



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 28 October 2002 (31.10)
(OR. de)**

13510/02

LIMITE

ASILE 57

NOTE

from : Austrian delegation
to : Strategic Committee on Immigration, Frontiers and Asylum
No. prev. doc. : 12454/02 ASILE 48

Subject : Safe third countries

Delegations will find attached a preliminary draft Council Regulation establishing the criteria for determining the countries which qualify as safe third countries and drawing up a list of European safe third countries.

Preliminary draft Council Regulation

**establishing the criteria for determining the countries which qualify as safe third countries
and drawing up a list of European safe third countries**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1)(d) of Article 63,

Having regard to the proposal from the Republic of Austria ¹,

Having regard to the Opinion of the European Parliament ²,

Whereas:

- (1) The Treaty of Amsterdam provided for the progressive establishment of an area of freedom, security and justice and for the Commission to be given a common right of initiative, with the Member States, to take the necessary measures to achieve a harmonised asylum policy.
- (2) At its meeting in Tampere, the European Council reaffirmed the importance the Union and Member States attach to absolute respect of the right to seek asylum. It agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.

¹ OJ C., ...

² Opinion of ...

- (3) The Laeken European Council undertook to adopt, on the basis of the Tampere conclusions and as soon as possible, a common policy on asylum and immigration, which would maintain the necessary balance between protection of refugees, in accordance with the principles of the 1951 Geneva Convention, the legitimate aspiration to a better life and the reception capacities of the Union and its Member States.
- (4) The Seville European Council decided that measures taken in the short and medium term for the joint management of migration flows must strike a fair balance between, on the one hand, a policy for the integration of lawfully resident immigrants and an asylum policy complying with international conventions, principally the 1951 Geneva Convention, and, on the other, resolute action to combat illegal immigration and trafficking in human beings. In this context it is important to afford refugees swift, effective protection, while making arrangements to prevent abuse of the system.
- (5) Pursuant to point (1)(d) of Article 63, the Council is to adopt minimum standards on procedures in Member States for granting or withdrawing refugee status; in particular with a view to the creation of a common European asylum system, it is therefore incumbent upon it to establish criteria for determining the countries which qualify as safe third countries and to draw up a common list of safe third countries. Under Article 61, the establishment of those criteria and of that list falls within other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63.
- (6) In application of Article 1 of the Protocol on the position of the United Kingdom and Ireland with regard to the Treaty on European Union and the Treaty establishing the European Community, Ireland and the United Kingdom shall **(not)** take part in the adoption of this Regulation. Without prejudice to Article 4 of that Protocol, this Regulation will **(not)** therefore apply to Ireland and the United Kingdom.

- (7) The list of safe third countries will be defined following an examination and evaluation of criteria based on the application and observation of standards established under international law for the protection of refugees and of basic human rights, from which there can be no derogation even in time of war or of national emergency threatening the existence of the State. The procedure provided for following such definition will not be affected by this Regulation.
- (8) The list of safe third countries set out in the Annex will be drawn up on the basis of the criteria established in this Regulation. Those third countries which have entered into the relevant international obligations (Geneva Convention relating to the Status of Refugees, European Convention for the Protection of Human Rights and Fundamental Freedoms) and have transposed the provisions set out therein into their national law will be assumed in principle to be safe third countries.
- (9) Compliance by the third countries included on the list with the standards established under international law for the protection of refugees and of basic human rights will be monitored by the Commission on the basis of information from the Member States, the UNHCR and other relevant international organisations. If necessary the Commission will propose an amendment of the list to the Council.
- (10) In accordance with the principle of proportionality enshrined in Article 5 of the Treaty, it is necessary and appropriate for the smooth functioning of common measures in the asylum field that the criteria for determining that a third country is safe and for drawing up a list of such countries, be established by means of a Regulation,

HAS ADOPTED THIS REGULATION:

ARTICLE 1

DEFINITION OF SAFE THIRD COUNTRIES

(1) **Definition:**

For the purposes of this Regulation, a safe third country means a country which has ratified the Geneva Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees and

- (a) the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, and the Appendix thereto, or
- (b) the 1966 International Covenant on Civil and Political Rights and the (first) Optional Protocol to the International Covenant on Civil and Political Rights.

- (2) Protection exists in the safe third country where there is genuinely a procedure available enabling asylum seekers to be granted refugee status in accordance with the Geneva Convention, where asylum seekers have the right to remain in that country until a decision is taken and where they are protected from inhuman treatment by expulsion to their country of origin, including via other States.

ARTICLE 2

LIST OF EUROPEAN SAFE COUNTRIES

Those third countries which are included on the list in the Annex shall be regarded as safe third countries.

ARTICLE 3

AMENDMENT OF THE LIST

- (1) The Commission shall monitor compliance by the third countries included on the list with the criteria set out in Article 1 and if necessary shall propose amendments to the Council. In its assessment of the countries, the Commission shall make use of information from the Member States, the UNHCR and other relevant international organisations.

- (2) On the basis of the Commission proposal and acting by a qualified majority (unanimously), the Council may adopt amendments to the list.

ARTICLE 4

This Regulation shall not affect the competence of the Member States to implement procedures for granting and withdrawing refugee status.

ARTICLE 5

- (1) This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.
- (2) In the case of the countries listed in the Annex and indicated with an asterisk, the decision referred to in Article 2 shall be made at a later date in accordance with the procedure laid down in Article 67(2), first indent, on the basis of a report from the Commission. The Commission shall submit a first report to the Council, together with specific recommendations, not later than 30 June 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX

COMMON LIST OF SAFE THIRD COUNTRIES IN ACCORDANCE WITH ARTICLE 2

EU Member States

Bulgaria*

Cyprus

Czech Republic

Estonia

Hungary

Iceland

Latvia

Lithuania

Malta

Norway

Poland

Romania*

Slovakia

Slovenia

Switzerland