

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.9.2000
COM(2000) 578 final

2000/0238 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on minimum standards on procedures in Member States for granting and withdrawing refugee status

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS: A FIRST MEASURE TO BUILD THE COMMON EUROPEAN ASYLUM SYSTEM

According to the Conclusions of the Presidency at the Tampere European Council in October 1999, a common European asylum system is to include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status. This is to be supplemented with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. On 24 May 2000, the Commission adopted a proposal for a Council Directive on temporary protection in the event of a mass influx of displaced persons based on solidarity between Member States as a tool in the service of a common European asylum system.

The Commission is now, in the autumn of 2000, proposing a draft Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status as a means to establish a fair and efficient asylum procedure, as indicated in the scoreboard to review progress on the creation of an area for freedom, security and justice in the European Union, approved by the Council on 27 March 2000.

In March 1999, the Commission began work on asylum procedures with its working paper "Towards common standards for asylum procedures". This document was discussed in the Council both at Ministerial level and among officials. Thirteen Member States subsequently submitted written comments. The European Parliament adopted Resolution A5-0123/2000 on the working document in the plenary session of 13 to 16 June 2000. In addition, the Commission specifically consulted the UNHCR, ECRE, Amnesty International and Save the Children on the working document. All four organisations submitted written comments, as did three other NGOs (the Refugee Legal Centre, the Medical Foundation for the Care of Victims of Torture and the Immigration Law Practitioners' Association). Following an analysis of these replies, the Commission has drafted its proposal, taking into account, where necessary, the existing soft law, principally the 1995 Council Resolution on minimum guarantees for asylum procedures, the 1992 London Council Resolutions on manifestly unfounded applications, host third countries and countries in which there is generally no serious risk of persecution and the 1997 Council Resolution on unaccompanied minors who are nationals of third countries.

The proposal takes into account the approach envisaged by the Conclusions of the Presidency at the Tampere European Council in October 1999 that a common European asylum system, while including in the short term the abovementioned measures on asylum in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other treaties, should lead, in the longer term, to a common asylum procedure and a uniform status for those granted asylum valid throughout the Union.

2. SCOPE OF THE PROPOSAL

As an essential first measure on asylum procedures for the purpose of achieving a common asylum policy on the basis of Title IV of the Treaty establishing the European Community, as amended by the Amsterdam Treaty, the proposal sets out the requisite measures for a simple and quick system for dealing with asylum applications. It focuses on all the legislative tools and mechanisms which Member States can use to operate a system that processes cases swiftly and correctly. Common standards and time-limits are set in order to dismiss quickly inadmissible and manifestly unfounded cases so that each national system can operate smoothly for the benefit of Geneva Convention refugees. Aligning national systems on the basis of these standards will enable Member States to build efficient asylum procedures for the future within the framework of a common European asylum system.

This measure will not require Member States to apply uniform procedures. Nor will it oblige them to adopt common concepts and practices which they do not wish to apply. For example, if a Member State does not wish to apply the safe third-country concept to reject asylum applications, the measure will not oblige this Member State to adopt the concept. Moreover, all standards for operating a fair and efficient procedure are laid down without prejudice to Member States' discretionary power to prioritise cases on the basis of national policies.

The measure also allows Member States to derogate from certain rules it they so wish, as this is a first measure on asylum procedures. For instance, it is proposed that Member States should be able to derogate from the principle that appeal has suspensive effect in, *inter alia*, manifestly unfounded cases. The issue of suspensive effect is a complex one and Member States appear to hold very divergent views on the advantages and disadvantages of suspensive effect. The Commission would welcome Member States that choose to adopt these and other derogations permitted at this stage, to introduce additional safeguards, such as the adoption by law of the derogations or supplementary procedural guarantees in individual cases.

Moreover, the proposal is limited to the minimum standards necessary for granting and withdrawing refugee status. Consequently, it does not include minimum standards for determining whether persons qualify for protection under some other international instrument or are otherwise in need of protection. Nonetheless, if the Member States were to apply the standards in this proposal in deciding on applications for kinds of protection other than that emanating from the Geneva Convention, this would be welcomed by the Commission. Accordingly, the proposal provides that Member States may decide to apply the provisions of the Directive to these other procedures.

The proposal does not prejudge other measures on a common asylum policy as laid down in the Vienna Action Plan and the Scoreboard. Articles 63(1) and 63(2) provide for the adoption of measures on asylum regarding the criteria and mechanisms for determining which Member State is responsible for considering an asylum application, minimum standards on the reception of asylum applicants, minimum standards with respect to the qualification of nationals of third countries as refugees and measures for persons who otherwise need international protection. The

Commission will put forward proposals on these particular areas in accordance with the Scoreboard.

Neither does this particular proposal prejudge any measures that have not been envisaged in the Vienna Action Plan and the Scoreboard. Several other measures with respect to procedures for the admission of refugees by the Member States of the European Union could be considered within the scope of point (1)(d) of the first paragraph of Article 63 of the EC Treaty. For one thing, the present proposal confines itself to procedures for cases of spontaneous applicants at the border or on the territory of the Member States in Europe. It is therefore without prejudice to a possible measure on procedures for admitting to Member States third-country nationals who qualify as Geneva Convention refugees, but have not yet been able to reach the external frontiers of the European Union.

The Communication on common asylum procedures and a uniform status for those who are granted asylum valid throughout the Union will outline what measures may be taken next on asylum procedures for the purpose of achieving a common asylum policy on the basis of Title IV of the Treaty establishing the European Community, as amended by the Amsterdam Treaty, including those that could be taken on the basis of point (1)(d) of the first paragraph of Article 63.

3. THE OBJECTIVES OF THE PROPOSAL

With this proposal for a Directive, the Commission is pursuing the following aims:

1. implementing point (1)(d) of the first paragraph of Article 63 of the Treaty, paragraph 36(b)(iii) of the Vienna Action Plan, Conclusion 14 of the Tampere European Council and the first part of the paragraph on a fair and efficient asylum procedure of the Scoreboard presented to the Council and Parliament in March 2000;

2. providing for measures that are essential to the efficiency of Member States' procedures for granting and withdrawing refugee status;

3. laying down common definitions of, and common requirements for inadmissible and manifestly unfounded cases, including the safe country concepts in order to achieve a common approach among those Member States that apply these practices and concepts;

4. laying down time-limits for deciding in first instance and in appeal in these cases, empowering Member States to effectively process them as soon as possible;

5. enhancing thereby the ability of Member States to examine the asylum applications of persons that may be Geneva Convention refugees;

6. laying down a minimum level of procedural safeguards for asylum applicants in the procedures in Member States to ensure a common level of procedural fairness in the European Community;

7. laying down specific safeguards for fair procedures for persons with special needs;

8. setting minimum requirements for decisions and decision-making authorities with a view to reducing disparities in examination processes in Member States and ensuring a good standard of decision making throughout the European Community.

4. AN OVERVIEW OF THE STANDARDS IN THE PROPOSAL

The proposal basically consists of three different sets of provisions.

The first set deals with procedural guarantees for asylum applicants. These provisions relate to situations found throughout all stages of the asylum procedures and are designed to approximate notions of procedural fairness among Member States. Every applicant for asylum must:

- have the right to appeal against a decision in first instance, irrespective of the nature of the decision;

- be informed at decisive moments in the course of the procedure, in a language which he understands, of his legal position in order to be able to consider possible next steps. For instance, when receiving the decision in first instance, an applicant must be informed of its contents and of the possibility to appeal this decision.

In addition, specific guarantees are laid down for persons with special needs, such as (unaccompanied) minors.

A second set of provisions concerns minimum requirements regarding the decision-making process. While Member States may retain their national systems, decision making has to meet certain minimum requirements in the interests of developing a comprehensive common European asylum policy**.** It will generally suffice for Member States to have in place a three-tier system: an authority determining refugee status, an authority to hear administrative or judicial appeals and an Appellate Court. Furthermore, decision-making authorities should have access to information on country of origin and be able to seek expert advice whenever necessary. Personnel should have received the requisite initial training, decision making should follow certain investigative standards, decisions are to be taken individually, objectively and impartially, and full reasons should be stated for adverse decisions.

A final set of provisions concerns common standards for the application of certain concepts and practices. These concepts or practices (‘inadmissible applications’, ‘manifestly unfounded applications’, ‘safe country of origin’; ‘safe third country’) are already in place in many Member States, but application and interpretation vary significantly. With a view to limiting secondary movements between Member States, the Commission proposes that they be made subject to common standards. Each Member State may decide whether or not to apply a concept or practice, but if it does, its national application would have to follow the common framework for all Member States. Accordingly, while there is no obligation to apply an accelerated procedure to dismiss manifestly unfounded applications, Member States will have to abide by the common definitions and maximum time-limits if they do so. Similarly, where Member States wish to dismiss an application as inadmissible on the basis of the safe third-country concept, they must abide by the common principles for

designating a country as a safe third country as laid down in Annex I to the proposal as well as the common requirements for applying the concept in individual cases.

Member States will be able to dismiss applications as inadmissible if:

- another Member State is responsible for examining the application, according to the criteria and mechanisms for determining which Member State is responsible;

- a country is considered as a first country of asylum for the applicant;

- a country is considered as a safe third country for the applicant.

As a procedure to determine whether another Member State is responsible for examining an asylum application may take place in parallel with or in the context of a more comprehensive examination of the asylum application in Member States, the general procedural guarantees in the proposal will also apply to the former procedure. However, the only guarantee included in the proposal which is specifically related to the procedure for determining whether another Member State is responsible for examining an asylum application is one that is based upon a principle of procedural fairness at the heart of this proposal: the principle that an applicant is informed of his legal position at all decisive moments in the course of the procedure. The Commission will come forward with a proposal for a Community instrument on a clear and workable determination of the Member State responsible for the examination of an application for asylum at the beginning of 2001.

Member States will be able to dismiss applications as manifestly unfounded if:

- the applicant has, without reasonable cause, submitted a fraudulent application with respect to his identity or nationality;

- the applicant has produced no identity or travel document and has not provided the determining authority with sufficient or sufficiently convincing information to determine his identity or nationality, and there are serious reasons for considering that the applicant has in bad faith destroyed or disposed of an identity or travel document that would help determine his identity or nationality;

- an application is made at the last stage of a procedure to deport the person and could have been made earlier;

- in submitting and explaining his application, the applicant does not raise issues that justify international protection on the basis of the Geneva Convention or Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;

- the applicant is from a safe country of origin;

- the applicant has submitted a new application raising no relevant new facts with respect to his particular circumstances or to the situation in his country of origin.

Finally, the proposal lays down a common approach for the concepts of both safe third country and safe country of origin on the basis of an analysis of the positions of the Member States, the Resolution of the European Parliament and the views expressed by the UNHCR and other relevant organisations. This approach consists of:

- the use of common principles to determine what these concepts should mean;
- national lists of safe countries for those Member States that so wish, subject to notification to the Commission;
- common requirements for applying the concepts in individual cases;
- regular exchanges of views among Member States on the designation of safe countries, national lists and the application of the concepts in individual cases under the umbrella of a Community procedure in a so-called Contact Committee (see below).

The Commission, for its part, envisages to introduce a Contact Committee. The Contact Committee will facilitate the transposition and the subsequent harmonised implementation of the Directive through regular consultations on all practical problems arising from its application. It will help avoid duplication of work where common standards are set, notably with respect to the situation in safe third countries and safe countries of origin. Secondly, the Committee will facilitate consultation between the Member States on more stringent or additional guarantees and obligations that they may lay down at national level. This would help prepare the ground for a common asylum procedure as envisaged by the Conclusions of the Presidency at the Tampere European Council in October 1999. Lastly, the Committee will advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary.

5. THE CHOICE OF LEGAL BASIS

The choice of legal basis is consistent with the amendments made to the Treaty establishing the European Community by the Amsterdam Treaty, which entered into force on 1 May 1999. Point (1)(d) of the first paragraph of Article 63 of the EC Treaty provides that the Council shall adopt measures on asylum in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties within the area of minimum standards on procedures in Member States for granting or withdrawing refugee status. Article 63 is accordingly the proper legal basis for a proposal to establish minimum standards for procedures in Member States to grant and withdraw refugee status.

Title IV of the EC Treaty is not applicable to the United Kingdom and to Ireland, unless those Member States decide otherwise in accordance with the procedure laid down in the Protocol on the position of the United Kingdom and Ireland annexed to the Treaties. Title IV is likewise not applicable to Denmark, by virtue of the Protocol on the position of Denmark annexed to the Treaties.

6. SUBSIDIARITY AND PROPORTIONALITY: JUSTIFICATION AND VALUE ADDED

Subsidiarity

The insertion of the new Title IV (Visas, asylum, immigration and other policies related to free movement of persons) in the Treaty establishing the European Community demonstrates the will of the High Contracting Parties to confer powers in these matters on the European Community. But the European Community does not have exclusive powers here. Consequently, even with the political will to implement a common policy on asylum and immigration, it must act in accordance with Article 5 of the EC Treaty, i.e. the Community may only take action if, and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. The proposed Directive satisfies these criteria.

The establishment of an area of freedom, security and justice entails the adoption of measures relating to asylum. The specific objective of this initiative is to lay down minimum standards on procedures in Member States for granting and withdrawing refugee status. The standards laid down in this proposal must be capable of being applied through minimum measures in all the Member States. The situation regarding the procedural guarantees for asylum applicants, the requirements for decision making and the standards for applying concepts and practices such as accelerated procedures vary considerably from one Member State to another. Minimum Community standards have to be laid down by the kind of action proposed here. They will help to limit secondary movements of asylum applicants as resulting from disparities in procedures in Member States. Henceforth, applicants for asylum will decide on their country of destination less on the basis of the procedural rules and practices in place than before. The continued absence of standards on the procedures for granting and withdrawing refugee status would have a negative effect on the effectiveness of other instruments relating to asylum. Conversely, once minimum standards on asylum procedures are in place, the operation of, *inter alia*, an effective system for determining which Member State is responsible for considering an asylum application is fully justified.

Proportionality

The form taken by Community action must be the simplest form allowing the proposal to attain its objectives and to be implemented as efficiently as possible. In this spirit, the legal instrument chosen is a Directive, which allows minimum standards to be laid down, while leaving national authorities the choice of the most appropriate form and methods for implementing it in their national legal system and general context. The proposal concentrates on a set of minimum standards that are strictly necessary for the coherence of the planned action without laying down standards relating to other aspects of asylum.

COMMENTS ON ARTICLES

Chapter I: Scope and definitions

Article 1

This Article defines the purpose of the Directive. All asylum procedures in the Member States are subject to the minimum standards laid down in the Directive with the exception of the procedures referred to in Article 3.

Article 2

This Article contains definitions of the various concepts and terms used in the provisions of the proposal.

(a) Throughout this proposal, including the Annexes, the term "Geneva Convention" refers to the Convention relating to the status of refugees on 28 July 1951, as complemented by the New York Protocol of 31 January 1967. All Member States are parties to both without any temporal or geographical limitations.

(b) "Application for asylum" is defined with reference to the definition of a refugee in the Geneva Convention. Any request by a person for protection at the border or on the territory of the Member States shall be understood to fall within the terms of the Geneva Convention, unless the person explicitly requests another form of protection where the Member State has a separate procedure for that purpose.

(c) The situation of being an applicant for asylum is defined in relation to the process for reaching a final decision to determine refugee status.

(d) A "refugee status determining authority" (hereinafter referred to as "determining authority") is any official body that is both responsible in first instance for examining the admissibility or substance of applications for asylum and competent to take decisions in first instance in these cases. The definition implies that not every authority in a Member State that is responsible for a particular measure of examination is necessarily a determining authority. Police officials who conduct a first interview with the applicant on his identity and travel documents and subsequently have to refer the case to another authority for a decision, are not considered to be a refugee-determining authority within the terms of this definition. Moreover, the definition does not preclude a Member State from having more than one determining authority (for instance if the decisions on the admissibility and on the substance are taken by different bodies). Nor does it preclude Member States from providing that a particular determining authority is wholly independent from the executive of the government. It is emphasized that the authorities responsible for controlling the entry into the territory cannot be considered as a determining authority for the purposes of this Directive.

(e) A "reviewing body" can be a higher administrative authority, a Refugee Board, a Commission with an interministerial composition or a court of law, as long as it is different from and independent of the determining authority. The definition does not preclude a Member State from having more than one reviewing body (for instance

making a distinction in relation to the nature of the procedure under which the asylum application been processed).

(f) An "Appellate Court" is a judicial body in a Member State responsible for further appeal against the decision of any of its reviewing bodies. The nature of further appeal will depend on the choice made by the Member States as regards the reviewing body. If the reviewing body is an administrative authority, the Appellate Court would be the first judicial body to rule on the case and further appeal should then be on both facts and points of law. If the reviewing body is a judicial body, further appeal may be limited to points of law. It follows from the definition that there can only be one Appellate Court in a Member State responsible for ensuring the uniformity of law in the area of asylum procedures.

(g) The term "decision" in the provisions of this Directive covers any (official) conclusion about an asylum application on either its admissibility or its substance by either a determining authority or a reviewing body of a Member State. As a result, all provisions on decisions apply to decisions of both types of authority. However, where appropriate, the term will be specifically related to one type of authority.

(h) A "refugee" is a person who fulfils the requirements of Article 1(A) of the Geneva Convention.

(i) Following the wording of Article 63(1)(d) of the EC Treaty, the term "refugee status" is understood to be the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State.

(j) The concept of "unaccompanied minor" is drawn from the definition in the Council Resolution of 26 July 1997 on unaccompanied minors who are nationals of third countries.

(k) "Detention" covers any confinement of an applicant for asylum by a Member State within a restricted area where the freedom of movement of the applicant is substantially curtailed.

(l) "Withdrawal of refugee status" for the purpose of this Directive is the decision by a determining authority in a Member State to withdraw the refugee status of a person on the basis of Article 1(C) of the Geneva Convention or Article 33(2) of the Geneva Convention.

(m) "Cancellation of refugee status" normally occurs if circumstances come to light that indicate that a person should never have been recognised as a refugee in the first place.

Article 3

1. By using the term "person" instead of alien, this paragraph makes clear that the provisions of the Directive apply to third-country nationals, stateless persons and EU nationals. With respect to the latter category, it is worth remembering that there is a Protocol on asylum for nationals of Member States of the European Union, annexed to the Treaty establishing the European Union.

Under this paragraph, the provisions of the Directive also apply when decisions are taken on the admissibility and/or substance of an asylum application in the context of a procedure to decide on the right of applicants to legally enter the territory of a Member State. So-called border procedures are therefore fully covered by this proposal.

2. The Directive does not apply to requests for diplomatic or territorial asylum submitted to the representations of Member States. Neither the granting of diplomatic asylum (usually in the asylum seeker's country of origin) nor the (preliminary) screening of territorial asylum (usually in a third country) when requests are submitted to representations in Member States need to be subject to minimum standards for procedures relating to applications for asylum at the border or on the territory of Member States.

3. Under this paragraph, Member States may also apply the provisions of the Directive to procedures for protection other than the procedure to grant or withdraw refugee status. At present, several Member States have in place separate procedures for other kinds of protection. The working document concluded that it seemed sensible at this stage to restrict the scope of the proposal for a Directive to claims for protection under the Geneva Convention, as a considerable amount of work would still have to be done on defining the cases covered by subsidiary protection. This work will start soon. Moreover, the issue of a single procedure will be dealt with in more detail in the Communication on a common asylum procedure and a uniform status for those who are granted asylum valid throughout the European Union. In the present proposal, no minimum standard is set, but Member States may decide to apply the provisions of the Directive to any other existing procedure they might have for determining the need for protection for other reasons.

Chapter II: Basic principles and guarantees

Article 4

1. This paragraph prohibits the use of time-limits for requesting protection for the purpose of denying access to the asylum procedure. This means, first, that applicants for asylum should not be required to make their request upon arrival or within a certain time-limit after entry. Secondly, failure to comply with this formality should not lead to an asylum application being excluded from examination. The provision does not preclude Member States from applying Article 31 of the Geneva Convention. Moreover, as it concerns prior formalities only, the provision does not render it impossible for Member States to draw consequences for the examination of the asylum application from a refusal by the applicant to fulfil formalities during the procedure.

2. Asylum applicants should have access to the asylum procedure as soon as possible. Rules on asylum procedures do not make sense if persons who wish protection from a Member State effectively fail to gain access to its asylum procedure or are left stranded in the territory of the Member State for an unnecessarily long time because authorities do not recognise these requests as asylum applications. Any statement signaling a person’s wish to obtain protection from persecution, or any manifestation or expression of the person indicating that he fears to be returned to his country, should therefore be treated as an application for asylum. While Member States may require persons who arrive at the border or in the territory of a Member State and wish to ask for protection from that Member State to lodge (officially file) their asylum application at a specific

location or with a specific authority, once a person has made known his request, the relevant authorities that have been addressed are bound to make arrangements to enable this person to reach the appropriate place within a reasonable time ("effective opportunity to lodge their application as soon as possible"). Thus, any authority that is likely to be addressed by these persons at the border or in the territory of a Member State, should have instructions to be able to further subsequent implementation of this obligation. To this end, Member States should provide these authorities with instructions that make clear what they should and should not do when encountering persons who wish to ask for protection, and in particular, which authorities they should contact to take the matter in hand.

3. This paragraph lays down an obligation on Member States to ensure that the authorities responsible for controlling entry to its territory forward applications made at the border to the competent authority for examination as soon as possible. This could be a police official who conducts a first interview with the applicant on his identity and travel documents as a first measure of examination and subsequently has to refer the case to the competent determining authority or it could already be the competent determining authority, either present at the border or elsewhere in the country.

4. In some Member States, asylum applications can be filed on behalf of dependants. This paragraph introduces a minimum standard with regard to their treatment. Dependants who are considered adults for the purpose of filing an application for asylum according to the legislation of Member States should be given the opportunity to express themselves in private on the issue of a separate and independent application.

Article 5

To effectively ensure the principle of non-refoulement, this Article lays down the right of each asylum applicant to remain at the border or on the territory of the Member State as long as his application has not been decided on.

Article 6

This Article sets out minimum requirements for decision making. Decisions on applications for asylum are to be taken individually, objectively and impartially. In this context, "individually" is understood to mean on the basis of an individual assessment that precludes instructions to reject the case outright. "Objectively" means on the basis of the facts of the case. This should be evident in the grounds for the decision. Lastly, "impartially" is understood to mean without discriminating between similar cases for, *inter alia*, political reasons.

Article 7

This Article sets out procedural guarantees for every asylum applicant. No differentiation is made on the basis of the nature of the procedure (admissibility, regular or accelerated procedure), the stage of the procedure (first or second instance, guarantees referred to in points (b) and (c) for the final instance) or the way the application is processed (procedure prior to legal entry or not).

(a) Member States must inform each applicant, prior to examination of his asylum application, of the procedure to be followed, and of his rights and obligations during the procedure, in a language which he understands. This could be done for example by giving the applicant a standard document about the procedure in a language he can read and to give him time to read it or by explaining the procedure to him in a film in a language he understands. It could also be done orally by the authorities or by organisations assigned this task.

(b) According to this point, applicants must be given the services of an interpreter, whenever necessary, for submitting their case to the competent authorities. These services must be paid for out of public funds, if the interpreter is called upon by the competent authorities.

(c) This point lays down the obligation of Member States to enable the applicant to write, phone, fax or e-mail a representative of the Office of the UNHCR or other organisations that are working on behalf of the UNHCR.

(d) This point lays down rules for decisions on applications for asylum. Every decision must be communicated to the applicant in writing. The decision must at least contain a short summary of the facts at issue, a reference to the legal ground(s) for rejection and an explanation how the facts have led to this conclusion. Moreover, any adverse decision should include information on appeal. "Where applicable" refers to the possibility of automatic review (Article 36).

(e) Points (e) and (f) ensure that an applicant for asylum is informed of the purport of the decision concerning him and what could or should happen next, either on receiving the decision or a short while afterwards, in a language which he understands. This is an additional safeguard to help applicants, who mostly do not understand the language decisions are written in, to quickly grasp the essentials of the decision so that they will be able to consider the possible next steps without undue delay. To implement this obligation, Member States could in most cases, for instance, attach a (standard) information leaflet to the decision in the language the particular applicant understands.

(f) In the event of a positive decision, an applicant must be informed in a language he understands of any next steps he must take. A mandatory step could be the obligation to go to the authorities to provide information or material for an identity card or to obtain this card.

Article 8

Article 8 concerns procedural guarantees for the personal interview. It does not concern other interviews during examination, as described earlier under the comments on Articles 2(e) and 4(4). Depending on the stage and nature of the procedure in first instance, Article 8 refers either to the personal interview on the admissibility and/or the substance, or to the personal interview on the substance.

1. This paragraph lays down the procedural guarantee that every applicant is entitled to a personal interview with a competent official under national law before a decision in first instance is taken, unless he declines the opportunity, e.g. by explicit statement or through his action (i.e. he has disappeared). This official does not have to work for the

determining authority but must have received training for this purpose in accordance with Articles 14(1)(b) and (d) and, where necessary, (c).

2. This paragraph provides that if the applicant is requested to agree with the description of his statements made during a personal interview, a transcript should be read out to him as a minimum procedural guarantee.

3. Paragraphs 3 and 4 concern the issue of family members and dependants. Minimum standards should be that every family member has a right to be interviewed separately, even if (s)he is a dependant within the meaning of Article 4(4). Exceptions can be made in cases falling within the terms of paragraph 5.

4. The term "normally" is meant to convey that, only in situations where the interviewing official believes it to be conducive to the result and the respective family members all separately give consent, a personal interview is conducted in the presence of family members.

5. Paragraph 5 describes two specific situations in which Member States may refrain from conducting a personal interview. It refers to persons and not applicants for asylum as it may also concern dependants.

6. Paragraph 6 sets out the right of an applicant for asylum whose application is processed in a regular procedure to consult the transcript of his own personal interview.

7. The last paragraph provides for a minimum standard on an appropriate course of action in situations where there are reasons to believe that an interviewee has inhibitions in presenting the grounds for the asylum application in a comprehensive manner. The Article refers to persons and not asylum applicants as it may also concern dependants. It is applicable to the situation of any applicant or person, male or female, minor or adult, who has been a victim of torture or sexual abuse and finds it difficult to present the grounds for the application owing to these experiences, unless an interviewer and an interpreter of the sex chosen by the interviewee are assigned to conducting the personal interview.

Article 9

This Article sets out the procedural guarantees relating to legal assistance during the asylum procedure. Legal assistance is understood to be any form of assistance by any person relating to the examination of the asylum application. It may be given by a legal adviser or counsellor, i.e. a person who has been chosen by the applicant to represent him for this purpose.

1. This paragraph lays down the general rule that every applicant must have the opportunity to contact organisations or persons that provide legal assistance at all stages of the procedure.

2. Paragraph 2 recognises the interest of Member States to regulate the access to closed areas designated for the examination of applications for asylum. These areas could be in-land centres or centres linked to airport transit zones, ports of entry, etc. The examination in these areas could, but need not, take place in the context of a border procedure (Article 3(2)). The Directive proposes that Member States may only control access for two specific purposes: quality of legal assistance and efficient examination of applications for asylum. In order to ensure quality of legal assistance in these areas,

Member States can choose to limit the access of (representatives of) organisations to these areas to those that meet the necessary professional qualifications. Qualified lawyers could not be denied access on the basis of this provision. In order to ensure efficient examination of asylum applications in these areas, including compliance with time-limits for decision making laid down in national laws or regulations, Member States can choose to set rules for the timing and the duration of access to clients. The measures taken by Member States should be strictly necessary for the purposes described in this paragraph and should never result in the effective annulment of the right to have access to legal assistance.

3. This paragraph defines the minimum standard with regard to the presence of a legal adviser or counsellor at personal interviews. At least in the regular procedure, where more difficult issues are often at stake, the legal counsellor or adviser must have the opportunity to be present at the personal interview on the substance of his client's asylum application. Another minimum standard is the existence of national rules clarifying the legal position of legal counsellors or advisers in interviews under other procedures than the regular procedure.

4. The last paragraph of this Article requires Member States to ensure that the applicant is given legal assistance free of charge after an adverse decision by the determining authority, if he has no adequate means to pay for it.

Article 10

This Article introduces the necessary additional procedural guarantees for unaccompanied minors following the December 1998 Vienna Action Plan and the March 2000 Scoreboard.

1. Paragraph 1 specifies the procedural guarantees to be provided to all unaccompanied minors, irrespective of the nature of the procedure used to process their application.

   (a) The minimum standard is assistance in the procedure by a legal guardian or adviser. The term "adviser" is designed to include a representative from an organisation which is responsible for the care and well-being of the minor or from any other organisation competent for these matters.

   (b) This point explains that appointing a legal guardian or adviser "as soon as possible" means that this person must be able to help the unaccompanied minor he represents prepare for the personal interview on the admissibility and/or substance of the asylum application. In the course of this action, a legal guardian or adviser could, where appropriate, discuss with the unaccompanied minor the need to continue the procedure where other options appear to be available. Furthermore, this paragraph lays down the minimum standard that the legal guardian or adviser has the opportunity to be present at the personal interview of the unaccompanied minor he represents and (like the interviewer) ask him questions and make comments (to be included in the transcript of the interview). General national rules on presence at the personal interview pursuant to Article 9(3) are set aside by the "best interests" principle of the child.

2. Paragraph 2 lays down the minimum standard that the personal interview on the admissibility and/or the substance of the asylum application of an unaccompanied minor must be conducted by an official trained with regard to the special needs of minors in accordance with Article 14(1)(c).

3. Paragraph 3 lays down two minimum standards with respect to medical examinations to determine the age of unaccompanied minors: (a) the methods should be safe and respect human dignity and (b) an unaccompanied minor that is to undergo this examination should be properly informed about it in a language he understands.

Article 11

1. Paragraph 1 of this Article sets a minimum framework for assessing the legitimacy of cases of detention which are based on the need for an efficient and adequate examination of an asylum application. On the one hand, a basic standard should be that an applicant must not, as a rule, be detained for the sole reason that he is an applicant. On the other hand, the needs of Member States to detain certain of these applicants for the purpose of determining identity and facts are recognised. The description of cases falling within this purpose is drawn from EXCOM Conclusion 44 (XXXVII). The Article does not, in any way whatsoever, interfere with national policies on detention of aliens for other purposes nor with the treatment of detainees in general.

2. Paragraph 2 provides that Member States must provide by law for the possibility of an initial review and subsequent regular reviews of the detention order in the cases described under the first paragraph.

Article 12

This Article requires Member States to take appropriate measures to ensure that all competent authorities (determining authorities, reviewing bodies and the Appellate Court) are adequately provided with staff and equipment so that they can discharge their duties as laid down in this Directive.

Article 13

1. Paragraph 1 requires each Member State to ensure that its determining authorities have specialised staff at their disposal, access to information and a right to ask for advice.

2. Paragraph 2 is designed to ensure that, as far as possible, reviewing bodies receive the same treatment as determining authorities with respect to information concerning the situation prevailing in the countries of origin of asylum applicants and in transit countries.

Article 14

1. This Article spells out minimum requirements for the training of personnel responsible for the implementation of duties laid down in the Directive. In principle, for the purposes of implementing the Directive, an initial training course is considered sufficient. Member States may of course provide for further training at suitable intervals. To ensure accuracy, types of personnel are listed according to the nature of the duties performed.

   (a) This point concerns the personnel responsible for the duties laid down in Article 4;

(b) This point concerns the personnel responsible for conducting personal interviews, as mentioned, *inter alia*, in Article 8, and other interviews that fall within the terms of the examination of an asylum application as described in the Directive;

(c) This is a specific form of training related to the duty laid down in Article 10(2);

(d) This kind of training is to be given to both the personnel mentioned in point (b) and the personnel of determining authorities responsible for taking decisions on the admissibility and/or on the substance of applications for asylum. Both types of personnel need to be acquainted with all (legal) questions that may arise when examining an asylum application in order to implement their tasks properly.

(e) This point relates to the personnel responsible for the duties laid down in Article 11.

2. This paragraph is designed to ensure that the relevant personnel of reviewing bodies receive the same treatment as determining authorities with respect to training necessary to perform their duties. The training under point (c) of paragraph 1 may need to be extended to personnel of reviewing bodies if unaccompanied minors are granted a hearing on appeal. The training under point (d) is considered basic training for the purpose of taking decisions and should therefore be logically extended to the personnel of reviewing bodies that perform these tasks.

Article 15

This Article requires Member States to take the appropriate measures to ensure confidentiality of information regarding individual applications for asylum. These measures should take into account the specific rules of paragraphs 2 and 3 on the exchange of information with the country of origin and the role of the UNHCR as underlined in paragraph 4.

1. Appropriate measures could include any rules necessary to ensure a safe exchange of information between different government departments in the Member State responsible for the examination of the asylum applications, rules for the exchange of information between these departments and any other governmental bodies, rules for allowing certain independent institutions (for instance an Ombudsman) access to investigate the exchange of information among these parts of the government, or rules for allowing access for study and research by third parties.

2. Information regarding an individual asylum application must not be shared with the applicant's country of origin.

3. Member States may, however, need to obtain certain information in countries of origin in order to decide on applications. Under this paragraph, they must ensure that the methods used do not lead to the cases of applicants becoming known to the authorities in the country of origin. Authorities responsible for examination of applications may, for instance, request the relevant department of the Ministry of Foreign Affairs to conduct or initiate investigations in the applicant's country of origin which, where necessary, may include the consultation of official records of certain authorities of the country of origin. However, great care must be taken to avoid that, as a result of these investigations, the fact that this person has applied for asylum becomes known to any person connected in any manner whatsoever with the authorities of the country of origin.

4. Any rules relating to this matter should take into account the UNHCR's specific mandate under the Geneva Convention as set out in Article 17 of this proposal.

Article 16

This Article concerns the closure of the file where the applicant has voluntarily withdrawn his asylum application or has disappeared. To lay down a standard approach to this issue in all Member States, while not obliging Member States to take an official decision in such cases, the Article proposes that, at least, a notice discontinuing the examination should be posted in the file of the determining authority in order to end the procedure from an administrative and legal angle. It would serve as the closing date of the procedure. It would enable Member States to retrieve the necessary information in situations where the applicant resurfaces in the same or another Member State and an issue of responsibility for examining a new application might arise. The third paragraph enables Member States to treat such an application as one that may be dismissed as a manifestly unfounded application in accordance with Article 28(1)(d), when no relevant facts with respect to the particular situation or to the situation in the country of origin of the applicant have been submitted.

Article 17

This Article sets out three different areas of responsibility of the UNHCR: access to asylum applicants (point (a)); access to information regarding individual asylum applications (point (b)) and the power to make representations in asylum procedures (point (c)), given its mandate under Article 35 of the Geneva Convention.

Chapter III: Admissibility

Article 18

Article 18 lists the cases in which Member States may dismiss an asylum application as inadmissible. In the working document it was proposed that a clear distinction be drawn between a decision not to consider the substance of an asylum application because the applicant could be returned to a third country, and a decision to refuse an asylum application on the substance. Accordingly, the concept of admissibility in the working document was restricted to determining whether the Member State in question should consider the substance of the application, or whether the applicant should be sent to a third country. Two types of safe third country concept are distinguished following EXCOM Conclusions No 15 (XXX) of 1979 and 58 (XL) of 1989. Consequently, Article 18 states that Member States may dismiss a particular asylum application as inadmissible if:

(a) Another Member State is responsible for examining the application according to the criteria and mechanisms for determining which Member State is responsible for considering an asylum application. This concerns the application of the Dublin Convention as well as any Community legal instrument based on point (1)(a) of the first paragraph of Article 63 of the EC Treaty. For the conditions of application reference can be made to either the Dublin Convention or this future instrument.

(b) A country is considered as a first country of asylum for the applicant. This country cannot be a Member State as such a rule would pre-empt the Dublin Convention or its successor-instrument. Other conditions of application are found in Article 20.

(c) A country is considered as a safe third country for the applicant. Here, too, this country cannot be a Member State as such a rule would pre-empt the Dublin Convention or its successor-instrument. Other conditions of application are found in Articles 21 and 22 and the Annex referred to in Article 21(1).

Article 19

Article 19 provides for a specific procedural guarantee where a Member State is examining the application of the Dublin Convention or in due time its successor-instrument. When a request is put forward by a Member State to another Member State to take the responsibility for examining an asylum application, the requesting Member State must inform the applicant in question as soon as possible of this request, its content and the relevant time-limits in a language which he understands. This specific procedural guarantee is in keeping with the general approach in this proposal to provide, where necessary, guarantees for the applicant to keep abreast of the state of play regarding his application: see Articles 7(1) (a), (e) and (f), which equally apply to decisions of reviewing bodies, and Article 24(4).

Article 20

This Article defines a country as a first country of asylum for an asylum applicant if this particular applicant has been admitted to the said country as a refugee or for other reasons justifying the granting of protection and can still avail himself of this protection. This definition is in accordance with paragraph (k) of the EXCOM Conclusion No 15 (XXX) of 1979 requesting States to give favourable consideration to an asylum application where the applicant advances that he has compelling reasons for leaving the first country of asylum due to fear of persecution.

Article 21

Under Article 21(1) Member States can use the safe third-country concept to dismiss applications as inadmissible if the designation of a country as a safe third country is in accordance with the principles laid down in Annex I. These principles consist of two parts. The first part sets out the material requirements for designation. A country has to observe certain standards before it can be considered as a safe third country. The second part sets out the designation procedure. In summary, any designation should be based on public information. These principles apply regardless of the existence of a national list designating countries as safe third countries per se. Consequently, if a Member State wishes to dismiss a specific individual application for asylum as inadmissible because the applicant has been in one particular third country and there has so far been no precedent with respect to the safety of this country for an applicant of his nationality, the first step of the determining authority of the said Member State would have to be to investigate whether these general principles apply to this specific third country for persons with the nationality and other main characteristics of the applicant. This part of the individual investigation need not be carried out if the said Member State has already successfully designated the third country as a safe third country in earlier cases in accordance with the principles in Annex I or has issued a policy statement to that end, for instance by putting the country on its list of safe third countries. For the purpose of avoiding duplication in these investigations, it is suggested that use be made of the Contact Committee.

Article 22

This Article lays down the requirements for dismissing an application as inadmissible on the basis of the safe third country concept. The first requirement is that the third country is in fact 'a safe third country', that is a country considered as a safe third country in accordance with the principles of Annex I. The second requirement is that this safe third country can be considered as a safe third country for the individual applicant. This is the case only if, notwithstanding any list, the three conditions set out in points (a), (b) and (c) are met in his particular case.

(a) The applicant should have a certain link with the third country. Asylum should not be refused solely on the ground that it could be sought from another State. EXCOM Conclusion No 15 (XXX) of 1979 refers to a connection (e.g. a visa issued, previous stay) and close links (e.g. presence of family members). A link would also be a previous stay which would have enabled him to avail himself of the protection of the authorities. This should be assessed individually by each Member State in accordance with its national case-law, presumably taking into account *inter alia* the duration and nature of the stay.

(b) There are grounds for considering that the applicant will be re-admitted to the third country. While no explicit assurance of (re-)admittance for the individual applicant is imposed in this proposal, any examination into the application of the safe third-country concept should take into account how the authorities of the third country will respond to the arrival of the applicant. This should also be assessed individually by each Member State on the basis of all relevant evidence relating *inter alia* to past experiences, information from the UNHCR and other Member States and the existence of re-admission agreements. Again, exchanges of views and experiences in the Contact Committee would help Member States to keep informed of the latest developments on this and to avoid unnecessary duplication of investigations.

(c) Lastly, the decision would have to show that the determining authority has considered and assessed information that the applicant might have provided indicating that the safe third country would not be a safe third country in his particular circumstances. It is possible that, although fellow countrymen of his are in general treated well in that country, the applicant would suffer a different fate given his particular background. This is the rebuttable presumption underlying any application of the safe third-country concept.

Article 23

Article 23 sets out time-limits for examining first country of asylum and safe third-country cases. They have been aligned on the time-limits for examination of manifestly unfounded applications. For the reasons behind the length of the time-limits, see the comments on Article 29. Time-limits for this kind of case are proposed first of all as a procedural guarantee for applicants. A deadline for an admissibility procedure ensures that the applicant cannot be kept in suspense for an unduly long period of time as to whether or not the determining authorities will admit his case in the substantive determination procedure. Secondly, a deadline serves as a minimum requirement for decision making. As, logically, any investigation into inadmissibility precedes any other form of examination, it should not take long to take a decision.

Chapter IV: Substantive determination procedures

Section 1: The regular procedure

Article 24

Article 24 provides for minimum standards concerning the examination of applications for asylum in the regular procedure. Its main aim is to introduce fair and efficient mechanisms to overcome lacunae or rigidities in the system.

1. Paragraph 1 underlines the freedom of Member States to determine the time-limits in this kind of case but requires them to be reasonable. Time-limits must not extend beyond what is general practice for difficult cases.

2. Paragraph 2 is designed to enable an applicant for asylum who does not receive a decision on time, to remind the competent authorities of the obligation set by their government and request a decision soon. Member States must determine by law whether the decisions of the reviewing body on this kind of request shall be on the merits of the case – determining refugee status instead of the determining authority – or set a time-limit for a decision by the determining authority. A decision on the merits of the case would help prevent delay in the procedure but would require powers on the part of the reviewing body to determine refugee status.

3. It is conceivable that there may be legitimate reasons for the determining authority not to take decisions on time. Therefore, the third paragraph allows for an extension of the time-limit for a maximum of six months if, *inter alia*, the determining authority is awaiting clarification by the reviewing body or the Appellate Court on an issue that could affect the nature of the decision on the application.

   In order to be able to effectively extend the time-limit in the circumstances described in an individual case, the determining authority must properly inform the applicant in question of the situation.

Article 25

This Article lays down investigative standards for examining regular cases. It provides that Member States must take appropriate measures to ensure that applicants are given the opportunity to cooperate with the competent authorities for this purpose (paragraph 1), sets out what constitutes sufficient cooperation by an applicant (paragraph 2) and lays down the subsequent obligations of the determining authorities to examine the facts of the case (paragraph 3). The last paragraph describes the consequences where a coherent and plausible case does not run counter to generally known facts: application of the principle of the benefit of the doubt to the applicant.

Article 26

This Article deals with the issue of withdrawal of refugee status within the meaning of point (1)(d) of the first paragraph of Article 63 of the EC Treaty. Cancellation of refugee status has been included.

1. A credible system for examining applications for asylum must also be able to remedy previous mistakes. This paragraph lays down the requirement that the competent determining authority must be able to start an examination to withdraw or cancel the refugee status of a particular person as soon as information comes to light indicating that there are reasons to reconsider the validity of his refugee status.

2. Cancellation or withdrawal of refugee status might have very serious consequences for the person in question. The decisions need to be carefully prepared and the person in question should be confronted in a personal interview with the information that has come to light indicating that there are reasons to reconsider the validity of his refugee status. Moreover, he should be able to reflect on the information and express his views following the personal interview as the information and the views of the determining authority might not wholly correspond to the situation of the applicant in reality. These procedural guarantees point towards a regular procedure, given the guarantee laid down in Article 8(6) of this Directive. While the proposal thus sets out that each cancellation or withdrawal of refugee status must be examined in the regular procedure, it does not preclude Member States from prioritising these cases.

3. The last paragraph of this Article provides that, in these cases, Member States may derogate from Articles 7 (guarantees to be informed, to have the decision explained in a language he understands) and 8 (right to a personal interview) of this Directive when these are impossible to implement. This is the case when the person in question has voluntarily re-established himself in the country where persecution was feared. Then these guarantees appear unnecessary and are in fact impossible to carry out.

Section 2: The accelerated procedure

Article 27

Article 27 provides that Member States may adopt or retain an accelerated procedure for the purpose of processing applications which are suspected to be manifestly unfounded in accordance with the definitions found in the proposal.

Article 28

1. The wording of Articles 28(1)(a) and(b) draws on EXCOM Conclusion No 30 (XXXIV) of 1983, which defines manifestly unfounded applications as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the Geneva Convention. Four other definitions are added following practices in some Member States. All the definitions have in common that they describe reasons for not investigating an application more thoroughly because clear and evident facts render this unnecessary.

   (a) The first point describes the situation of applications containing false information with respect to identity and nationality. The claim of an applicant need not be investigated further if, without reasonable cause, false information is provided about his identity or nationality, something that will fundamentally undermine the credibility of a claim. This is not necessarily the case for untrue statements or false information about the experiences of the applicant in his country of origin or the general situation in this country. The latter inconsistencies or contradictions should be examined in the light of all the circumstances of the case.

(b) This point describes the situation of an undocumented applicant who has provided the determining authority with some information on his identity or nationality but the information has not been sufficient or sufficiently convincing to determine fully his identity or nationality. This is the case if the claim is not plausible and the information provided about identity and travel routes shows inconsistencies. In these cases, the application can be dismissed as manifestly unfounded if, in addition, there are serious reasons for considering that he has in bad faith destroyed or disposed of an identity or travel document that would otherwise help determine his identity or nationality.

(c) The third point is designed to avoid abuse of the asylum procedure by a person who is on the point of being deported.

(d) The fourth point covers cases in which an applicant has submitted reasons that do not justify protection or, when explaining his claim, has described facts that do not justify protection. This definition would cover two situations: (1) the grounds of the application are outside the scope of the Geneva Convention; the applicant has put forward reasons such as the search for a job or better living conditions; (2) the application is totally lacking in substance as the applicant provides no indications that he would be exposed to fear of persecution or his story contains no circumstantial or personal details.

(e) The fifth point provides for the possibility to dismiss an application as manifestly unfounded if the applicant is from a safe country of origin in accordance with Articles 30 and 31.

(f) The final point provides for the possibility to dismiss an application as manifestly unfounded if the applicant has submitted a new application raising no new relevant facts with respect to his particular circumstances or to the situation in his country of origin. For the purpose of this paragraph, new applications could be second or multiple applications ("repeat applications") that are submitted before or after a final decision in an asylum procedure has been taken, applications made for facts that occurred after the applicant had left his country of origin ("refugees *sur place*") or applications requesting the re-opening of a final decision on the grounds that new facts have subsequently emerged which would shed another light on that decision.

2. Following the suggestions in the working document, Article 28(2) explicitly excludes any application that may be rejected on the basis of Article 1(F) of the Geneva Convention or on the basis of an internal flight alternative from being considered as manifestly unfounded.

Article 29

This Article lays down time-limits as an inherent part of the common framework for the accelerated procedure. Two time-limits are introduced. The first one requires the personal interview to be conducted within 40 working days after the application has been made (paragraph 1). The second one requires a decision on a personal interview within 25 working days (paragraph 2). The general reason for a deadline for accelerated procedures is that examination of an application that is manifestly unfounded should not require a lot of time. The 1992 Resolution on manifestly unfounded applications stated that initial decisions would

have to be taken as soon as possible and at the latest within a month. This deadline has been perceived as too ambitious. Hence, a less stringent limit has been set. Two time-limits are introduced for reasons of fairness and efficiency. First, it is not reasonable that an applicant for asylum is interviewed after a considerable time and yet receives a decision that has been taken in a so-called accelerated procedure. Hence a time-limit is proposed for the personal interview. Secondly, it is not reasonable that a determining authority decides to dismiss an application as manifestly unfounded after having spent considerable time examining the result of a personal interview. The determining authorities must have already started the examination of the case before the personal interview, while from the point of view of the applicant, the personal interview raises expectations that his case is being examined and that he will receive a decision soon. In cases where no personal interview has taken place, the sum of these time-limits, i.e. 65 working days, shall be the time-limit to take a decision for the purposes of this Article.

Article 30

Articles 30, 31 and 41 jointly lay down the proposed common approach towards safe countries of origin. The approach is identical to the one for the safe third countries as described above in the comments on Article 21.

Article 31

This Article lays down the requirements for dismissing an application as manifestly unfounded on the grounds that the country of origin is safe. The first requirement is that the country of origin of the applicant is in fact "a safe country of origin" in accordance with the principles of the relevant Annex. The second requirement is that the country can be considered as a safe country of origin for the individual applicant. This is the case only if (a) he has the nationality of this country or, if he is a stateless person, it is his country of former habitual residence and (b) there are no grounds for considering the country not to be a safe country of origin in his particular circumstances. This last element is in fact the rebuttable presumption underlying any application of the safe country-of-origin concept.

Chapter V: Appeal procedures

Article 32

The first paragraph of this Article lays down the right to appeal; the second contains a provision about the scope of that right. The Article applies to decisions on inadmissible and manifestly unfounded applications and to decisions taken in the regular procedure.

The first paragraph states that applicants for asylum have the right to appeal against each decision taken on the admissibility or the substance of their application.

The second paragraph states that appeal can but need not be on both facts and points of law. The reviewing body cannot limit itself to points of law, unless there is no dispute between the parties about the facts.

Where this Article, or other Articles in this Chapter, refers to inadmissible cases, it includes the cases dismissed as inadmissible on the basis of the Dublin Convention or its successor-instrument. The successor-instrument to the Dublin Convention may provide for rules on appeal and further appeal, superseding the Articles in this Chapter for those particular cases.

Article 33

This Article lays down rules on suspensive effect for all cases in appeal. The Commission proposes that appeal should have suspensive effect, except in a limited number of cases. The Article applies both to decisions on inadmissible and manifestly unfounded applications and to decisions taken in the regular procedure.

1. Paragraph 1 states that appeal shall have suspensive effect and that the consequence of this is that the applicant may remain in the territory or at the border of the Member State concerned awaiting the outcome of the decision of the reviewing body.

2. Paragraph 2 allows Member States to derogate from the general rule that appeal has suspensive effect in safe third-country cases, manifestly unfounded cases and in the case of issues of public order and national security. As regards to the last case, these terms are taken from the Geneva Convention. Article 32 of which states that the Contracting States must not expel a refugee lawfully in their territory save on grounds of national security or public order in pursuance of a decision reached in accordance with due process of law.

3. Paragraph 3 lays down the minimum standard that in each case where suspensive effect is denied, the applicant has the right to apply to the competent authority for leave to remain in the territory or at the border of the Member State during the procedure in review or appeal. No expulsion may take place until a decision has been taken by the competent authority on this request, except in safe third-country cases.

4. Paragraph 4 requires the competent authority to process the request as soon as possible.

Article 34

This Article concerns the general framework for taking decisions on appeal in all cases. The first four paragraphs apply to both decisions on inadmissible and manifestly unfounded applications and decisions taken in the regular procedure.

1. Under this paragraph, Member States shall lay down by law or regulation reasonable time-limits for giving notice on appeal and for filing the grounds of appeal. While time-limits may vary considerably, it is considered reasonable that in general time-limits for appeal in inadmissible or manifestly unfounded cases are shorter than those in regular cases. It is only proposed that the time-limit for filing the grounds of appeal in regular cases must not be shorter than 20 working days. The Commission would envisage discussions in the Contact Committee on what constitute reasonable time-limits.

2. Under this paragraph, Member States shall lay down all other necessary rules for filing appeal, including rules on extending the time-limit for filing the grounds of appeal for a reasonable cause.

3. In this paragraph, the proposal introduces two possibilities for decision making on appeal. Member States will decide that the reviewing body either has the power to confirm or nullify the decision of the determining authority or that it must take a decision on the merits of the case.

4. If Member States have decided that the reviewing body has the power either to confirm or nullify the decision of the determining authority, the reviewing body must as a consequence remit the case to that authority, where it nullifies a decision.

5. The last paragraph enables Member States that operate border procedures as described in Article 3(2) to provide for a very rapid decision on appeal in these cases.

Article 35

An accelerated procedure would not really be of any practical use if the decision of a reviewing body in an accelerated case took (nearly) as long as in a regular case. This Article therefore lays down a time-limit for decisions by the reviewing bodies in inadmissible and manifestly unfounded cases. Paragraph 1 states that a decision of a reviewing body in an inadmissible or manifestly unfounded case should be taken within 65 working days after notice for appeal is given. Paragraph 2 suggests that Member States could lay down time-limits in other cases. This would help increase the legal certainty about the duration of the procedure from the point of view of applicants. Following the suggestion in Article 38(3), it could also enable applicants to make reviewing bodies accountable for delays by way of a procedure similar to Article 24(2). Paragraph 3 concerns minimum standards similar to the standards laid down in Article 24(3).

Article 36

This Article allows Member States to introduce a procedure for automatic review of decisions by determining authorities in inadmissible and manifestly unfounded cases instead of appeal. Automatic review takes place in certain Member States. The system is described in the 1995 Council Resolution on minimum guarantees as an alternative to appeal. Automatic review avoids the need to wait for the applicant to give notice for appeal. The reviewing body is immediately requested to confirm or nullify the decision taken by the determining authority and this may enable the Member State to implement an adverse decision rapidly when it is not nullified.

1. This paragraph gives Member States the option of introducing automatic review in inadmissible and manifestly unfounded cases.

2. Paragraph 2 requires those Member States which introduce such a procedure to provide for reasonable time-limits for the applicant to submit written comments. Thus, these procedures include a guarantee that applicants for asylum can put forward their objections to an adverse decision as in an ordinary appeals procedure. Given the nature of automatic review as an additional safeguard for decision-making taken up by the authorities themselves, this time-limit can be short.

3. Paragraph 3 is designed to ensure that automatic review is subject to the same minimum standards for decision making as appeal, except for the standards on time-limits.

Article 37

This provision introduces the possibility of introducing accelerated appeal (Article 35) or automatic review (Article 36) to some regular cases. Accelerated appeal would ensure that the reviewing body prioritises its decision making in these cases. Alternatively, it may be felt by Member States that certain regular cases are of a sensitive nature and, irrespective of the applicant's wish for an appeal, call for a review. Certain principles of law could be at stake.

The government might feel more confident if backed by the reviewing body when implementing an adverse decision. As with inadmissible and manifestly unfounded cases, application of automatic review could thus be seen as an additional safeguard within the decision-making process of the authorities.

(a) The first ground is that the applicant has, without reasonable cause and in bad faith, withheld information in an early stage of the procedure which would have resulted in the application being dismissed as inadmissible or manifestly unfounded. The determining authority may wish to prioritise these fraudulent cases and request the reviewing body to take a similar approach.

(b) The second ground is that the applicant has committed a serious offence in the territory of the Member State or of another Member State. Accelerated appeal or automatic review in these cases and the cases described at points (c), (d) and (e) underlines the willingness of determining authorities to ensure a rapid decision.

(c) The third ground is that there are manifestly serious reasons for considering that the grounds of Article 1(F) of the Geneva Convention apply with respect to the applicant. Not all Article 1(F) cases would merit this treatment, given the complexity of the issue of exclusion.

(d) The fourth ground is that there are reasonable grounds for regarding the applicant as a danger to the security of the Member State in which he is located. This ground is based on Article 33(2) of the Geneva Convention.

(e) The applicant, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he is located. This ground is also based on Article 33(2) of the Geneva Convention.

(f) The final ground is that the applicant is held in detention. This could be the kind of case to prioritise under all circumstances.

Article 38

This Article lays down the right to further appeal and provides the general framework within which rulings take place.

1. This paragraph lays down that, in all cases, applicants for asylum have a right to further appeal against decisions of reviewing bodies.

2. This paragraph lays down that the Appellate Court has the power to examine decisions on both facts and points of law, unless there has already been a judicial examination on both facts and points of law. Thus, where the reviewing body is a judicial body, Member States may limit the examination by the Appellate Court to points of law.

3. This paragraph lays down that, in inadmissible and manifestly unfounded cases, Member States may empower the Appellate Court to refuse leave to appeal, and that, in cases where leave to appeal is granted, it may examine the pertinent points of law in an abbreviated or accelerated procedure. An abbreviated procedure could be a procedure without a hearing. A reason to refuse leave to appeal could be that a point of law is raised which, given existing caselaw, would not invalidate the decision.

4. This paragraph enables Member States that so wish to introduce the right for applicants and/or the determining authorities to request a decision from the Appellate Court in cases in which the reviewing bodies have not taken a decision on time. The Appellate Court would be requested to take a decision setting a time-limit for a decision by the reviewing body.

5. This paragraph sets minimum standards for further appeal that are similar to those set in Article 35(1) for appeal.

6. In the final paragraph, minimum standards for further appeal are set that are similar to those in Article 35(2).

Article 39

This Article sets minimum standards relating to suspensive effect of further appeal.

1. Under paragraph 1, Member States must lay down rules by law about suspensive effect pending the ruling of the Appellate Court. Member States may choose not to provide for suspensive effect as the general rule.

2. Paragraph 2 lays down the minimum standard that, in each case where suspensive effect of further appeal is denied, the applicant has the right to apply to the Appellate Court for leave to remain in the territory or at the border of the Member State during the procedure in further appeal. No expulsion may take place until a decision has been taken by the Appellate Court on this request.

3. Paragraph 3 provides that Member States may decide that the Appellate Court shall take a decision as soon as possible.

4. Paragraph 4 enables Member States that operate border procedures as described in Article 3(2) to provide for a very rapid decision in further appeal in these cases.

Article 40

Under this Article, Member States may decide that the right to further appeal in regular cases and the right to apply for further appeal in inadmissible and manifestly unfounded cases can also be extended to the determining authorities. Member States may want to make use of this option if they have decided in accordance with Article 34(3) or Article 36(3) that the reviewing bodies are required to take a decision on the merits of the case.

Chapter VI: General and final provisions

Article 41

A standard provision about non-discrimination is introduced. The wording is based on Article 3 of the Geneva Convention and Article 13 of the EC Treaty.

Article 42

This Article is a standard provision in Community law, providing for effective, proportionate and dissuasive penalties. It leaves Member States with the discretionary power to lay down penalties for infringements of the national provisions adopted pursuant to this Directive.

Article 43

The Commission is instructed to draw up a report on the Member States' application of the Directive, in accordance with its role of ensuring the application of provisions adopted by the institutions pursuant to the Treaty. It is also given the task of proposing possible amendments to the Directive. A first report must be submitted no later than two years after the deadline for transposal of the Directive in the Member States. After this first report, the Commission must draw up a report on the application of the Directive at least every five years.

Article 44

The Member States are required to transpose the Directive by 31 December 2002. This is the same deadline as in the draft Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. The Member States must inform the Commission of the amendments they make to their laws, regulations or administrative provisions and include a reference to the Directive when adopting the measures.

Article 45

This Article lays down the date when the Directive enters into force.

Article 46

The Directive is addressed only to the Member States.

Annex I

Annex I contains the principles with respect to the designation of safe third countries.

Annex II

Annex II contains the principles with respect to the designation of safe countries of origin.

2000/0238 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on minimum standards on procedures in Member States for granting and withdrawing refugee status

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the Economic and Social Committee[3],

Whereas:

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, 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 of 28 July 1951, as complemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.

(3) The Tampere Conclusions provide that a Common European Asylum System should include in the short term common standards for fair and efficient asylum procedures in the Member States and in the longer term Community rules leading to a common asylum procedure in the Community.

(4) Minimum standards on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures without prejudice to any other measures to be taken for the purpose of implementing point (1)(d) of the first paragraph of Article 63 of the Treaty and the objective of a common asylum procedure agreed on in the Tampere Conclusions.

---

1 OJ C
2 OJ C
3 OJ C

(5) Asylum procedures should not be so long and drawn out that persons in need of protection have to go through a long period of uncertainty before their cases are decided, and persons who have no need of protection but wish to remain on the territory of the Member States see an application for asylum as a means of prolonging their stay by several years. At the same time, asylum procedures should contain the necessary safeguards to ensure that those in need of protection are correctly identified.

(6) The minimum standards laid down in this Directive should therefore enable Member States to operate a simple and quick system that swiftly and correctly processes applications for asylum in accordance with the international obligations and constitutions of the Member States.

(7) A simple and quick system for procedures in Member States could, provided the necessary safeguards are in place, consist of an initial review of the decision and the possibility of further appeal.

(8) The necessary safeguards should include that, in the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, every applicant has effective access to procedures, the opportunity to cooperate with the competent authorities to present the relevant facts of his case and sufficient procedural guarantees to pursue his case at and throughout all stages of the procedure.

(9) On the other hand, in the interests of a system of swift recognition of those applicants in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, provision should be made for Member States to operate specific procedures for processing applications for which it is not necessary to consider the substance and those that are suspected to be manifestly unfounded.

(10) Member States are at liberty to decide whether or not to operate these procedures for inadmissible and manifestly unfounded cases, but if they do, they should abide by the common standards laid down in this Directive as regards the definition of these cases and the other requirements to apply the procedures, including time-limits for the decision-making process.

(11) It is essential that these procedures contain the necessary safeguards to ensure that earlier doubts can be set aside so that those who are in need of protection can still be correctly identified. In so far as is possible, they should therefore contain, in principle, the same minimum procedural guarantees and requirements regarding the decision-making process as regular procedures. However, given the nature of the cases involved, decision making can and should be prioritised in both instances and further appeal may be restricted.

(12) As minimum procedural guarantees for all applicants in all procedures should be considered, *inter alia*, the right to a personal interview before a decision is taken, the opportunity to communicate with the UNHCR, the opportunity to contact organisations or persons that provide legal assistance, the right to a written decision within the time-limits laid down and the right of the applicant to be informed at decisive moments in the course of his procedure, in a language he understands, of his legal position in order to be able to consider possible next steps.

(13) In addition, specific procedural guarantees for persons with special needs, such as unaccompanied minors, should be laid down.

(14) Minimum requirements regarding the decision-making process in all procedures should include that decisions are taken by authorities qualified in the field of asylum and refugee matters, that personnel responsible for examination of applications for asylum receives appropriate training, that decisions are taken individually, objectively and impartially, and that negative decisions state the reasons for the decision in fact and in law.

(15) In order to enable every applicant to effectively pursue his case with the competent authorities of the Member States, the right to appeal should entail for all applicants in all procedures the opportunity for a review on both facts and points of law and should as a rule suspend enforcement of an adverse decision.

(16) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.

(17) In this spirit, Member States are also invited to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.

(18) The Member States should provide for penalties in the event of infringement of the national provisions adopted pursuant to this Directive.

(19) The implementation of this Directive should be evaluated at regular intervals.

(20) In accordance with the principles of subsidiarity and proportionality, as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to establish minimum standards on procedures in Member States for granting or withdrawing refugee status cannot be attained by the Member States and, by reason of the scale and effects of the proposed action can therefore only be achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope and definitions

Article 1

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

Article 2

For the purposes of this Directive:

(a) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as complemented by the New York Protocol of 31 January 1967;

(b) "Application for asylum" means a request whereby a person asks for protection from a Member State and which can be understood to be on the grounds that he is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any application for protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;

(c) "Applicant" or "applicant for asylum" means a person who has made an application for asylum in respect of which a final decision has not yet been taken. A final decision is a decision in respect of which all possible remedies under this Directive have been exhausted;

(d) "Determining authority" means any judicial, quasi-judicial or administrative body in a Member State responsible for examining the admissibility and/or substance of applications for asylum and competent to take decisions in first instance in these cases. Any authority responsible for controlling the entry into the territory cannot be considered as a determining authority;

(e) "Reviewing body" means any judicial, quasi-judicial or administrative body in a Member State which is independent of and different from the relevant determining authority in that Member State and responsible for review of the decisions of this determining authority on facts and points of law;

(f) "Appellate Court" means a judicial body in a Member State independent of the government of the Member State in question and responsible for further appeal against the decision of any reviewing body;

(g) "Decision" means a decision by a determining authority or reviewing body in a Member State on the admissibility or substance of an application for asylum;

(h) "Refugee" means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

(i) "Refugee Status" means the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;

(j) "Unaccompanied minor" means a person below the age of eighteen who arrives on the territory of the Member States unaccompanied by an adult responsible for him whether by law or by custom, and for as long as he is not effectively taken into the care of such an adult;

(k) "Detention" means confinement of an applicant for asylum by a Member State within a restricted area, such as prisons, detention facilities or airport transit zones, where his freedom of movement is substantially curtailed;

(l) "Withdrawal of refugee status" means the decision by a determining authority to withdraw the refugee status of a person on the basis of Article 1(C) of the Geneva Convention or Article 33(2) of the Geneva Convention;

(m) "Cancellation of refugee status" means the decision by a determining authority to cancel the refugee status of a person on the grounds that circumstances have come to light that indicate that this person should never have been recognised as a refugee in the first place.

Article 3

1. This Directive shall apply to all persons who make an application for asylum at the border or on the territory of Member States without prejudice to the Protocol on asylum for nationals of Member States of the European Union.

   The provisions of this Directive shall also apply where examination of an application for asylum takes place within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State.

2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.

3. Member States may decide to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.

CHAPTER II

Basic principles and guarantees

Article 4

1. The filing of an application for asylum shall not be subject to any prior formality.

2. Member States shall ensure that the applicant for asylum has an effective opportunity to lodge an application as early as possible.

3. Member States shall ensure that all authorities likely to be addressed by the applicant at the border or on the territory of the Member State have instructions for dealing with applications for asylum, including the instruction to forward the applications to the competent authority for examination, together with all relevant information.

4. Where a person has made an application for asylum also on behalf of his dependants, each adult among these persons shall be informed in private of his right to make a separate application for asylum.

Article 5

Applicants for asylum shall be allowed to remain at the border or on the territory of the Member State in which the application for asylum has been made or is being examined as long as it has not been decided on.

Article 6

Member States shall ensure that decisions on applications for asylum are taken individually, objectively and impartially.

Article 7

With respect to all procedures provided for in this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

(a) They must be informed, prior to examination of their application for asylum, of the procedure to be followed and of their rights and obligations during the procedure, in a language which they understand.

(b) They must be given the services of an interpreter, whenever necessary, for submitting their case to the competent authorities. These services must be paid for out of public funds, if the interpreter is called upon by the competent authorities.

(c) They must be given the opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR) or with other organisations that are working on behalf of the UNHCR at all stages of the procedure.

(d) They must be communicated decisions on applications for asylum in writing. If an application is rejected, the reasons for the decision in fact and in law shall be stated and information given on the possibility for review of the decision and, where applicable, on how to file an appeal and the relevant time-limits.

(e) In the event of an adverse decision, they must be informed of the main purport of the decision and the possibility for review of the decision and, where applicable, of how to request an appeal and the relevant time-limits, in a language which they understand.

(f) In the event of a positive decision, they must be informed of the decision and of any mandatory steps, if any, they should take as a result of this decision, in a language which they understand.

Article 8

1. Before a decision is taken by the determining authority, the applicant for asylum must be given the opportunity of a personal interview on the admissibility and/or substance of his application for asylum with an official competent under national law.

2. At the end of a personal interview as referred to in paragraph 1, the official must at least read out a transcript to the interviewee in order to be able to request his agreement with its contents.

3. Where a person has made an application for asylum also on behalf of his dependants, each adult among these persons must be given the opportunity to express his opinion in private and to be interviewed on the admissibility and/or substance of the application**.**

4. A personal interview on the substance of the application for asylum shall normally take place without the presence of family members.

5. Member States may permit the competent authorities to refrain from conducting a personal interview on the substance of the application for asylum in the case of persons who are not capable of attending this interview for psychological or medical reasons and minors below an age stipulated by national law or regulation, as long as this does not negatively affect the decision by the determining authority. In these cases, each person must be given the opportunity to be represented by a legal guardian, counsellor or adviser as appropriate.

6. In the regular procedure referred to in Articles 24, 25 and 26, hereinafter "the regular procedure", each applicant for asylum must be given an opportunity, within a reasonable time-limit, to consult the transcript of a personal interview on the substance of his application for asylum and to make comments on it.

7. Member States shall ensure that an official and an interpreter of a sex chosen by the interviewee is involved in the personal interview on the substance of the application for asylum if there are reasons to believe that the person concerned finds it otherwise difficult to present the grounds for his application in a comprehensive manner owing to the experiences he has undergone or to his cultural origin.

Article 9

1. Member States shall ensure that all applicants for asylum have the opportunity to contact in an effective manner organisations or persons that provide legal assistance at all stages of the procedure.

2. In closed areas designated for the examination of applications for asylum, Member States may regulate the access of organisations providing legal assistance, provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not render access impossible.

3. In the regular procedure, the applicant’s legal adviser or counsellor shall have the opportunity to be present during the personal interview on the substance of the application for asylum. Member States shall provide for rules on the presence of legal advisers or counsellors at all other interviews in the asylum procedure, without prejudice to this paragraph and Articles 8(5) and 10(1)(b).

4. Member States shall ensure that all applicants for asylum have the right to a legal adviser or counsellor to assist them after an adverse decision by a determining authority. The assistance must be given free of charge at this stage of the procedure if the applicant has no adequate means to pay for it himself.

Article 10

1. With respect to all procedures provided for in this Directive, Member States shall ensure that all unaccompanied minors enjoy the following guarantees:

   (a) A legal guardian or adviser must be appointed as soon as possible to assist and represent them with respect to the examination of the application;

   (b) The appointed legal guardian or adviser must be given the opportunity to help prepare them for the personal interview on the admissibility and/or the substance of the application for asylum. Member States shall allow the legal guardian or adviser of an unaccompanied minor to be present at the personal interview and to ask questions or make comments.

2. Member States shall ensure that the personal interview on the admissibility and/or the substance of the application for asylum of an unaccompanied minor is conducted by an official trained with regard to the special needs of unaccompanied minors.

3. Member States shall ensure that:

   (a) The competent organisations that carry out medical examinations to determine the age of unaccompanied minors shall use methods that are safe and respect human dignity;

   (b) Unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they understand, about the possibility of age determination by a medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, including the consequences of refusal on the part of the unaccompanied minor to undergo the examination.

Article 11

1. Member States shall not hold an applicant for asylum in detention for the sole reason that his application for asylum needs to be examined. However, Member States may hold an applicant for asylum in detention for the purpose of taking a decision in the following cases, in accordance with a procedure prescribed by national law and only for as long as is necessary:

   (a) to ascertain or verify his identity or nationality;

   (b) to determine his identity or nationality when he has destroyed or disposed of his travel and/or identity documents or used fraudulent documents upon arrival in the Member State in order to mislead the authorities;

   (c) to determine the elements on which his application for asylum is based which in other circumstances could be lost;

   (d) in the context of a procedure, to decide on his right to enter the territory.

2. Member States shall provide by law for the possibility of an initial review and subsequent regular reviews of the order for detention of applicants for asylum detained pursuant to paragraph 1.

Article 12

Member States shall take appropriate measures to ensure that all competent authorities are adequately provided with staff and equipment so that they can discharge their duties as laid down in this Directive.

Article 13

1. Member States shall take appropriate measures to ensure that determining authorities are fully qualified in the field of asylum and refugee matters. To that end, each Member State shall ensure that its determining authorities have:

   (a) at their disposal specialised personnel with the necessary knowledge and experience in the field of asylum and refugee matters;

   (b) 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 applicants for asylum and in transit countries;

   (c) the right to ask advice, whenever necessary, from experts on particular issues, for example, a medical or cultural issue.

2. Upon request of their reviewing bodies, Member States shall grant them the same treatment as determining authorities with respect to access to the part of the information mentioned at paragraph 1(b) that is considered public information. Member States may decide to grant them access to the part of the information mentioned at paragraph 1(b) that is considered confidential information, if they abide by the same rules as the determining authorities with respect to the confidentiality of this information.

Article 14

1. Member States shall ensure that:

   (a) personnel likely to come into contact with persons at the stage where they may make an application for asylum, such as border officials and immigration officers, have received the necessary basic training to recognise an application for asylum and how to proceed further in accordance with the instructions referred to in Article 4(3);

   (b) personnel interviewing applicants for asylum have received the necessary basic training for this purpose;

   (c) personnel interviewing persons in a particularly vulnerable position and minors have received the necessary basic training with regard to the special needs of these persons;

(d) personnel examining applications for asylum have received the necessary basic training with respect to international refugee law, national asylum law, relevant international human rights law, this Directive and the assessment of applications for asylum from persons with special needs, including unaccompanied minors;

(e) personnel responsible for orders of detention have received the necessary basic training with respect to national asylum law, relevant international human rights law, this Directive and national rules for detention.

2. Upon request of their reviewing bodies, Member States shall grant their personnel the same treatment as the personnel of determining authorities with respect to the training mentioned at paragraph 1(c), where necessary, and (d).

Article 15

1. Member States shall take appropriate measures to ensure that information regarding individual applications for asylum is kept confidential.

2. Member States shall not disclose or share the information referred to in paragraph 1 with the authorities of the country of origin of the applicant for asylum.

3. Member States shall take appropriate measures to ensure that no information for the purpose of examining the case of an individual applicant shall be obtained from the authorities of his country of origin in a manner that would result in the fact of his having applied for asylum becoming known to those authorities.

4. This Article does not affect the UNHCR's access to information in the exercise of its mandate under the Geneva Convention in accordance with Article 17 of this Directive.

Article 16

1. In the event of a voluntary withdrawal of the application for asylum by the applicant, the determining authority shall enter a notice in the file discontinuing the examination of the application.

2. If an applicant for asylum has disappeared, the determining authority may discontinue the examination of the application if, without reasonable cause, the applicant has not complied with reporting duties or requests to provide information or to appear for an personal interview for at least 30 working days.

3. If the applicant places himself at the disposal of the authorities for the purpose of the examination of his application for asylum after the examination of the application has been discontinued pursuant to paragraphs 1 or 2, his request may be considered a new application for asylum.

Article 17

Member States shall take appropriate measures to enable the UNHCR or other organisations that are working on behalf of the UNHCR:

(a) to have access to applicants for asylum, including those in detention and in airport transit zones;

(b) to have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees;

(c) to be able to make representations, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

CHAPTER III

Admissibility

Article 18

Member States may dismiss a particular application for asylum as inadmissible if:

(a) another Member State is responsible for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States;

(b) pursuant to Article 20, a third country is considered as a first country of asylum for the applicant;

(c) pursuant to Articles 21 and 22, a third country is considered as a safe third country for the applicant.

Article 19

When a Member State requests another Member State to take the responsibility for examining a particular application for asylum, the requesting Member State shall inform the applicant as soon as possible of the request, its content and the relevant time-limits in a language which he understands.

Article 20

A country can be considered as a first country of asylum for an applicant for asylum if he has been admitted to that country as a refugee or for other reasons justifying the granting of protection, and can still avail himself of this protection**.**

Article 21

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I.

2. Member States may retain or introduce legislation that allows for the designation by law or regulation of safe third countries. This legislation shall be without prejudice to Article 22.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

   Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this Directive, as well as any subsequent relevant amendments.

Article 22

A country that is a safe third country in accordance with the principles set out in Annex I can only be considered as a safe third country for a particular applicant for asylum if, notwithstanding any list:

(a) the applicant has a connection or close links with the country or has had the opportunity during a previous stay in that country to avail himself of the protection of its authorities;

(b) there are grounds for considering that this particular applicant will be re-admitted to its territory; and

(c) there are no grounds for considering that the country is not a safe third country in his particular circumstances.

Article 23

1. If a personal interview on the admissibility of the application for asylum with regard to Article 18(b) or (c) is conducted with an applicant, Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.

2. Member States shall ensure that the determining authority takes a decision dismissing an application for asylum as inadmissible by virtue of Article 18(b) or (c) within 25 working days following the personal interview.

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be 65 working days.

4. Non-compliance with the time-limits in this Article shall result in the application for asylum being processed under the regular procedure.

5. When implementing a decision based on Article 22, Member States may provide the applicant with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance.

CHAPTER IV

Substantive determination procedures

Section 1. The regular procedure

Article 24

1. Member States shall adopt by law or regulation a reasonable time-limit for examination of applications for asylum by the determining authority.

2. In cases in which the determining authority has not taken a decision within the time-limit referred to in paragraph 1, applicants shall have the right to request a decision from the reviewing body. Member States shall determine by law whether the decision of the reviewing body on this request is to be on the merits of the case or be a decision setting a time-limit for a decision by the determining authority**.** The Member States shall ensure that the reviewing body takes a decision in these cases as soon as possible.

3. The time-limit in paragraph 1 can be extended for six months if there is reasonable cause. Reasonable cause is, *inter alia*, assumed if the determining authority is awaiting clarification by the reviewing body or the Appellate Court on an issue that could affect the nature of the decision on the application.

   If the time-limit is extended, the determining authority must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

Article 25

1. Member States shall take appropriate measures to ensure that an applicant for asylum is given the opportunity to cooperate with the competent authorities in order to present the relevant facts of his case as completely as possible and with all available evidence.

2. An applicant for asylum shall be considered to have sufficiently put forward the relevant facts of his case if he has provided statements on his age, background, identity, nationality, travel routes, identity and travel documents and the reasons justifying his need for protection with a view to helping the competent authorities to determine the elements on which his application for asylum is based.

3. After the applicant has made an effort to support his statements concerning the relevant facts by any available evidence and has given a satisfactory explanation for any lack of evidence, the determining authority must assess the applicant’s credibility and evaluate the evidence.

4. Member States shall ensure that if the applicant has made a genuine effort to substantiate his claim and the examiner finds the applicant's statements to be coherent and plausible, while not running counter to generally known facts, the determining authority gives the applicant the benefit of the doubt, despite a possible lack of evidence for some of the applicant's statements.

Article 26

1. Member States shall ensure that the determining authority may start an examination to withdraw or cancel the refugee status of a particular person as soon as information comes to light indicating that there are reasons to reconsider the validity of his refugee status.

2. Each cancellation or withdrawal of refugee status shall be examined under the regular procedure in accordance with the provisions of this Directive.

3. Member States may provide for derogation from Articles 7 and 8 in cases where it is impossible for the determining authority to comply with the provisions for reasons specifically relating to the grounds for withdrawal or cancellation.

Section 2. The accelerated procedure

Article 27

Member States may adopt or retain an accelerated procedure for the purpose of processing applications that are suspected to be manifestly unfounded pursuant to Article 28.

Article 28

1. Member States may dismiss applications for asylum as manifestly unfounded if:

   (a) the applicant has submitted, without reasonable cause, an application containing false information with respect to his identity or nationality;

   (b) the applicant has produced no identity or travel document and has not provided sufficient or sufficiently convincing information to determine his identity or nationality, and there are serious reasons for considering that the applicant has in bad faith destroyed or disposed of an identity or travel document that would help determine his identity or nationality;

   (c) a person has made an application for asylum at the last stage of a procedure to deport him and could have made it earlier;

   (d) in submitting and explaining his application, the applicant does not raise issues that justify protection on the basis of the Geneva Convention or Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;

   (e) the applicant is from a safe country of origin within the meaning of Articles 30 and 31 of this Directive;

(f) the applicant has submitted a new application raising no relevant new facts with respect to his particular circumstances or to the situation in his country of origin.

2. Member States shall not consider the following to be grounds for the dismissal of applications for asylum as manifestly unfounded:

(a) the applicant has not sought refuge in a part of his country of origin or, if he is a stateless person, in a part of the country of former habitual residence, in which he can reasonably be expected not to be persecuted in the sense of the Geneva Convention;

(b) there are serious reasons for considering that the grounds of Article 1(F) of the Geneva Convention apply with respect to the applicant.

Article 29

1. If a personal interview on the substance of the application for asylum is conducted with an applicant, Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.

2. Member States shall ensure that the determining authority takes a decision dismissing an application for asylum as manifestly unfounded in accordance with Article 28 within 25 working days following the personal interview with the applicant.

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be 65 working days.

4. Non-compliance with the time-limits in this Article shall result in the application for asylum being processed under the regular procedure.

Article 30

1. Member States may consider a country as a safe country of origin for the purpose of examining applications for asylum only in accordance with the principles set out in Annex II.

2. Member States may retain or introduce legislation that allows for the designation by law or regulation of safe countries of origin. This legislation shall be without prejudice to Article 31.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulation designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant amendments.

Article 31

A country that is a safe country of origin in accordance with the principles set out in Annex II can only be considered as a safe country of origin for a particular applicant for asylum if he has the nationality of that country or, if he is a stateless person, it is his country of former habitual residence, and if there are no grounds for considering the country not to be a safe country of origin in his particular circumstances.

CHAPTER V

Appeals procedures

Article 32

Applicants for asylum have the right to appeal against any decision taken on the admissibility or the substance of their application for asylum.

Appeal may be on both facts and points of law.

Article 33

1. Appeal shall have suspensive effect. The applicant may remain in the territory or at the border of the Member State concerned awaiting the outcome of the decision of the reviewing body.

2. Member States may derogate from this rule:

   (a) in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22;

   (b) in cases that are dismissed as manifestly unfounded pursuant to Article 28;

   (c) in cases where there are grounds of national security or public order.

3. If the suspensive effect of appeal is denied, the applicant shall have the right to apply to the competent authority for leave to remain on the territory or at the border of the Member State during the appeals procedure. No expulsion may take place until the competent authority has taken a decision on this request, except in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22.

4. Member States shall ensure that the competent authority processes the request as soon as possible.

Article 34

1. Member States shall lay down by law or regulation reasonable time-limits for giving notice of appeal and for filing the grounds of appeal. The time-limit for filing the grounds of appeal in regular cases shall in no case be less than 20 working days.

2. Member States shall lay down all other necessary rules for lodging appeal, including rules to extend the time-limit for filing the grounds of appeal for a reasonable cause.

3. Member States shall decide that the reviewing body either has the power to confirm or nullify the decision of the determining authority or that it must take a decision on the merits of the case.

4. Member States shall ensure that, if the reviewing body nullifies a decision, it remits the case to the determining authority for a new decision.

5. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may provide for the reviewing body to take a decision on appeal within seven working days.

Article 35

1. Member States shall ensure that, in cases where an application has been found to be inadmissible or manifestly unfounded, the reviewing body takes a decision within 65 working days after notice of appeal has been given in accordance with Article 34(1).

2. Member States may adopt by law or regulation time-limits for examination by the reviewing body in other cases.

3. A time-limit in paragraph 1 or 2 may be extended if there is reasonable cause. Reasonable cause is, *inter alia*, assumed if the reviewing body is awaiting clarification by the Appellate Court on a point of law that could affect the nature of its decision.

   If the time-limit is extended, the reviewing body must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

Article 36

1. Member States may introduce a procedure that provides for automatic review by a reviewing body of decisions by determining authorities finding cases to be in inadmissible or manifestly unfounded.

2. If a Member State chooses to introduce such a procedure, it shall provide for reasonable time-limits for the applicant to submit written comments.

3. In a procedure providing for automatic review, the provisions of Articles 32(2), 33 and 34(3), (4) and (5) shall apply.

Article 37

Member States may provide that the reviewing body shall decide a case in accordance with the procedure in Article 35 or Article 36 if:

(a) the applicant has, without reasonable cause and in bad faith, withheld information at an early stage of the procedure which would have resulted in the application of Articles 18 or 28;

(b) the applicant has committed a serious offence on the territory of the Community;

(c) there are manifestly serious reasons for considering that the grounds of Article 1(F) of the Geneva Convention apply with respect to the applicant;

(d) there are reasonable grounds for regarding the applicant as a danger to the security of the Member State in which he is located;

(e) the applicant, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he is located;

(f) the applicant is held in detention.

Article 38

1. Member States shall ensure that in all cases applicants for asylum have a right to further appeal to the Appellate Court.

2. If the reviewing body is an administrative or quasi-judicial body, Member States shall ensure that the Appellate Court has the power to examine decisions on both facts and points of law. If the reviewing body is a judicial body, Member States may decide that the Appellate Court has to limit its examination of decisions to points of law.

3. Member States may provide that in cases where an application has been found to be inadmissible or manifestly unfounded, the Appellate Court is able to decide whether or not to give leave to appeal and, in cases in respect of which leave to appeal is granted, to examine the decisions in an abbreviated or accelerated procedure.

4. Member States may provide that in cases in which the reviewing body has not taken a decision within the time-limits provided for in Article 35(1) or (2), applicants and/or determining authorities shall have the right to request a decision from the Appellate Court setting a time-limit for a decision by the reviewing body. Member States may provide for a decision to be taken by the Appellate Court in these cases as soon as possible.

5. Member States shall lay down by law or regulation reasonable time-limits for giving notice of further appeal and for filing the grounds of further appeal. The time-limit for filing the grounds of further appeal shall in no case be less than 30 working days.

6. Member States shall lay down all other necessary rules for filing further appeals, including rules extending the time-limit for filing the grounds of further appeal for a reasonable cause.

Article 39

1. Member States shall lay down rules by law on suspensive effect pending the ruling of the Appellate Court.

2. In all cases in which suspensive effect is denied, the applicant for asylum shall have the right to apply to the Appellate Court for leave to remain on the territory or at the border of the Member State during further appeal. No expulsion may take place until a decision has been taken by the Appellate Court on this request.

3. Member States may provide for a decision to be taken by the Appellate Court in the cases referred to in paragraph 2 as soon as possible.

4. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may require the Appellate Court to rule on the request pursuant to paragraph 2 within seven working days.

Article 40

Member States may decide that determining authorities also have the right to further appeal.

CHAPTER VI

General and final provisions

Article 41

Member States shall apply the provisions of this Directive to applicants for asylum without discrimination as to sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or country of origin.

Article 42

The Member States shall lay down the penalties for infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are enforced. The penalties laid down must be effective, proportionate and dissuasive. The Member States shall notify the Commission of these provisions by no later than the date specified in Article 44(1) and without delay of any subsequent amendments affecting them.

Article 43

No later than two years after the date specified in Article 44(1), the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report not later than eighteen months after the date specified in Article 44(1).

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 44

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

   When the Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive

Article 45

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 46

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX I

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE THIRD COUNTRIES

I. Requirements for designation

A country is considered as a safe third country if it fulfils, with respect to those foreign nationals or stateless persons to which the designation would apply, the following two requirements:

A. it generally observes the standards laid down in international law for the protection of refugees;

B. it generally observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

A. The standards laid down in international law for the protection of refugees

1. A safe third country is any country that has ratified the Geneva Convention, observes the provisions of that Convention with respect to the rights of persons who are recognised and admitted as refugees and has in place with respect to persons who wish to be recognised and admitted as refugees an asylum procedure in accordance with the following principles:

   - The asylum procedure is prescribed by law.
   - Decisions on applications for asylum are taken objectively and impartially.
   - Applicants for asylum are allowed to remain at the border or on the territory of the country as long as the decision on their application for asylum has not been decided on.
   - Applicants for asylum have the right to a personal interview, where necessary with the assistance of an interpreter.
   - Applicants for asylum are given the opportunity to communicate with the UNHCR or other organisations that are working on behalf of the UNHCR.
   - There is provision for appeal to a higher administrative authority or to a court of law against the decision on each application for asylum or there is an effective possibility to have the decision reviewed.
   - The UNHCR or other organisations working on behalf of the UNHCR have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.

2. Notwithstanding the above, a country that has not ratified the Geneva Convention may still be considered a safe third country if:

   - it generally observes the principle of non-refoulement as laid down in the OAU Convention governing the specific aspects of refugee problems in Africa of 10 September 1969 and has in place with respect to the persons who request asylum for this purpose a procedure that is in accordance with the abovementioned principles; or

   - it has followed the conclusions of the 19–22 November 1984 Cartagena Declaration of Refugees to ensure that national laws and regulations reflect the principles and criteria of the Geneva Convention and that a minimum standard of treatment for refugees is established; or

   - it nonetheless generally observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the abovementioned principles; or

   - it complies in any other manner whatsoever with the need for international protection of these persons, either through cooperation with the Office of UNHCR or other organisations which may be working on behalf of the UNHCR or by other means deemed in general to be adequate for that purpose as evinced by the Office of the UNHCR.

B. The basic standards laid down in international human rights law

1. Any country that has ratified either the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") or both the 1966 International Covenant on Civil and Political Rights (hereinafter referred to as the "International Covenant") and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "Convention against Torture"), and generally observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, freedom from slavery and servitude, the prohibition of retroactive criminal laws, the right to recognition as a person before the law, freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation and the right to freedom of thought, conscience and religion.

2. Observance of the standards for the purpose of designating a country as a safe third country also includes provision by that country of effective remedies that guarantee these foreign nationals or stateless persons from being removed in breach of Article 3 of the European Convention or Article 7 of the International Covenant and Article 3 of the Convention against Torture.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe third country in general or with respect to certain foreign nationals or stateless persons in particular must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

ANNEX II

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE COUNTRIES OF ORIGIN

I. Requirements for designation

A country is considered as a safe country of origin if it generally observes the basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation, and it:

A. has democratic institutions and the following rights are generally observed there: the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly, the right to freedom of associations with others, including the right to form and join trade unions and the right to take part in government directly or through freely chosen representatives;

B. allows monitoring by international organisations and NGOs of its observance of human rights;

C. is governed by the rule of law and the following rights are generally observed there: the right to liberty and security of person, the right to recognition as a person before the law and equality before the law;

D. provides for generally effective remedies against violations of these civil and political rights and, where necessary, for extraordinary remedies;

E. is a stable country.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of a designating a country as a safe country of origin must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

2. BUDGET HEADING(S) INVOLVED

A – 7030.

3. LEGAL BASIS

Point (1)(d) of the first paragraph of Article 63 of the EC Treaty.

4. DESCRIPTION OF OPERATION:

4.1 General objective

The aim of the Directive is to establish minimum standards at Community level for asylum procedures in Member States in which refugee status is granted or withdrawn.

The proposal is the first Community initiative on asylum procedures for the purpose of achieving a common European asylum system. As Conclusion 15 of the Presidency at the Tampere European Council in October 1999 states that in the long term Community rules should lead to a common asylum procedure in the European Union, the minimum standards for procedures in Member States are only a first step towards further harmonisation on procedural rules. A Communication on this particular issue will be presented in November.

With respect to this Directive, the Commission intends to establish a Contact Committee. The reasons to establish this Committee are the following. First, the Committee is to help the Member States implement the minimum standards laid down in this Directive in a forward-looking and coordinating spirit. Secondly, it is to be the forum for Member States that wish to go jointly beyond the minimum standards at this stage of the harmonisation process, notably with respect to coordinating the designation of safe third countries and safe countries of origin. Thirdly, it is to set aside the impediments for a common asylum procedure and create the necessary conditions for achieving the objective set by the European Council in Tampere. Thus, the Committee could promote further approximation of asylum policy in the future and it could pave the way forward from minimum standards on procedures to a common procedure.

In the period before 31 December 2002 the Contact Committee would meet three times a year to prepare transposal of the Directive and henceforth two or three times a year to facilitate consultation between Member States on additional standards, etc.

4.2 Period covered and arrangements for renewal or extension

Indeterminate.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 Non-compulsory expenditure.

5.2 Non-differentiated appropriations.

5.3 Type of revenue involved

Not applicable.

6. TYPE OF EXPENDITURE OR REVENUE

Not applicable.

7. FINANCIAL IMPACT

Administrative measures as a result of the introduction of the Contact Committee.

8. FRAUD PREVENTION MEASURES

Not applicable.

9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

9.1. Specific and quantified objectives; target population

Not applicable.

9.2. Grounds for the operation

Not applicable.

9.3 Monitoring and evaluation of the operation

Not applicable.

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE GENERAL BUDGET)

The administrative resources actually mobilised will be determined in the Commission's annual decision on the allocation of resources, taking into account the additional staff and appropriations granted by the budgetary authority.

10.1 Impact on the number of posts

None.

10.2 Overall financial impact of additional human resources

None.

10.3 Increase in administrative expenditure arising from the adoption of the Directive

Budget heading	Amount	Method of calculation
A-7030		Contact Committee meeting three times a year as of the adoption of the Directive One-day meetings with all national experts of Member States Average cost per meeting: EUR 650 EUR 650 x 15 representatives = EUR 9 750 Three times a year = EUR 29 250
Total	EUR 29 250	

The expenditure relating to Title A7, set out at point 10.3, will be covered by appropriations from DG JAI's overall allocation.