (entered illegally) at

.....

— Means of transport used

Public transport (what form?)
 Own vehicle
 Other means (how?

25. Did the asylum applicant enter via another European Union Member State?

- No
- Yes

— Which was the first EU Member State entered?

.....
.....

— Crossed border at authorized crossing point, or

.....
.....

— Avoided border controls at

.....

— When?

.....

Residence in another EU Member State

26. Residence in another EU Member State or States after leaving country in which journey was begun (country of origin/provenance)

- No
- Yes

— In which State or States?

.....

— From — to

.....

— Place/exact address

.....

— Residence was

- Authorized
- Unauthorized

— Period of validity of residence permit

.....

— Purpose of residence

.....

Residence in third countries (non-members of EU)

27. Residence in third country or countries after leaving country in which journey was begun (country of origin/provenance)

- No
- Yes

— In which third country or countries?

.....

— From — to

.....

— Place/exact address

.....

- Hotel/boarding house
- Private accommodation
- Camp
- Other

(Where?))

— Residence was

- Authorized
- Unauthorized

— Period of validity of residence permit

.....

— Purpose of residence

.....

.....

— Was the asylum applicant in danger of being expelled/removed?

Yes

No

— To which country?

.....

— Why?

.....

— Reasons for continuing journey

.....

Particulars of family members living in EU Member States or in third countries

28. (a) Is any member of the family recognized in a Member State or in a third country as having refugee status and as being legally resident there?

Yes

No

— Name of family member

.....

— State

.....

— Address in that State

.....

.....

.....

(b) Do any of those concerned object to the examination of the application for asylum in that Member State or third country?

Yes

No

ANNEX III.6

COUNCIL CONCLUSIONS

of 20 June 1994

on the Commission communication on immigration and asylum policies

THE COUNCIL OF THE EUROPEAN UNION;

EXPRESSES its gratitude for the Commission communication of 23 February 1994 on immigration and asylum policies, which has the great merit of encompassing the various aspects of these policies;

NOTES that the various chapters of the Commission communication have been discussed by the General Affairs Council, the Social Affairs Council, the Development Council and, in accordance with the procedural decisions taken at its meeting on 23 March 1994, the preparatory bodies for the JHA Council;

RECALLS the exchange of views at the informal meeting of the Ministers for Internal Affairs in Salonika on 6 and 7 May 1994;

REITERATES the importance it attaches to the action plan and the priority work programme for 1994 which were adopted at the end of 1993;

CALLS upon the competent bodies to examine, at the time of preparation of a new work programme, the desirability of including in it the topics in that communication which come under Title VI of the Treaty on European Union but which are not included in the priority work programme for 1994.

ANNEX III.7

COUNCIL CONCLUSIONS

of 30 November 1994

on the organization and development of the Centre for Information, Discussion and Exchange
on the Crossing of Frontiers and Immigration (Cirefi)

THE COUNCIL OF THE EUROPEAN UNION,

RECALLS the decision taken by the Ministers responsible for immigration on 30 November and 1 December 1992 to establish a Centre for information, discussion and exchange on the crossing of frontiers and immigration (Cirefi) and NOTES that in the 1994 priority work programme in the field of justice and home affairs which it adopted in November 1993, Cirefi was requested to continue its work;

EMPHASIZES the urgent problems arising from illegal immigration and unlawful residence by nationals of third countries in the Member States and considers that only concerted action by the Member States on a basis of solidarity can stem or reduce the flow of unauthorized immigration;

UNDERLINES the need for all Member States to combat criminal illegal immigration networks and make it impossible for them to arrange or assist large scale illegal immigration flows;

Given that further progress in cooperation between Member States requires improved exchanges of information and uniform situation assessments in order to improve coordination on a Union-wide basis in the areas of illegal immigration and expulsion, CONSIDERS AND DECIDES that Cirefi should be, as a further step, progressively developed in the following way:

1. Cirefi will assist the Member States in effectively studying legal immigration preventing illegal immigration and unlawful residence, in effectively combating immigration crime, in better detecting forged documents and in improving expulsion practice.
2. Cirefi shall meet on a regular basis and shall consist of expert representatives of the Member States (Standing Conference) with logistical back-up from the General Secretariat of the Council.

3. Without prejudice to the other tasks included in the Decision taken by the Ministers responsible for immigration on 30 November and 1 December 1992, the specific tasks of Cirefi shall be to:

- 3.1. collate, using standard forms, statistical information concerning:

- (a) legal immigration;
- (b) illegal immigration and unlawful residence;
- (c) facilitating of illegal immigration;
- (d) use of false or falsified travel documents;
- (e) measures taken by competent authorities, and draw up regular and occasional situation reports on this basis commenting on trends, developments and changes;

- 3.2. analyse the information compiled, draw conclusions and, when appropriate, give advice;

- 3.3. conduct exchanges of information on expulsion matters, particularly in respect of countries of destination, airports of departure or arrival, carriers, flight routes, fares, reservation possibilities, conditions of carriage, escort requirements and charter possibilities as well as on problems in obtaining repatriation travel documents.

Cirefi will submit an annual report on its activities, and any additional reports on request, to the Council (JHA).

Personal data may not be processed and, in particular, may not be communicated by or to Cirefi.

Cirefi will not be empowered to give instructions to Member States' authorities.

The activities of Cirefi will not affect closer cooperation between Member States.

4. Cirefi, in the form of the Standing Conference as defined in paragraph 2, will meet regularly or as circumstances require; as a general rule this should

be once a month. Where possible, discussions adequately prepared in advance should be structured around a particular current item of common interest to permit an efficient exchange of information.

The relevant bodies of the Council will determine priorities for Cirefi's ongoing work within the framework of the tasks assigned to it under paragraph 3.

The logistical back-up at the General Secretariat of the Council will provide Cirefi with the necessary administrative and organizational assistance and will contribute to prior and subsequent processing of agendas for Cirefi's meetings. The General Secretariat of the Council will, within its budgetary constraints, ensure provision of the staff and equipment required for Cirefi to perform its tasks.

5. The Council also notes that during the time between meetings of Cirefi as a Standing Conference as defined in paragraph 2, the national central units of the Member States concerned will exchange information directly at a multilateral or bilateral level in cases requiring immediate action. Information will be exchanged as far as possible using standard forms or as events dictate using an agreed layout.

Costs incurred by national central units, including the cost of communicating with other national central units, will be borne by the Member State concerned.

6. The Council considers that Cirefi may begin to carry out its work as defined in these conclusions from 1 January 1995.

ANNEX IV.1

GUIDELINES

for joint reports on third countries

(Text adopted by the Council on 20 June 1994)

A. INTRODUCTION

1. The Ministers responsible for immigration have on several occasions spoken of the desirability of drawing up joint situation reports on certain third countries of origin of asylum-seekers. They believe this to be essential if a convergent and eventually harmonized analysis of asylum applications is to be obtained.
2. To achieve this aim fully, there are certain items of information which it is important that the reports should contain.
3. It is suggested that the reports drawn up by Member States' embassies on the spot should contain as far as possible the points set out below.
4. The reports ought to provide an accurate overall picture of the political, economic and social situation in the third country, without being over-detailed since it is vital that they be drawn up quickly.
5. It has been agreed that the following guidelines could be adjusted according to the country on which a joint report is requested. In some cases this would mean omitting certain points. In others, certain specific questions would be added, depending on the information needed.
6. This outline could be revised in the light of experience.

B. CONTENT OF JOINT REPORTS

I. General political situation

1. Recent political developments
2. Current actual situation in the country, and in particular:

(a) specify the following points if possible regarding its regime:

- free elections;
- multi-party system;
- freedom of opinion and assembly;
- religious freedom;
- independent judiciary;
- security service activity;
- situation of minorities;

(b) security situation in the country (including situations of war or civil war).

3. Prospects

- (a) So far as one can tell, is the political situation stable?
- (b) Are there any known political deadlines (election dates, etc.)?

II. General human rights situation

1. Has the country acceded to any instruments for the protection of human rights? Preferably state which. How does it comply in practice with the principles they contain?
2. Are international human rights organizations able to monitor whether human rights are respected?
3. Actual practice as regards human rights

Are people exposed to acts contrary to human rights, in particular:

- (a) torture, inhuman or degrading treatment and punishment (e.g. beating imposed by a court, legislation enshrining racial discrimination);
- (b) frequent use of the death penalty (in countries where such sentences continue to be carried out);
- (c) conditions of imprisonment which are contrary to human rights, arbitrary arrest,

lack of freedom to travel, denial of recourse to the courts, or specific measures against political prisoners?

III. Specific information on persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion

1. Persecution by the State

(a) Are there any forms of persecution by the State, such as repressive measures or arbitrary treatment by State bodies of certain groups of individuals?

(b) What is the extent of such persecution, especially as regards:

— Interference with life, health and freedom including religious freedom?

— Extreme conditions involved in military service, where relevant?

— Other types of social discrimination?

2. Are there other forms of indirect persecution by the State (acts of persecution not carried out by the public authorities but attributable to them), such as the situation where the national authorities are unwilling to give sufficient protection to members of a particular group in the population who are seriously threatened by their fellow citizens?

IV. Possibility of fleeing within the State

(in the event of persecution)

1. Are there persecution situations confined to one part of the State's territory?

2. Is it possible to escape such persecution by going to another part of the territory?

V. Movement of nationals of the State

1. What sort of controls are carried out at these States' external frontiers (air, sea and land) as regards their own nationals? In particular, what formalities do the nationals of these States have to complete on entering or leaving? Are they discriminatory compared with the controls imposed on other nationals?

2. On the basis of the information available, are there any illegal networks facilitating the departure of nationals of the State?

VI. Authenticity of documents

1. What credence should be given to documents held by nationals and issued by the national authorities, especially travel documents?

2. Can nationals of the country easily get hold of false official documents or certificates?

VII. Return to country of origin

1. Does the fact of having lodged an asylum application in another country mean that a national risks being subjected to punishments, torture or inhuman or degrading treatment when he returns to his country of origin?

2. What attitude do the State's authorities take towards foreign nationals, especially asylum-seekers?

VIII. Economic and social situation

It is useful to indicate general features of the economic and social situation that might induce people to leave the country. For example:

1. What is the current general economic situation in the country and, where appropriate, in some of its regions, and what are the prospects for future development?

2. What is the current unemployment level and what are the expected trends?

3. Is there a welfare system?

IX. Preparation of reports on host third countries

The above guidelines concerning countries of origin should be used as far as possible when drawing up reports on host third countries.

Details on the following points would also be desirable:

1. Has the country acceded to the Geneva Convention of 28 July 1951 on the Status of

- Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms or any other similar human rights convention? How does it comply in practice with the principles they contain (where this adds to the answers given under II.1)?
2. Can any national of a third country submit an application for asylum in the host State? Is it possible, at the frontier or in the territory, for him to request the protection of the authorities of that country before applying to the Member State where he is seeking asylum? If not, is this the case for persons of certain nationalities or origins?
 3. Is it certain that he can be admitted to the host country? If not, is that the case for persons of certain nationalities or origins?
 4. Does the asylum-seeker benefit or potentially benefit from effective protection against 'refoulement' as defined by the Geneva Convention?
- X. **Place and date of the drawing up of the report**
- It would be useful to state where and when the joint report was drawn up.
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ANNEX IV.2

**Second activity report on the Centre for Information, Discussion and Exchange on Asylum
(Cirea)**

(Text adopted by the Council on 20 June 1994)

I. INTRODUCTION

1. The Ministers decided to set up Cirea at their meeting on 11 and 12 June 1992. Its main objective is to compile, exchange and disseminate information and prepare documentation on all questions relating to asylum.
2. It has been decided that Cirea will in principle draw up an activity report twice a year for the attention of the Council. The first report was submitted to the Ministers at their meeting in Copenhagen on 1 and 2 June 1993.
3. The purpose of this second report is to describe the progress of work during the second half of 1993.

II. WORK UNDERTAKEN BY CIREA

Cirea has held two meetings in the second half of 1993 (15 September and 27 October) and will hold a third one on 13 December.

Cirea has concerned itself with two types of work: it has continued with the establishment of the rules governing its operation and it has exchanged information on asylum in respect of each Member State.

A. Rules of operation**1. Establishment of a new statistical system**

The Group has established a new statistical system to record the number of asylum-seekers and the recognition rate in each of the Member State.

The system has been set up in order to respond more effectively to the provisions laid down in the second part of Article 14 (1) of the Dublin Convention, where it is stated, *inter alia*, that statistical data concerning monthly arrivals will be forwarded quarterly. It also corresponds to the guidelines laid down by the Ministers indicating that Cirea should concentrate on the exchange of statistical information.

The new system will enable the Member States to have a more complete and more accurate

picture of the situation regarding asylum-seekers in the European area. Firstly, the Member States will have access to information about the exact number of asylum-seekers from all countries of the world. Secondly, footnotes indicate the general interpretation given by the Member States to several concepts contained in the statistical tables.

In this first phase, the intention has been to cover only a relatively limited amount of important data which the Member States can easily assemble.

The new statistical system will apply as from 1 January 1994.

In addition, the Group held a discussion with a view to harmonizing certain important statistical concepts.

2. Guidelines on the content of joint reports on third countries

The Ministers have on several occasions asked for joint situation reports to be drawn up on certain third countries of origin of asylum-seekers. To achieve this aim fully Cirea has decided to include a number of items of information in each of these reports.

Cirea has accordingly prepared some guidelines enabling the reports to give an accurate overall picture of the political, economic and social situation into the third country, without going into too much detail.

It has been agreed that these guidelines could be adapted as appropriate to the third country on which the joint report is requested. In certain cases, this will mean deleting one or more points. In other cases, certain specific questions will be added depending on the perceived information requirements.

3. Dissemination and confidentiality of the joint reports concerning the situation in certain third countries

Cirea has examined the question of the dissemination and confidentiality of the joint reports on several occasions.

A consensus seems possible on allowing the competent national authorities to use the joint reports, if they wish to do so, among the items of information at their disposal when dealing with asylum applications.

Depending on national procedures, these reports may be made available to the parties involved in a dispute when there is an appeal against a decision by the authorities responsible for matters concerning asylum and aliens.

4. *Procedure for drawing up reports in connection with joint assessments of the situation in third countries*

Cirea considers that it is important to have a rapid procedure for drawing up joint reports on the situation in third countries.

To this end, it has made a detailed examination of the procedure relating to the steps to be followed, the decision to produce a joint report, its drafting by the representations of Member States in a particular third country and its forwarding to Cirea via the appropriate bodies once completed.

B. Information exchanges

1. *Situation in the country of origin of asylum-seekers*

Cirea made a detailed examination of the situation in Ethiopia/Eritrea and Romania on the basis of joint reports drawn up on the spot by the representations of the Twelve and finalized by European Political Cooperation (EPC).

The discussion, which proved very useful for the Member States, enabled informal consultations to be held to facilitate the coordination of asylum practices and policies.

In this context, it contributed to the general debate on the way in which the Member States will apply Article 1A of the Geneva Convention. Cirea has also had occasion to discuss asylum-seekers from other regions, such as Albanians from Kosovo.

2. *New list of joint reports on third countries*

It was agreed that EPC should be asked to draw up joint reports on five other third countries (Bulgaria, China, Iraq, Vietnam and Zaire).

A request will also be made, in due course, in respect of Turkey and Nigeria.

3. *Examination of the differences in the rate of recognition of refugee status*

Cirea discussed the very different rates behind of recognition in the Member States and the reasons behind them.

In this connection it gave priority to examining the situation in those third countries which generate most asylum-seekers in the European Union.

It was apparent that this exercise was one of the main points which Cirea was intended to deal with, thus contributing to the general debate on how Member States are to apply Article 1A of the Geneva Convention.

4. *Representations to the authorities of third countries*

(a) It is apparent that certain Member States are experiencing a significant increase in the number of asylum-seekers of Chinese origin.

On the basis of a study carried out within Cirea, the *Ad hoc* Group on Immigration decided to ask EPC to make representations to the Chinese authorities with a view to facilitating the return of rejected Chinese asylum-seekers. The arguments to be deployed are still being prepared.

(b) It was also agreed that representations should be made to the Vietnamese authorities and a request to that effect has been forwarded to EPC. Work on arguments to be deployed is similarly under way.

5. *Length of time taken to examine asylum applications*

Cirea has conducted a review and produced a synopsis relating to the average length of time taken to examine applications for asylum, decisions and appeals in each of the Member States.

In view of recent changes in legislation in the Member States which will affect the length of

time taken to examine asylum applications, the group agreed to carry out a further examination of the situation at a later date.

6. *Cooperation with the research documentation centre of the United Nations High Commissioner for Refugees (CDR/UNHCR)*

Following decisions taken by Ministers on 1 and 2 June 1993, Cirea has established with the CDR/UNHCR the practical bases on which to implement the cooperation agreement concluded.

It has been agreed that a six-month pilot project should be set up between Cirea and the CRD.

7. *Compilation of information*

The compilation of information on asylum practised and policies is of particular importance in the work of Cirea.

At each meeting Member States have exchanged practical information on salient aspects such as the number of asylum-seekers who have entered a country, breakdown into main nationalities, draft laws under examination, new legislative provisions and major changes in practice which have taken place.

Cirea has also conducted a detailed and thorough exchange of views on changes in legislation in certain Member States, especially Germany, the United Kingdom, Belgium, Greece and Portugal.

III. FUTURE WORK

Cirea will continue its efforts to finalize the rules governing its operation and to improve the exchange of information on asylum.

In this connection, Cirea considers that all work which will help to ensure more effective consultation on the concept of 'refugee' as defined Article 1A of the Geneva Convention should be continued.

Cirea is aware that these discussions will take place in parallel with those of the Group on Asylum, where current work is aimed at preparing guidelines on this subject and that the work of the Group on Asylum would, therefore, be underpinned by the discussions under way within Cirea.

In addition, it will be remembered that the Ministers decided at their meeting in Lisbon on 11 and 12 June 1992 that in the immediate term Cirea would operate on a provisional basis.

In view of the entry into force of the Treaty on European Union, a legal act will have to be adopted in due course to establish Cirea in this new framework.

ANNEX IV.3

Honorary consuls already empowered to issue visas who, as a transitional measure, will be allowed to issue uniform visas

(Text adopted by the council on 20 June 1994)

Honorary consuls will not be allowed to issue uniform visas. However, certain honorary consuls of Denmark and the Netherlands who are already authorized may provisionally continue to issue uniform visas.

This concerns the honorary consuls of the following towns:

(a) *Denmark:*

- Malmö (Sweden)
- Göteborg (Sweden)
- Stavanger (Norway)

(b) *The Netherlands:*

- Nassau (Bahamas)
- Manama (Bahrein).

The authorizations referred to in (a) and (b) shall be valid for three years from the date of entry into force of the system.
