



**COUNCIL OF
THE EUROPEAN UNION**

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9563/02

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LIMITE

ASILE 30

NOTE FROM THE PRESIDENCY

to : Coreper/Council

No. prev. doc.: 9305/02 ASILE 29

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

Subject : Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

I

1. In accordance with Article 63 (1) (a) TEC, the Commission forwarded, in July 2001, a proposal for a Council Regulation establishing the criteria and mechanisms for determining which Member State is responsible for considering an asylum application submitted by a third-country national or a stateless person in one of the Member States.

The proposed Regulation aims to bring within the Community framework the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States.

The proposal takes up the fundamental principles which assure asylum-seekers that there will always be a competent Member State to examine their application, whilst avoiding multiple asylum applications. Furthermore, the responsibility generally lies with the Member State which played the greatest part in the applicant's entry into or residence on the territories of the Member States.

However, in order to take account of experience gained during the implementation of the Convention, some changes have been proposed by the Commission :

- as regards allocating responsibility, there are new criteria which emphasise the obligation of the Member States to fight effectively against the development of illegal immigration in their territory, and new provisions which give family unity an autonomous and compulsory value;
- as regards mechanisms implemented, the procedural deadlines envisaged are much shorter and appeals against transfer to the responsible Member State will no longer suspend such a transfer.

2. It is recalled that in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the treaty on European Union and to the treaty establishing the European Community, Denmark is not participating in the adoption of this proposal and is therefore not bound by it nor subject to its application.

Pursuant to Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the treaty on European Union and to the treaty establishing the European Community, the United Kingdom and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this proposal.

3. The European Parliament and the Economic and Social Committee delivered their opinions respectively on 9 April 2002 and 20 March 2002.
4. The proposal for a Regulation has been discussed in depth within the Working Groups of the Council, without reaching an agreement.
5. The Presidency has detected several problems which need the Council valuation for obtaining an orientation to allow the experts to go on with the work for a fast approval of the regulation.

II QUESTIONS

1. The determination of the Member State which is responsible for examining an asylum application has several important aims. On one hand, it is about guaranteeing, as soon as possible, to the asylum seeker an access to a process which defines his/her need to receive protection. On the other hand, it is about protecting our asylum systems against the improper asylum applications of people who do not need any protection, or use the "asylum-shopping". Little by little, these misuses could put in danger the whole asylum system, due to this, it seems essential to prevent them.

The current Dublin Convention foresees that when an asylum seeker, coming from a non Member State, has illegally crossed the border of an EU Member State, this last one shall be responsible for studying the asylum application. However, this Member State shall not be responsible of the asylum application if it can be proved that the asylum seeker has been, at least, during 6 months in another Member State where he has previously presented his asylum application. In this case, this last State shall be responsible for studying the application.

In the Presidency opinion, it seems reasonable that the Member State which did not make the necessary efforts to avoid the presence of people in an illegal situation in the EU has to assume some responsibility.

If the Member State agrees with the aforementioned general principle, the Presidency reminds that the Commission proposal has two criterions in this sense: the illegal crossing of the borders and the illegal presence in the Member State territory, specially if this illegal presence is known.

Due to this, it is about knowing whether the Council agrees to:

- Maintain the special criterions of illegal borders crossing and the illegal presence in the territory to define the Member State which is responsible for examining the asylum application.

- Whether the reference of known illegal presence of the third country citizen should be maintained or eliminated. In fact, theoretically, even the possibility of a Member State to tolerate the presence of illegal foreigners in its territory cannot be admitted.
2. Bearing in mind that there should be defined clear and precise rules for determining the responsible State for examining an asylum application, the Council is asked whether this aforementioned criteria should appear in the hierarchy order that appears in the Commission proposal, i.e., firstly the illegal crossing of borders and secondly the illegal presence in a Member State territory for a period that should be decided, or the criteria of hierarchy order should be inverted.
 3. Whichever hierarchy order is determined, according to the last paragraph, the Presidency considers that it should be valued whether when the Member State which is responsible for studying the asylum application is defined, the first State where the application has been presented could be indifferent and inactive regarding the continuation of the asylum seeker illegal presence in its territory without proceeding with its transfer to the responsible State Member.

Subsequently, the Council is asked whether it is possible to maintain the dispositions of the Commission original proposal, in the sense that the responsibility for examining the asylum application should again come back to the Member State where the application has been presented if 6 months after the decision of taking charge, the asylum seeker transfer to the responsible Member State has not been done, even though there might be exceptions to take account of, such as: serious illness, detention of the asylum seeker, or any other exception established by the Council.