



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**establishing the criteria and mechanisms for determining the Member State responsible
for examining an asylum application lodged in one of the Member States by a
third-country national.**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE FOR EXAMINING AN ASYLUM APPLICATION LODGED IN ONE OF THE MEMBER STATES BY A THIRD-COUNTRY NATIONAL

The conclusions of the Tampere European Council of October 1999 state that a common European asylum system should 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 refugee status. The system should be complemented by measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. With a view to achieving that objective, the Commission has successively presented a proposal for a Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons (COM(2000)303 final of 24 May 2000), a proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000)578 final of 20 September 2000) and a proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States (COM(2001)181 final of 3 April 2001).

With this proposal for a Regulation laying down the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, the Commission has added a block to the construction of a common European asylum system, in accordance with the programme provided for in the scoreboard to examine progress made in setting up an area of freedom, security and justice in the European Union, a document which was presented to the Council on 27 March 2000.

The drafting of this proposal for a Regulation was preceded by a wide-ranging debate:

- Firstly, the debate was launched on the basis of the Commission's working paper entitled "Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an asylum application submitted in one of the Member States" (SEC(2000)522 final of 21 March 2000). That paper, which analyses some of the difficulties encountered in implementing the Convention, compares the results achieved with the objectives laid down in the introduction and with other potential objectives of a system for determining which Member State is responsible, and sets out a number of possible alternatives to the Convention, was discussed in the Council and has given rise to written contributions on the part of various interested organisations, including the HCR, ILPA/MPG, Amnesty International, the Conference of Churches on migrants in Europe and the European Council on Refugees and Exiles (ECRE).
- Secondly, as it had promised the Council, in autumn 2000 the Commission conducted an evaluation of the application of the Convention. The analysis of replies submitted by the Member States to a detailed questionnaire, together with

discussions with experts from the departments responsible for the day-to-day implementation of the Convention in the Member States, revealed the practical and legal difficulties encountered in implementing the Convention and enabled precise statistics to be produced. The conclusions drawn on that occasion were presented in the Commission staff working paper "Evaluation of the Dublin Convention" (SEC (2001) 756 final of 13 June 2001).

2. OBJECTIVES AND SCOPE OF THE PROPOSAL

2.1. Objectives

The Commission's aim in presenting this proposal is not merely to implement Article 63(1)(a) of the EC Treaty, but also to respond to the wish expressed by the Tampere European Council that the criteria and mechanisms for determining the Member State responsible for examining an asylum application would be based on a "clear and workable method" forming part of "a fair and efficient asylum procedure".

To that end, the proposal for a Regulation aims to:

- ensure that asylum seekers have effective access to the procedures for determining refugee status by making provision for the necessary links with those procedures as indicated in the proposal for a Directive on the minimum standards applicable to them and by laying down rules sanctioning failure to comply with timetables;
- prevent abuse of asylum procedures in the form of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States with the sole aim of extending his stay in the European Union;
- close the loopholes and correct the inaccuracies detected in the Dublin Convention;
- adapt the system to the new realities resulting from the progress made as regards the establishment of an area without internal borders, in particular by drawing the consequences of the entry into force of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
- the Member State responsible to be determined as quickly as possible, partly by laying down a reasonable timetable for the various phases of proceedings and partly by providing clarifications on the standard of proof required to establish the responsibility of a Member State;
- increase the system's efficiency by granting the Member States a more realistic period in which to implement decisions on transfers of asylum seekers and by providing an appropriate framework for special implementing arrangements between Member States which jointly have to process a large number of cases involving the determination of the Member State responsible.

2.2. Scope

The working paper referred to above, "Revisiting the Dublin Convention", reviewed several possible alternatives to the Dublin Convention system. It concluded that there did not appear to be many viable alternatives to the present system.

The most credible alternative scenario, in which responsibility would depend solely on where the application was lodged, would probably make it possible to set up a clear, viable system that meets a number of objectives: rapidity and certainty; no "refugees in orbit"; resolution of the problem of multiple asylum applications; and a guarantee of family unity. However, as the Commission pointed out, it would require harmonisation in other areas such as asylum procedures, reception conditions, interpretation of the refugee definition and subsidiary protection in order to reduce any perceived incentives for asylum seekers to choose between the Member States when lodging their application.

At this stage of the construction of the common European asylum system, there are significant differences between the Member States in terms of procedures for granting refugee status, reception conditions for asylum seekers and the administration of complementary forms of protection which could affect the destination chosen by asylum seekers. These differences will persist, albeit to a lesser degree, after the directives proposed by the Commission on those subjects have entered into force.

It would therefore not be realistic to envisage a system for determining the Member State responsible for examining an asylum application which diverges fundamentally from the Dublin Convention. As the Commission indicated in its communication to the Council and the European Parliament "Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum" (COM(2000)755 final of 22 November 2000), a system based on different principles could probably only be envisaged in the context of establishing a common procedure and a uniform status, i.e. at a later stage.

Consequently, this proposal for a Regulation is based on the same principles as the Dublin Convention and its scope is the same. In other words:

- the general principle is that responsibility for examining an asylum application lies with the Member State which played the greatest part in the applicant's entry into or residence on the territories of the Member States, subject to exceptions designed to protect family unity;
- the system for determining the State responsible applies only to persons requesting recognition of the status of refugee within the meaning of the Geneva Convention of 28 July 1951 relating to the Status of Refugees – to which all the Member States are parties - and does not cover the forms of subsidiary protection which have not yet been harmonised.

However, so as to take the lessons of the past on board, the proposal includes a number of innovations:

- new provisions emphasising each Member State's responsibility vis-à-vis all its partners in the Union when it allows illegal residents to remain on its territory;

- much shorter procedural deadlines consistent with the proposed deadlines for granting and withdrawing refugee status, to ensure that applications for asylum are processed rapidly;
- extended deadlines for implementing transfers to the Member State responsible so as to allow for the practical difficulties arising in connection with such transfers;
- new provisions aimed at preserving the unity of asylum seekers' families, in so far as this is compatible with the other objectives of asylum and immigration policy, i.e. processing applications for asylum as rapidly as possible under a fair and efficient procedure, and ensuring that these provisions cannot be abused to get round the rules on family reunification put forward by the Commission in its proposal for a Council Directive on the right to family reunification (COM(1999)638 final – 1999/0258 (CNS)), which is currently being negotiated.

This proposal for a Regulation, which is designed to replace the Dublin Convention, essentially sets out the Member States' obligations vis-à-vis each other, which must apply to all parties on the same terms. It contains provisions on the Member States' obligations vis-à-vis asylum seekers whose applications are being examined with a view to determining which Member State is responsible only in so far as those provisions affect the course of proceedings between Member States or are necessary to ensure consistency with the proposal for a Directive on procedures for granting and withdrawing refugee status.

3. OVERALL ASSESSMENT OF PROVISIONS

3.1. Criteria governing responsibility

The proposal for a Regulation is based on the same principles as the Dublin Convention, namely the idea that, in an area within which free movement of persons is guaranteed by the Treaty, each Member State is answerable to all the others for its actions concerning the entry and residence of third-country nationals and must bear the consequences thereof in a spirit of solidarity and fair cooperation.

The main criteria for allocating responsibility, and the hierarchical order in which they are presented, reflect this general approach by placing the burden of responsibility on the Member State which, by issuing him with a visa or residence document, being negligent in border control or admitting him without a visa, played the greatest part in the applicant's entry into or residence on the territories of the Member States.

However, new criteria have been added:

The first group is designed to protect family unity. The Dublin Convention already provided for responsibility to be allocated to the State in which a member of the applicant's family is resident as a refugee, even if another criterion might also apply.

- This proposal adds a criterion for the purpose of uniting an unaccompanied minor, whatever the circumstances, with an adult member of his family who is already present in a Member State and is able to take charge of him.

- The proposal also provides for responsibility for examining applications for asylum to be vested in the Member State examining, under a normal procedure (within the meaning of the proposal for a Directive on minimum standards on procedures for granting refugee status), an application lodged by a family member who has arrived previously and who has not yet been the subject of a decision at first instance.
- Lastly, to prevent a literal application of responsibility criteria resulting in the members of a family group who have lodged applications in the same Member State being separated, there is a provision which lays down the rules for derogating from the normal application of criteria so as to maintain family unity within a given Member State.

A second group of criteria is designed to deal with the consequences of a Member State failing to meet its obligations in the fight against illegal immigration. The Dublin Convention already provided that a Member State in which an asylum seeker has stayed illegally for six months or more before lodging his asylum application cannot invoke the criterion of illegal entry to request the Member State through which the applicant entered the European Union to assume responsibility for examining the application. The provision signalled that a Member State which does not take effective action against the illegal presence of third-country nationals on its territory has an equivalent responsibility vis-à-vis its partners to that of a Member State which fails to control its borders properly. The proposal extends this approach to several situations.

Under the new criteria, where responsibility cannot be established on the basis of any of the higher-ranking criteria set out above:

- any Member State which knowingly tolerates the illegal presence of a third-country national on its territory (by not taking any measure to remove the individual or question or regularise his situation) must assume the consequences of the liability it has incurred vis-à-vis the other Member States by allowing that situation to continue;
- any Member State on whose territory a third-country national has remained illegally for more than six months must bear the consequences of its failure to combat illegal immigration.

3.2. Procedure for taking charge and taking back

Arrangements for taking charge and taking back are similar to those in the Dublin Convention.

The most significant differences with the Convention are as follows:

- the deadline for submitting requests to take charge is reduced from six months to sixty-five working days;
- the possibility of asking for an urgent reply;
- further clarification of the standard of proof required to establish a Member State's responsibility;

- the time limit for performing the transfer is six months: if it is exceeded, responsibility reverts to the Member State where the asylum application was lodged;
- the responsibility of the Member State responsible is discharged, where the asylum seeker has stayed for at least six months without permission in the Member State where he now is;
- the obligation to communicate to the asylum seeker a reasoned decision from which an appeal may lie, but, since a transfer to another Member State should not result in serious loss which is difficult to make good, the possibility of giving this appeal suspensive effect is withdrawn. This measure is designed to make proceedings faster and more efficient and to prevent appeals being lodged purely as stalling tactics.

3.3. Cooperation between Member States

The mechanism for determining which Member State is responsible will not function unless the Member States set up a system of fair co-operation with a view to collecting the necessary evidence, processing applications within the agreed time limits and organising transfers in the best conditions.

The main form of co-operation between Member States consists in exchanging the information necessary to determine responsibility, including personal data in compliance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Where the purpose of exchanges of information is to collect the requisite data to establish the responsibility of a Member State, the Member State requested should be given a time in which to respond that is compatible with the objective of determining responsibility rapidly (which was not the case in the Dublin Convention). The proposed time limit is one month.

The Member States have a duty to make the necessary resources available to the departments required to implement the mechanism for determining the Member State responsible.

Lastly, Member States may, on a bilateral basis, establish administrative arrangements between themselves to facilitate application of this proposal and increase its effectiveness. Such arrangements may relate to exchanges of liaison officers, simplification of procedures and shortening of response times, or mechanisms for rationalising transfers to prevent asylum seekers being shuttled between two Member States.

3.4. Final and transitional provisions

Most of these are "standard" provisions concerning discrimination, penalties and the Directive's entry into force.

The following should be noted:

- Provisions designed to ensure a smooth transition between the Dublin Convention and implementation of this proposal for a Regulation, particularly a clause laying down a time limit from the Regulation's entry into force until the date of its actual implementation;
- The setting-up of a regulatory committee to help the Commission draw up implementing measures for the proposal, and in particular rules on the production of evidence, the performance of transfers and standard forms for the Member States to submit requests for taking charge or taking back.

Where necessary, this chapter could contain additional transitional provisions, if implementation of the Regulation were to precede implementation of the Directive on asylum procedures.

4. LEGAL BASIS

Article 63(1)(a) of the EC Treaty specifically provides for the adoption of criteria and mechanisms for determining which Member State is responsible for considering an application asylum submitted by a national of a third country in one of the Member States.

Title IV of the Treaty is not applicable in the United Kingdom and Ireland, unless those two countries decide otherwise, in accordance with the provisions set out in the Protocol on the position of the United Kingdom and Ireland attached to the Treaties. Title IV does not apply to Denmark either, by virtue of the Protocol on the position of Denmark attached to the Treaties.

5. SUBSIDIARITY AND PROPORTIONALITY

Subsidiarity

The purpose of this proposal is to lay down in Community law criteria and mechanisms for determining the Member State responsible for examining an asylum application which create mutual rights and obligations between the Member States. Clearly, by their very nature these rights and obligations cannot be created by the Member States acting in isolation and can, in view of the scope or the effects of the proposed measure, only be established at Community level.

Proportionality

The proposal is also designed to replace an instrument of international public law creating mutual rights and obligations between the Member States in identical terms for all Member States. The only instrument which meets these conditions in Community law is a regulation.

Commentary on the articles

CHAPTER I : Subject matter and definitions

Article 1

This defines the purpose of the Regulation, which is to establish the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

Article 2

Article 2 defines the various concepts and terms used in the Regulation.

- (a) A "third-country national" is anyone who is not a citizen of the Union; thus, stateless persons are also covered by the definition proposed.
- (b) The term "Geneva Convention" means the Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967. All Member States are party to the Convention and its Protocol without temporal or geographic restriction.
- (c) "Asylum application" is defined with reference to the definition of a refugee in the Geneva Convention. Any request for protection made by a third-country national at the border or on the territory of the Member States shall be understood to fall within the scope of the Geneva Convention, unless the person explicitly requests another form of protection where a Member State has a separate procedure for that purpose.
- (d) The situation of being an "asylum seeker" is defined with reference to the process for reaching a final decision to determine refugee status.
- (e) The "examination of an asylum application" consists in all the procedures laid down by Directive .../.../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, with the exception of admissibility procedures, for determining the State responsible for examining the application under the provisions of this Regulation.
- (f) "Withdrawal of the asylum application" occurs in those cases provided for by Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] and, for the purpose of applying this Regulation, where the asylum seeker abandons his application while it is being examined by going to another Member State without having received permission to do so.
- (g) A "refugee" is defined by the fact that the person concerned lawfully resides as such on the territory of a Member State.
- (h) The concept of "unaccompanied minor" is drawn from the definition given in the Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries.

- (i) A member of an asylum seeker's family is defined not only as a member of the nuclear family already constituted in the country of origin but also as a person with whom there is a blood relationship and who was living in the same household in the country of origin, provided one of the persons concerned is dependent on the other.
- (j) "Residence document" includes all documents and authorisations issued by the authorities of a Member State with a view to allowing a third-country national to stay on its territory, including documents granted to those eligible for temporary protection or to persons whose removal cannot provisionally be carried out for a reason which prevents such performance without, however, the third-country national being admitted to residence, excluding visas and residence authorisations issued during the examination of an application for a residence document or an asylum application.
- (k) The definition of a "visa" is based on that in Regulation (EC) No 539/2001 (visas). It is subdivided into four categories reflecting the different types of visa in use in the Member States:
 - i) a "long-stay visa", issued for a stay of more than three months;
 - ii) a "short-stay visa", issued for a stay of less than three months in accordance with the definition in the Visas Regulation;
 - iii) a "transit visa", issued for a transit to a third State;
 - iv) an "airport transit visa", issued to allow passage through the transit zone of an airport during a stopover in a Member State but does not give access to the national territory of the Member State concerned.

CHAPTER II : General principles

Article 3

1. The fundamental principle underlying the establishment of the criteria and mechanisms for determining the State responsible is that the asylum application should normally be examined by a single Member State identified on the basis of objective criteria.
2. The Member State responsible examines the application in accordance with the procedures which it has introduced pursuant to Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status].
3. However, a Member State may sovereignly decide, for political, humanitarian or practical considerations, to agree to examine an asylum application lodged with it by a third-country national, even if it is not responsible under the criteria in the Regulation. The condition of the asylum seeker's consent, which figured in the Dublin Convention, is not reproduced in the Regulation, since it is the applicant who takes the initiative to lodge an application with the Member State concerned: he necessarily consents, therefore, to that State examining his application. A Member State which takes such a decision thus becomes the State responsible within the meaning of the Regulation and assumes all the obligations associated with such responsibility. To avoid procedures relating to a single application being carried out simultaneously in two Member States, the Member State which makes use of this

discretionary power should, where appropriate, inform the other Member States concerned.

To ensure that the deadlines set in Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] are effectively complied with, the asylum seeker should be informed in writing of the date on which his application was received in the procedure for determining refugee status.

Article 4

1. The process for determining the Member State responsible for examining the asylum application is an admissibility procedure laid down by Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status]. It precedes the examination of the substance of the application and should be started as soon as the latter is submitted.
2. An asylum application should be regarded as actually having been submitted, once the applicant's intention has been confirmed at the competent authority by the receipt either of a form completed by him or of a report compiled by an entitled authority. The receipt of such written confirmation is the starting point for calculating time limits. This provision is reproduced from Decision 1/97 of the Committee set up by Article 18 ("the Article 18 Committee").
3. Since the definition and content of subsidiary protection have so far not been harmonised, the alternative forms of protection to the status of refugee established by the Geneva Convention do not fall within the scope of this Regulation. However, where, in the Member States in which this is made possible by the existence of separate procedures, an asylum seeker changes the nature of his request for protection during the procedure, in particular to avoid the application of the mechanisms for determining the State responsible, such a choice should not, in principle, prevent the procedure for determining the State responsible from continuing, since the applicant had already considered that he could claim the most favourable status, i.e. the status of refugee, which he is also free to request in the State responsible. This solution in no way harms the persons concerned, since the Member States have all accepted the same obligations with regard to respect for fundamental rights, protection against torture and inhuman or degrading punishment and treatment, and protection against "refoulement". It makes it possible to place Member States where there are separate procedures for gaining access to complementary forms of protection on an equal footing with those Member States where, because there is a single procedure, the determination of the appropriate form of protection is not left to the applicant.
4. The laws of the Member States differ with regard to the formalities that have to be completed before a minor accompanying an adult who has charge of him can also be considered as an asylum seeker: in some Member States, the adult's asylum application necessarily means that recognition of refugee status is also requested for the child; in other Member States, an application must be made by the adult on behalf of the minor; in still others, above a certain age, the minor himself must make a separate application. The Regulation establishes the principle that the minor's situation must be regarded as indissociable from that of the adult on whom he is dependent. This rule makes it possible to ensure that differences in legislation do not

lead to different applications of the rules for determining the State responsible; it also makes it possible to preserve the unity of the family group while proceeding with a transfer to the State responsible for examining the application, even if the minor is not formally an asylum seeker under the law of the Member State where the application was lodged.

5. The procedure for determining the Member State responsible must be conducted by the Member State on whose territory the asylum seeker is, including where the applicant contacts the authorities of another Member State, e.g. at a diplomatic or consular post or at the frontier. The rule established in this paragraph makes it possible to assign the asylum application to the State whose competence is determined by the applicant's presence.
6. The procedure for determining the State responsible lies with the Member State where the application is first lodged; consequently, that Member State is obliged to take back the applicant, even if the latter has travelled to another Member State during the course of the procedure.

However, this obligation ceases:

- if the applicant has left the territories of the Member States for more than three months. Where the third-country national returns and lodges an asylum application, the latter constitutes a new application;
- if another Member State grants the asylum seeker a residence document as defined in Article 2. Unlike the Dublin Convention, it is not stipulated here that the residence document must be valid for more than three months. Article 5(1) of the Convention (reproduced as Article 8(1) of the Regulation) assigns responsibility to the Member State which issued a residence document, without restriction as to duration; it seemed more consistent to apply the same principle in all cases where the Member State issues a residence document as defined in Article 2.

CHAPTER III: Hierarchy of criteria

Article 5

1. The criteria are applied in the hierarchical order in which they are presented.
2. The provision, reproduced unchanged from the Dublin Convention, stipulates the point in time which is to serve as a reference for determining the State responsible.

Article 6

The criterion set out in this article has been added to those that appear in the Dublin Convention. Its aim is to avoid a minor being unaccompanied on the territory of one Member State when a member of his family who is able to take charge of him is present on the territory of another Member State. This provision corresponds to one of the cases referred to in Decision 1/2000 of the Article 18 Committee.

Article 7

This criterion already figured in the Dublin Convention. It seeks to protect the family unity of refugees and is based on the idea that the members of a refugee's family may themselves be under threat in their country of origin. The State protecting the refugee is best placed to assess whether his fears of persecution are justified.

Article 8

The criterion set out in Article 7 has been added to the Dublin Convention. An autonomous, binding criterion, it is aimed at settling some of the cases referred to in Decision 1/2000 of the Article 18 Committee. It is based on the idea that processing the asylum applications of the various members of a family by a single Member State will make it possible to examine the applications thoroughly and for consistent decisions to be taken in regard to them. However, this measure can be profitably applied, only if it does not adversely affect other important objectives of the instruments of Community asylum policy, in particular the objective that applications - especially those that are obviously unfounded - should be processed quickly.

1. Thus paragraph 1 provides that applicants for asylum may be brought together around the family member arriving first who is himself an asylum seeker, only if the latter's application is pending before the authority responsible for determining refugee status under a normal procedure such as that defined by Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status]. It would be disproportionate, and likely to delay examination of the asylum applications unjustifiably, to bring the persons concerned together, if the application of the family member arriving first is the subject either of an admissibility procedure likely to result in a transfer to another Member State or removal to a third State, or of an accelerated procedure with a strong presumption of a negative outcome, or if the application has been rejected at first instance.
2. However, since an admissibility procedure may result in an application being accepted for the normal procedure, it is provided that the Member State requested to take charge of the applicant should, where such a case arises, inform the requesting Member State firstly of the status of the procedure and secondly of its outcome, so that the members of the family may be brought together if the conditions of paragraph 1 happen to be met.

Article 9

The allocation of responsibility for examining the asylum application to the Member State which, through a positive act such as issuing a residence visa or document, has played the largest part in a third-country national's entry into or residence on the territories of the Member States reflects the principle underlying the system, namely that, in an area of free movement, each Member State is answerable to all the others for its actions as regards the entry and residence of third-country nationals. However, as a result of Regulation (EC) No 539/2001 (visas), which introduces common visa arrangements, some of the scenarios mentioned in the Dublin Convention can no longer arise. The proposal takes this development into account by dispensing with those provisions which only applied where a third-country national might be obliged to hold visas from more than one Member State.

It should be noted that the scenarios associated with the holding of several visas may still occur because of the existence of visas issued for a transit to a third country, visas of limited territorial validity and long-stay visas whose terms of issue are not covered by the Visas Regulation.

To prevent any differences of interpretation, paragraph 5 stipulates that obtaining a visa or residence permit under fraudulent conditions does not absolve the Member State concerned from its obligations, unless it can be shown that a fraud such as substitution or alteration has occurred after the document was issued.

Article 10

This provision is taken from the Dublin Convention and is based on the same underlying principle that the Member States are responsible to all the others for their actions regarding control of the entry and residence of third-country nationals.

The responsibility of the Member State at whose frontier the asylum seeker entered the European Union ceases, if the person concerned has stayed at least six months in the Member State where he lodged his application. The term "proved" in the Dublin Convention has been replaced by "shown" to indicate that the evidential requirements should not be unduly strict.

Article 11

The provisions of this Article adapt the provisions of Article 7 of the Dublin Convention to the realities resulting from, first, the application of the Convention implementing the Schengen Agreement and, second, the Regulation on visas.

1. Paragraph 1 establishes the principle that the Member State responsible is the one in which the third-country national not subject to a visa requirement lodges his application. Where the third-country national does not need a visa, it cannot be argued that the State through which he entered the common area has failed its partners by authorising entry, since any other Member State would have authorised the entry of the person concerned under the same conditions. Moreover, the point of entry is often determined by constraints resulting from the pattern of air services. It is not right, therefore, that the State of entry should be penalised.
2. Where the asylum application is lodged in transit by a traveller whose final destination is not a Member State of the European Union, the transit State is responsible for examining the application. Such responsibility does not prevent that Member State from applying the concept of safe third country.

Article 12

The criterion provided for in this Article has been added to the Dublin Convention. It aims to make a Member State which has knowingly tolerated the unlawful presence on its territory of a third-country national for more than two months responsible for examining the asylum application. Such situations arise where the unlawful presence of the person concerned is known to the authorities of the Member State and that Member State has not taken any measure leading to his removal. A State which has tolerated such a situation has, through its inertia, encouraged the plans of the third-country national, who has been able to wait on its territory for a suitable chance to travel unlawfully to another Member State in order there to declare his intention of requesting recognition of refugee status, whereas the threat of removal

would have led the person concerned, if he considers that returning to his country of origin would expose him to persecution, to lodge an asylum application, the existence of which would have made it possible to launch the procedure for determining the State responsible under this Regulation.

Article 13

The criterion laid down in this Article has been added to the Dublin Convention. It extends the scope of the underlying principle to the second paragraph of Article 10 and is based on the idea that the Member State which, for six months or more, has not detected the unlawful presence of the third-country national has, to a certain extent, been deficient in implementing the Member States' common objectives concerning the control of illegal immigration and must assume the consequences vis-à-vis its partners.

Article 14

The criterion established in this Article has been reproduced unchanged from the Dublin Convention. It is aimed at making the system watertight by designating the Member State where the asylum application was first lodged responsible "by default", where responsibility cannot be established under any of the criteria set out above.

Article 15

Article 15 has been added to the Dublin Convention and aims to establish a clear, binding rule for preserving the unity of the family group where the strict application of the criteria would result in designating different Member States as responsible for examining the asylum applications of the various members of the family. The criteria selected - assigning responsibility to the Member State responsible for examining the applications of the largest number of family members or, failing this, to the Member State responsible for examining the application of the oldest member of the family group - are simple to apply and neutral in their effects on the Member States. They make it possible to give mandatory force to some of the hypothetical cases discussed in Decision 1/2000 of the Article 18 Committee in the form of "guidelines" subject to a case-by-case assessment.

CHAPTER IV: Humanitarian clause

Article 16

1. Article 16(1) reproduces Article 9 of the Dublin Convention unchanged. This provision, called the "humanitarian clause", has been used first and foremost to prevent or remedy the dispersal of family members which could sometimes result from the strict application of the responsibility criteria. Although the Regulation now contains several binding provisions aimed at bringing together, or maintaining the unity of, asylum seekers belonging to the same family group, the situations that can arise are so diverse that they cannot all be covered by special provisions, with the result that a discretionary humanitarian clause remains necessary in the interests of the Member States and of asylum seekers. The second sentence is based on the recommendations agreed by the Member States in Decision 1/2000 of the Article 18 Committee and seeks to clarify the principles which they are called upon to apply when proceeding, in derogation from the responsibility criteria, to unite an asylum seeker with a member of his family present on the territory of one of them.

2. More precise rules on the conditions and procedures for implementing the humanitarian clause contained in paragraph 1, in particular a mechanism for settling any differences of assessment between Member States concerning the need to bring family members together or the place where such an event should occur, may, where appropriate, be adopted later in the light of experience, in accordance with the committee procedure provided for in Article 29.

CHAPTER V : Taking charge and taking back

Article 17

This Article sets out the obligations of the Member State responsible and the circumstances in which those obligations cease. It is reproduced from the Dublin Convention with a few editorial changes.

1. Subparagraphs (a), (b) and (d), relating respectively to the obligation to take charge of the asylum seeker, the obligation to complete the examination of his application and the obligation to take back the applicant who makes an application in another Member State having withdrawn his application in the State responsible, are reproduced unchanged.

In subparagraph (c) the word "irregularly", and in subparagraph (e) the word "illegally", have been replaced by the phrase "without permission". This change is justified by the fact that the asylum seeker who does not need a visa or who has a valid visa, and who has kept his passport in his possession, is not formally in an unlawful situation in the non-responsible Member State which he has entered; this renders the provision as worded in the Dublin Convention inapplicable in certain cases.

2. For the same reasons as in Article 4(6), it seemed more consistent not to include a restriction concerning the period of validity of the residence permit.
3. The principle whereby the Member State on whose territory a third-country national has remained for more than six months should assume the consequences thereof is also applicable.
4. By deleting the words "(a) to (d)", the exemption clause provided for in this paragraph is extended to paragraph 1(e), so that the obligation to take back imposed on the State responsible when a third-country national whose application it has rejected makes an asylum application in another Member State ceases, if the person in question has meanwhile left the territories of the Member States for more than three months. An application lodged after such an absence should be regarded as a fresh application giving rise to a new determination of the State responsible.
5. Paragraph 5 provides for immediate exemption from the obligations to take back set out in paragraph 1(d) and (e), where the State responsible has effectively removed the third-country national who has ceased to be an asylum seeker following the withdrawal or rejection of his application, whether that removal was enforced or the person complied voluntarily with the order he was given to leave the territory. As in paragraph 3, the result is that any asylum application lodged by the same person after an effective removal constitutes a fresh application giving rise to a new determination of the State responsible.

Article 18

The provisions which make up Article 11 of the Dublin Convention have been divided into three separate articles, in order better to reflect the sequence of events and differentiate the acts which are a matter for the Member State where the application was lodged from the measures which are a matter for the Member State requested to take charge of the applicant.

1. In paragraph 1, the time limit for making a request to the State presumed to be responsible is reduced from six months to 65 working days (i.e. 13 weeks or, approximately, three months). This time limit has been aligned on that prescribed by Council Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] for admissibility procedures; it reflects the desire of the Member States to complete the determination of the State responsible within reasonable time limits compatible with the general objective of processing asylum applications quickly.
2. In paragraph 2, the term "ascertain" has been replaced by "check", in order better to indicate, in accordance with the principles agreed by the Member States in Decision 1/97 of the Article 18 Committee, that the requested State may not confine itself to evaluating the information submitted to it by a requesting State in the request to take charge, but must carry out active research.

A new paragraph provides that rules on the preparation of and the procedures for transmitting requests to take charge, e.g. a standardised form containing the necessary headings for the processing of requests or, later, rules on the use of electronic mail, may be adopted in accordance with the committee procedure referred to in Article 29.

3. Paragraph 3 introduces into the system an urgent procedure which the Member States had agreed in Decision 1/97 of the Article 18 Committee, in order to settle as soon as possible those situations where the asylum application was lodged after entry or residence was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and where the asylum seeker is held in detention.
4. Paragraph 4 echoes a similar provision in Council Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] and introduces into the system the obligation to inform the asylum seeker of the fact that another Member State has been requested to take charge of him, and of the time limits applicable.

Article 19

1. Paragraph 1 contains several changes compared with the equivalent provision in the Dublin Convention:
 - Firstly, and consistently with the wording of paragraph 2 of the preceding Article, it is stated that the Member State requested to take charge may not limit itself to examining the items of evidence contained in the request but must actively search through its own files and archives to see if its responsibility is involved. This approach reflects the agreement reached by the Member States in Decision 1/97 of the Article 18 Committee.

- Secondly, the time limit for replying to a request to take charge is reduced to one month, in accordance with the wish expressed by the Member States in Decision 1/97 of the Article 18 Committee.
 - Thirdly, the standard of proof required is clarified: if a formal proof, or proofs, is/are not available, the Member State requested should recognise its responsibility once a body of corroborating evidence makes it possible to establish such responsibility with a reasonable degree of probability. The Article 18 Committee noted, in Decision 1/97, that: "responsibility for processing an asylum application should in principle be determined on the basis of as few requirements of proof as possible. If establishment of proof carried excessive requirements, the procedure for determining responsibility would ultimately take longer than examination of the actual asylum application. In that case, the Convention would fail totally to have the desired effect and would even contradict one of its objectives since the delays would create a new category of "refugees in orbit", asylum seekers whose applications would not be examined until the procedure laid down under the Convention had been completed. Under too rigid a system of proof the Member States would not accept responsibility and the Convention would be applied only in rare instances, while those Member States with more extensive national registers would be penalised since their responsibility could be proved more easily. A Member State should be prepared to assume responsibility on the basis of indicative evidence for examining an asylum application once it emerges from an overall examination of the asylum applicant's situation that, in all probability, responsibility lies with the Member State in question." Flexibility as regards production of evidence should, however, still be reasonable and not entail responsibility on the basis of a mere presumption.
 - Rules on proof and evidence and their interpretation are adopted in accordance with the committee procedure referred to in Article 29.
2. Paragraph 2 states what the obligations of the Member State requested to take charge are, where the requesting State has initiated the urgent procedure provided for in paragraph 3 of the preceding Article.
 3. Paragraph 3 determines the penalty for failing to reply within the time limit of one month laid down in paragraph 1: this is tantamount to an implicit acceptance of responsibility.

Article 20

1. This provision is an addition to the Dublin Convention; it reproduces principles agreed by the Member States in Decision 1/97 of the Article 18 Committee, while introducing a clarification concerning the time limit imposed on the Member State for notifying the asylum seeker, where the Member State requested has accepted its responsibility, that his application is inadmissible in the Member State where it was lodged and that he should go to the Member State responsible. Such a notification is given (a) within fifteen working days, which time limit is long enough for the decision to be taken and compatible with the desire not to prolong procedures unduly, and (b) in the form of a single decision relating both to the admissibility of the application and the obligation to leave the territory of the Member State and travel to the State responsible. Since both aspects of the decision are closely

connected, a single decision seems a rational way of ensuring that they are both heard in a single proceeding.

2. Paragraph 2 specifies the content of the decision mentioned in paragraph 1 and lays down that the decision is appealable. Since a transfer to another Member State is not likely to cause the person concerned serious loss that is hard to make good, it is not necessary for the performance of the transfer to be suspended pending the outcome of the proceedings.
3. Paragraph 3 lays down the rules applicable to the transfer of the asylum seeker to the State responsible. The transfer is carried out as soon as practically possible, after consultation between the Member States concerned and within at most six months. Increasing the time limit imposed on the transfer from one month to six reflects the practical difficulties encountered by the Member States in this respect when implementing the Dublin Convention

If necessary, the asylum seeker is supplied with a specially prepared laissez-passer of the design adopted in accordance with the procedure referred to in Article 29.

The State responsible must inform the requesting State, as appropriate, of the arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

4. If the transfer is not performed within the six-month time limit provided for in paragraph 3, the acceptance of responsibility by the Member State requested lapses, and responsibility lies with the Member State where the application was lodged. This provision, which was not in the Dublin Convention (the latter did not provide for such a consequence if a transfer should fail), is based on the considerations underlying the second paragraph of Article 10 and the responsibility criterion in Article 13, namely that a Member State which has been deficient in implementing the common objectives concerning the control of illegal immigration must assume the consequences vis-à-vis its partners. It also seeks to avoid the creation of a pool of "asylum seekers in orbit", whose applications are not examined in any Member State.
5. If necessary, rules on carrying out transfers will be adopted in accordance with the procedure referred to in Article 29.

Article 21

This Article contains the provisions on the taking back by the Member State responsible of the asylum seeker who has travelled to another Member State.

1. In paragraph 1(a) and (b), the changes made to the wording of the corresponding provisions of the Dublin Convention are of the same nature as those made to Article 18(2) and Article 19(1) and are intended to indicate clearly that the State requested to take back is obliged to make active checks in its files and archives.

Subparagraph (c) enables the State requested to give a provisional reply where the checks it makes seem likely to exceed the eight-day deadline. This option, which allows the State requested a further two weeks in exceptional circumstances, was agreed by the Member States in Decision 1/97 of the Article 18 Committee.

Subparagraph (d) spells out the consequence of failing to reply within the time limits set in subparagraphs (b) and (c), namely implicit agreement to take back the third-country national.

Subparagraph (e) repeats, with regard to taking back, the rules on transfer set out in Article 20(3), i.e. a time limit of six months, consultation between the Member States concerned, the possible issue of a *laissez-passer* and information on the arrival or absence of the asylum seeker transferred.

Subparagraph (f) applies to decisions on taking back by the Member State responsible the same procedural rules that apply to decisions concerning inadmissibility and transfer to the Member State responsible.

2. Paragraph 2 spells out the consequence of the inability of the requesting State to carry out a transfer to the State responsible: the agreement to take back lapses, and the requesting Member State has to assume responsibility for the asylum seeker.
3. As with requests that charge be taken, it is necessary to lay down rules on the preparation of and the procedures for transmitting requests to take back an applicant. Although one might expect the evidence substantiating such a request to be provided, as a rule, by Eurodac, it is still necessary to establish rules for assessing the other items of evidence, in particular with regard to the clauses transferring responsibility and the clauses on the cessation of responsibility set out in Article 17(2) to (5).
4. Rules on the performance of transfers may be adopted in accordance with the procedure referred to in Article 29.

CHAPTER VI: Administrative cooperation

Article 22

Exchanges of information between Member States are essential for the implementation of the Regulation, especially where the information which a Member State has concerning the responsibility of another Member State is patchy and has to be supplemented or confirmed. The provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data apply *ipso jure* to the data processing operations carried out under this Regulation and in particular to the exchanges referred to in this Article. It is necessary to clarify their application, given that it falls to the national supervisory authorities established in the Member States to exercise their supervisory powers.

1. Paragraph (1) spells out the only purposes for which information can be exchanged, i.e.:
 - (a) determining which Member State is responsible for examining the asylum application;
 - (b) examining the asylum application;
 - (c) implementing any obligations arising under this Regulation, such as taking back an asylum seeker who has travelled to another Member State without obtaining permission.

2. Paragraph (2) stipulates the type of information that may be exchanged:
 - (a) personal details of the asylum seeker and, where appropriate, his family members;
 - (b) the asylum seeker's identity and/or travel documents;
 - (c) any other information needed to establish or confirm the asylum seeker's identity, including fingerprints, *inter alia* with a view to carrying out the checks provided for in Article 4(6) of Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention. Fingerprints should be processed in accordance with the said Regulation.
 - (d) information on the places where the asylum seeker or, where appropriate, a family member present on the territory of the Member State is staying and on the route travelled by the asylum seeker, thus enabling the responsibility criteria based thereon to be applied;
 - (e) residence documents or visas issued by a Member State, since they may be decisive for allocating responsibility;
 - (f) the place where the application was lodged;
 - (g) the date on which any previous application was lodged, the date on which the present application was lodged, the stage reached in proceedings and the decision taken, if any, in order to determine which Member State is responsible either for taking an applicant back or for examining an asylum application.
3. Either as a result of the application of the sovereignty clause provided for in Article 3(3) or as a consequence of the expiry of time limits whereby the responsibility of the responsible Member State is ended or responsibility is assigned to the Member State on whose territory the asylum seeker is present, an asylum application may be examined successively by several Member States. This situation may also arise where a third-country national leaves the territory of the Member States for a period of more than three months and lodges a new asylum application for which a Member State other than the one which examined the original application is responsible. In such cases, it is to the purpose for the Member State examining a new application from the same person to be provided with details of the previous application and, where appropriate, informed of the reasons for the decision taken. In view of the sometimes sensitive nature of applications for asylum, though, it is for the Member State requested to decide whether it can provide the information in question without jeopardizing essential interests or the protection of the rights and liberties of the person concerned or of another person and to ensure that the asylum seeker gives his consent.
4. The two provisions in this paragraph were not in the Dublin Convention. Paragraph 1 is binding and imposes a duty on Member States to reply to all information requests; this may represent a heavy burden for the competent authorities, and processing requests for taking charge or taking back may suffer as a result. It has become

necessary to regulate the right of the Member States to transmit information requests, by providing that any such request should be properly substantiated and, to facilitate the researchers of the Member State requested, that any evidence or verifiable information on which it is based should be specified.

5. In return, the Member State to which the request is addressed is given one month in which to reply. In the event of particular difficulties arising, the Member State in question has two weeks in which to give a provisional reply, stating when it will be able to provide a definitive one. This extension may not exceed six weeks, bringing the maximum deadline for replying to eight weeks. No provision is made for penalising failure to meet that deadline, but a Member State which has exercised its right to extend the reply time cannot invoke the expiry of the time limit of sixty-five days provided for in Article 18(1) as grounds for refusing to comply with a request to take charge if it has incurred liability.
6. Paragraph 6 states that exchanges of information may only take place between authorities designated for that purpose.
7. Paragraph 7 spells out the purposes for which the information exchanged can be used and the types of authority which may be entrusted with it. It can be used only for the purposes set out in paragraph 1, and may be transmitted only to the authorities entrusted with the obligations arising under the Regulation as set out in the same paragraph, it being understood that each authority will receive only such information as is necessary for it to carry out its duties. Accordingly, where the authorities entrusted with determining the Member State responsible are different from those entrusted with examining the asylum application, information on the contents of the application and the grounds underpinning the decision may only be provided to the latter.
8. Paragraph 8 concerns the accuracy and the lawfulness of the exchanged data.
9. Paragraph 9 highlights the right of asylum seekers to have access to and, where appropriate, correct processed data which concern them. It also adds to the Dublin Convention wording the notion of 'blocking' within the meaning of Directive 95/46/EC.
10. Paragraph 10 lays down the obligation to keep a record of the transmission and receipt of information exchanged.
11. Paragraph 11 establishes a general principle concerning the period for which exchanged data should be kept. It should not exceed the period which is necessary for the purposes for which it was exchanged. A rule laying down a uniform period would not be appropriate since, while data exchanged with a view to determining which Member State is responsible can be erased once the decisions taken in that connection can no longer be contested, information exchanged with a view to examining an asylum application is included with the asylum seeker's file and is stored on that basis.
12. Paragraph 12 lays down the obligation to ensure compliance with the Article through effective checks.

Paragraphs 10 and 12 of Article 15 of the Dublin Convention are not reproduced; the first because it implicitly authorises differentiated levels of data protection, which are now prohibited by Directive 95/46/EC, and the second because it no longer serves any purpose, since the necessary provisions are contained in the aforementioned Directive.

Article 23

The competent departments in the Member States must have sufficient resources to carry out their duties and in particular to reply within the time limits prescribed in the Regulation.

Article 24

The Regulation lays down general rules which apply in all the Member States, and as such it is unable to take particular circumstances into account, whereas the frequency of exchanges between Member States with a view to determining which State is responsible may vary according to various factors, including their geographical situation. Experience suggests that, when it comes to taking charge of or taking back asylum seekers, certain Member States have more intense activity with some Member States than with others. In such cases, bilateral mechanisms which are designed to facilitate application of the Regulation and are compatible with its provisions may be an effective solution.

1. Paragraph 1 opens up the possibility for Member States to establish such arrangements. Depending on the individual case and the volume of cases to be processed, these arrangements may concern the following:
 - (a) exchanges of liaison officers. This solution helps to improve communication between authorities with different structures and different ways of working;
 - (b) streamlining of procedures and shortening of the time limits applicable to procedures between the Member States concerned. Agreements of this type were concluded between certain Member States to facilitate implementation of the Dublin Convention and their effectiveness has been proven, particularly in connection with the rapid settlement of very straightforward cases in border areas. This takes the form of direct contacts between the relevant authorities;
 - (c) a mechanism for limiting transfers. Where there is a significant volume of asylum seekers taken in charge and taken back by two Member States, resulting in asylum seekers being shuttled between the two Member States in question, either voluntarily or under escort, it would not be incompatible with the Regulation if each Member State were to cancel an equal number of transfers so as to carry out a one-way transfer of a limited number of persons, designated on the basis of appropriate criteria, corresponding to the difference between the transfers accepted by each set of authorities. This measure is designed to reduce the workload and operating costs of the departments responsible for transfers. To ensure that the objectives of the Regulation are met, the period at the end of which an assessment is made of the number of transfers to be effected should be restricted to one month, and transfers based on the provisions of the Regulation which are designed to promote family unity should be carried out whatever the circumstances.

2. The Commission must be informed of the arrangements made by Member States. To ensure that they are compatible with the Regulation, the arrangements referred to in points (b) and (c), which, by their very nature, are likely to contain provisions differing from those of the Regulation, must be approved by the Commission.

CHAPTER VII : Transitional provisions and final provisions

Article 25

1. The Regulation replaces the Dublin Convention.
2. However, it is necessary to ensure continuity of the arrangements for determining the Member State responsible, which is a measure complementing the free movement of persons within the European Union. To that end, it is provided that the "operative events" triggering a Member State's responsibility, in other words the criteria, are taken into consideration even if they precede the date of the Regulation's entry into force as laid down in the second paragraph of Article 31.

The solution proposed is identical to that adopted by the parties to the Convention applying the Schengen Agreement to ensure the transition between that Convention and the Dublin Convention.

3. It is also necessary to ensure consistency with the Eurodac system for the comparison of asylum seekers' fingerprints, which was set up to ensure the effective application of the Dublin Convention, by providing that references to that Convention in Council Regulation (EC) No 2725/2000 should be read as references to the present Regulation.

Article 26

As the successor instrument to the Dublin Convention, this Regulation has the same territorial application as that Convention.

Article 27

A standard provision on non-discrimination is introduced. The wording is based on Article 21 of the European Union's Charter of Fundamental Rights.

Article 28

This is a standard provision of Community law which establishes effective, proportionate and dissuasive sanctions. It leaves the Member States free to determine the sanctions applicable should the Regulation be infringed.

Article 29

The Commission is assisted by a committee composed of representatives of the Member States and chaired by the Commission representative. The committee's task is to adopt measures for which it is competent pursuant to various articles of the Regulation and to check whether they are compatible with any bilateral agreements concluded between Member States. It will be required to adopt - on the basis of the previous work by the Article 18 Committee - a design for a laissez-passer, a standardised application form and, in particular, lists of proof and evidence concerning the responsibility of a Member State. These

documents are not attached to the Regulation because it may be necessary to update them rapidly in the light of experience. In view of the nature of the measures to be adopted, which are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, the committee set up by this Article is a regulatory committee.

Article 30

The Commission will report on the application of the Regulation in accordance with its role of monitoring the implementation of provisions adopted by the institutions under the Treaty. It will also propose any necessary amendments. An initial report will be submitted no more than three years after the Regulation enters into force. After that initial report, the Commission will prepare a report on the application of the Regulation at the same time as the overall evaluation of Eurodac provided for in Article 24(5) of Regulation (EC) No 2725/2000, i.e. at least every six years.

Clearly, the preparation of the reports provided for in this Article requires detailed statistical information. The Commission intends to discuss the question of statistics on the operation of the mechanism for determining the State responsible in later proposals on the collection of asylum and immigration statistics.

Article 31

This Article lays down the date on which the Regulation enters into force. The second paragraph specifies the date from which the Regulation will apply to asylum applications. The intervening period between the date of entry into force and the date of applicability will enable the measures necessary for its implementation to be adopted in accordance with the procedure referred to in Article 29. In that period the Member State responsible for examining applications for asylum will be determined in accordance with the criteria set out in the Dublin Convention.

Proposal for a

COUNCIL REGULATION

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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 progressively establishing 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 supplemented 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 also stated that this system should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application.
- (4) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to rapidly determine the Member State responsible, so as to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications which is the basis of Council Directive

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

.../.../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.⁴

- (5) As regards the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities,⁵ signed in Dublin on 15 June 1990 (hereinafter referred to as "the Dublin Convention"), whose implementation has stimulated the process of harmonising asylum policies and has made it possible to mitigate the negative aspects of the unequal direction of the flows of asylum seekers.
- (6) Family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the State responsible for examining an asylum application.
- (7) The processing together of the asylum applications of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent. However, this principle should not contradict the objective of examining asylum applications quickly and should therefore be limited to those cases where the asylum application of the family member who arrived first is held over by the authority responsible for the determination of refugee status under a normal procedure, with the exception of admissibility procedures, accelerated procedures applicable to manifestly unfounded applications, and appeals. Nevertheless, the Member States should be able to derogate from the responsibility criteria, so as to make it possible to bring family members together where this is necessary on serious grounds, in particular those of a humanitarian nature.
- (8) The progressive creation of an area without internal frontiers in which the free movement of persons is guaranteed in accordance with the Treaty establishing the European Community means that each Member State is answerable to all the others for its actions concerning the entry and residence of third-country nationals and should, in a spirit of solidarity and responsibility, assume the consequences thereof as regards asylum. The criteria for assigning responsibility should reflect this principle.
- (9) Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data shall apply.⁶ It is necessary, to allow the exchanges of personal data essential for the implementation of the provisions relating to taking charge of and taking back asylum seekers and for the fulfilment of all obligations resulting from this Regulation, to clarify the application of certain provisions of that Directive.

⁴ OJ L [...], [...], p. [...].

⁵ OJ C 254, 19.8.1997, p. 1.

⁶ OJ L 281, 23.11.1995, p. 31.

- (10) The application of the Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communications between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.
- (11) A system for limiting the number of transfers of asylum seekers between two Member States may constitute a rationalisation that can benefit both the Member States concerned and the asylum seekers.
- (12) Continuity between the system for determining the State responsible established by the Dublin Convention and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.⁷
- (13) There is no reason why this Regulation should have a different territorial application to that of the Dublin Convention, which it is intended to replace, especially in view of the excessive constraints which any transfer from remote territories would involve for the persons concerned.
- (14) The Regulation should be applied in the same way for all asylum seekers without discrimination.
- (15) The Member States should provide a system of penalties for the infringement of this Regulation.
- (16) Since the measures required for implementing this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,⁸ such measures should be adopted under the regulatory procedure laid down in Article 5 of the said Decision.
- (17) The application of the Regulation should be evaluated at regular intervals.
- (18) The Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union.⁹ In particular, it seeks to ensure full observance of the right to asylum guaranteed by Article 18.
- (19) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of the proposed measure, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, cannot be attained by the Member States and, given the scale and effects, can therefore be achieved only at Community level. This Regulation

⁷ OJ L 316, 15.12.2000, p. 1.

⁸ OJ L 184, 17.7.1999, p. 23.

⁹ OJ C 364, 18.12.2000, p. 1.

is limited to the minimum required to achieve that objective and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject matter and definitions

Article 1

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

Article 2

For the purposes of this Regulation,

- (a) "third-country national" means anyone who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;
- (b) "Geneva Convention" means the Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967;
- (c) "asylum application" means the request for protection which is submitted by a third-country national to a Member State and which can be regarded as having been submitted on the grounds that the third-country national is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any request for protection shall be deemed to be an asylum application, unless the person concerned explicitly seeks another type of protection for which a separate request can be submitted;
- (d) "applicant" or "asylum seeker" means the third-country national who has lodged an application for asylum concerning which no final decision has yet been taken; any decision from which all possible means of appeal provided for by Directive .../.../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status have been exhausted shall be final;
- (e) "examination of an asylum application" means any examination of, or decision or ruling concerning, an asylum application by the competent authorities in accordance with Council Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] except for procedures for determining the State responsible in accordance with this Regulation;
- (f) "withdrawal of the asylum application" means the action by which the asylum seeker terminates the procedures initiated by the submission of his asylum application; such action may be either express, i.e. where the applicant makes his wish known to the authority responsible in writing, or implicit, i.e. where the tests stipulated in the relevant provisions of Council Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] are satisfied or where the applicant stays without having received permission to do so on the territory of another

Member State during the determination of the State responsible or during the examination of his application;

- (g) "refugee" means any third-country national qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;
- (h) "unaccompanied minor" means any third-country national under the age of eighteen who arrives on the territory of a Member State without being accompanied by an adult responsible for him whether by law or by custom, and for as long as he is not effectively in the care of such a person;
- (i) "family members" means an asylum seeker's spouse or unmarried partner in a stable relationship, if the legislation of the Member State responsible treats unmarried couples in the same way as married couples, provided that the couple was formed in the country of origin; his unmarried minor children under the age of eighteen, irrespective of the nature of their filiation or his ward; his father, his mother or his guardian, if the asylum seeker is himself an unmarried minor under the age of eighteen; where appropriate, other persons to whom the applicant is related and who used to live in the same home in the country of origin, if one of the persons concerned is dependent on the other;
- (j) "residence document" means any authorization issued by the authorities of a Member State authorizing a third-country national to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the examination of an application for a residence document or of an asylum application;
- (k) "visa" means the authorisation or decision of a Member State required for transit or entry for a proposed stay in that Member State or in several Member States. The nature of the visa is determined in accordance with the following definitions:
 - i) "long-stay visa": the authorisation or decision of a Member State required for entry for a proposed stay in that Member State of more than three months;
 - ii) "short-stay visa": the authorisation or decision of a Member State required for entry for a proposed stay in that State or in several Member States for a period whose total duration does not exceed three months;
 - iii) "transit visa" means the authorisation or decision of a Member State for entry for a transit through the territory of that Member State or several Member States, excluding transit at an airport;
 - iv) "airport transit visa" mean the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight.

CHAPTER II

General principles

Article 3

1. An asylum application shall be examined by a single Member State. That Member State shall be the one which the criteria set out in Chapter III indicate is responsible.
2. The application shall be examined by the Member State responsible in conformity with Council Directive .../.../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.
3. In derogation from paragraph 1, each Member State may examine an asylum application lodged with it by a third-country national, even if such examination is not its responsibility under the criteria of this Regulation. In such an event, that State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the State conducting a procedure for determining the State responsible or the State which has been requested to take charge of or take back the applicant.

The asylum seeker shall be informed in writing of the date when the examination of his application shall start.

Article 4

1. The process of determining the Member State responsible under this Regulation shall start as soon as an asylum application is first lodged with a Member State.
2. An asylum application shall be deemed to have been lodged once a form submitted by the asylum seeker or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.
3. The substitution of a request for protection on a basis other than the Geneva Convention for an asylum application that has been duly lodged shall not stop the procedure for determining the State responsible from continuing.
4. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2(1) shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the asylum application of the said parent or guardian, even if the minor is not individually an asylum seeker.
5. Where an asylum application is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible shall be made by the Member State on whose territory the applicant is. The latter Member State shall be informed

without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the asylum application was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

6. An asylum seeker who is present in another Member State and there lodges an asylum application after withdrawing his application during the process of determining the State responsible shall be taken back, under the conditions laid down in Article 21, by the Member State with which that asylum application was lodged, with a view to completing the process of determining the State responsible for examining the asylum application.

This obligation shall cease, if the asylum seeker has since left the territories of the Member States for a period of at least three months or has obtained a residence document from a Member State.

CHAPTER III

Hierarchy of criteria

Article 5

1. The criteria for determining the Member State responsible established by this Chapter shall be applied in the order in which they are presented.
2. The State responsible in accordance with the criteria, shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State.

Article 6

Where the asylum seeker is an unaccompanied minor, the Member State where a member of his family is who is able to take charge of him shall be responsible, provided that this is in the best interests of the child.

Article 7

Where the asylum seeker has a member of his family who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible for examining the asylum application, provided that the persons concerned so desire.

Article 8

1. Where the asylum seeker has a member of his family whose asylum application is being examined in a Member State under a normal procedure within the meaning of Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] and has not yet been the subject of a decision by the authority responsible for the determination within the meaning of the

said Directive, that Member State shall be responsible for examining the asylum application, provided that the persons concerned so desire.

2. Where the family member's asylum application is the subject of an admissibility procedure within the meaning of Directive .../.../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] when the Member State on whose territory that person is contacted by the Member State conducting the procedure for determining the Member State responsible for examining the application, the Member State requested shall so inform the requesting Member State in a provisional reply within not more than two weeks. The Member State in which the family member is shall inform the requesting State immediately of the outcome of the admissibility procedure. Where the family member's application is allowed under the normal procedure, paragraph 1 shall apply.

Article 9

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the asylum application.
2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the asylum application, except if the visa was issued at a diplomatic post or on the written authorization of another Member State. In such a case, that Member State shall be responsible for examining the asylum application. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorization within the meaning of this provision.
3. Where the asylum seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the asylum application shall be assumed by the Member States in the following order:
 - (a) the State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the State which issued the residence document having the latest expiry date;
 - (b) the State which issued the visa having the latest expiry date where the various visas are of the same type;
 - (c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the State which issued the visa having the latest expiry date.
4. Where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him actually to enter the territory of a Member State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply for such time as the applicant has not left the territories of the Member States.

Where the asylum seeker is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application is lodged shall be responsible.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the State issuing the residence document or visa shall not be responsible, if it can establish that a fraud was committed after the document/visa had been issued.

Article 10

Where it can be shown that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Union, the Member State thus entered shall be responsible for examining the asylum application.

That State shall cease to be responsible, however, if it is shown that the applicant has been living in the Member State where the asylum application was made for at least six months before making his asylum application. In that case it is the latter Member State which shall be responsible for examining the asylum application.

Article 11

1. Responsibility for examining the asylum application of a third-country national not subject to a visa requirement shall lie with the Member State in which he lodges his application.
2. Where the asylum application is made in transit in an airport of a Member State by a third-country national whose final destination is in a third State, that Member State shall be responsible for examining the application.

Article 12

A Member State which has knowingly tolerated the unlawful presence of a third-country national on its territory for more than two months shall be responsible for examining the asylum application.

Article 13

Where it can be shown that a third-country national has remained unlawfully for six months or more on the territory of a Member State, that State shall be responsible for examining the asylum application.

Such responsibility shall cease, if the applicant has subsequently remained unlawfully for six months or more on the territory of another Member State, or if he has left the territories of the Member States for a period of more than three months.

Article 14

Where no Member State responsible for examining the asylum application can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the asylum application was lodged shall be responsible for examining it.

Article 15

Where several members of a family submit asylum applications in the same Member State simultaneously, or on dates sufficiently close that the procedures for determining the State responsible can be conducted together, and where the application of the criteria set out in this Regulation would lead to them being separated, the State responsible shall be determined on the basis of the following provisions:

- (a) responsibility for examining the asylum applications of all the members of the family shall lie with the Member State which the criteria indicate is responsible for examining the applications of the largest number of them;
- (b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

CHAPTER IV

Humanitarian clause

Article 16

1. Any Member State, even where it is not responsible under the criteria set out in this Regulation, may for humanitarian reasons, based in particular on family or cultural considerations, examine an asylum application at the request of another Member State, provided that the applicant consents. Member States shall regard situations where one of the persons concerned is dependent on the assistance of the other on account of pregnancy or maternity, their state of health or great age as justifying the uniting of the asylum seeker with a member of his family present on the territory of one of the Member States in circumstances not provided for by this Regulation.

Where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.

2. The conditions and procedures for implementing this Article, including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, shall be adopted in accordance with the procedure referred to in Article 29(2).

CHAPTER V

Taking charge and taking back

Article 17

1. The Member State responsible for examining an asylum application under this Regulation shall be obliged to:
 - (a) take charge, under the conditions laid down in Articles 18 to 20, of an asylum seeker who has lodged an application in a different Member State,
 - (b) complete the examination of the asylum application,
 - (c) take back, under the conditions laid down in Article 21, an applicant whose application is under examination and who is on the territory of another Member State without permission,
 - (d) take back, under the conditions laid down in Article 21, an applicant who has withdrawn the application under examination and made an application in another Member State,
 - (e) take back, under the conditions laid down in Article 21, a third-country national whose application it has rejected and who is on the territory of another Member State without permission.
2. Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.
3. Where it can be shown that the asylum seeker has resided for at least six months in a Member State, the obligations specified in paragraph 1 shall be transferred to that Member State.
4. The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.
5. The obligations specified in paragraph 1(d) and (e) shall likewise cease, once the State responsible for examining the application has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.

Article 18

1. Where a Member State with which an asylum application has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within sixty-five working days of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge is not made within the period of sixty-five working days, responsibility for examining the asylum application shall lie with the State in which the application was lodged.

2. The request to take charge shall contain information enabling the authorities of the State requested to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 29(2).

3. The requesting Member State may ask for an urgent reply in cases where the asylum application was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and where the asylum seeker is held in detention. The request shall state the legal and factual information warranting an urgent reply and the period within which a reply is expected.
4. The applicant shall be informed immediately, and in a language which he understands, of the fact that a request to take charge has been sent to another Member State and of the time limits applicable.

Article 19

1. The Member State requested shall make the necessary checks, in particular in its files, and shall give a decision on the request to take charge within one month of the date on which the request was received. If there is no formal proof, the requested State shall acknowledge its responsibility where there is a body of corroborating evidence which makes it possible to invoke that State's responsibility with a reasonable degree of probability.

The list of proof and evidence and the rules relating to its interpretation shall be adopted in accordance with the procedure referred to in Article 29(2).

2. Where the requesting State has pleaded urgency, the State requested shall do all it can to reply within the time limit requested. Failing this, it shall inform the requesting State before that time limit expires when it will be able to provide a definitive answer.
3. Failure to act within the period of one month mentioned in paragraph 1 shall be tantamount to accepting the request.

Article 20

1. Where the State requested accepts that it should take charge, the State in which the asylum application was lodged shall communicate to the applicant a single decision concerning the inadmissibility of his application in that Member State and the transfer to the State responsible within no more than fifteen working days from the date of receipt of the reply from the State responsible.

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he his travelling to the State responsible by his own means. Appeal from the decision shall lie to the courts. Appeal shall not suspend the performance of the transfer.
3. The transfer of the applicant from the Member State in which the asylum application was lodged to the Member State responsible shall be carried out in accordance with the national law of the first Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request to take charge.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez-passer of the design adopted in accordance with the procedure referred to in Article 29(2).

The Member State responsible shall inform the requesting State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

4. Where the transfer does not take place within the period of six months, responsibility shall lie with the Member State in which the asylum application was lodged.
5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 29(2).

Article 21

1. An asylum seeker shall be taken back in accordance with Article 4(6) and Article 17(c), (d) and (e) as follows:
 - (a) the request for the applicant to be taken back must contain information enabling the State requested to check that it is responsible;
 - (b) the State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it within eight days of the referral;
 - (c) in exceptional cases, the Member State requested may, before the eight-day time limit has expired, give a provisional reply stating the period within which it will give its definitive answer. Such period should be as brief as possible and may, in any event, not exceed the period of fourteen days from the date of dispatch of the provisional reply;
 - (d) where the Member State requested does not communicate its decision within the eight days mentioned in subparagraph (b), or within the fourteen days mentioned in subparagraph (c), it shall be considered to have agreed to take back the asylum seeker.

- (e) a State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request to take charge;
- (f) the requesting State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible within a period not exceeding fifteen working days from the receipt of the reply from the State responsible. The decision shall set out the grounds on which it is based. It shall be supplemented with details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the State responsible by his own means. Appeal from the decision shall lie to the courts. Appeal shall not suspend performance of the transfer.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez-passer of the design adopted in accordance with the procedure referred to in Article 29(2).

The Member State responsible shall inform the requesting State, as appropriate, of the safe arrival of the asylum seeker or of the fact that he did not appear within the set time limit.

- 2. Where the transfer is not carried out within the six-month time limit, the State responsible shall be relieved of its obligation to take back, and responsibility shall then be transferred to the requesting State.
- 3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 29(2).
- 4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 29(2).

CHAPTER VI

Administrative cooperation

Article 22

- 1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:
 - (a) the determination of the Member State responsible for examining the asylum application,
 - (b) examining the asylum application,
 - (c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:
 - (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth),
 - (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.),
 - (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000;
 - (d) places of residence and routes travelled,
 - (e) residence documents or visas issued by a Member State,
 - (f) the place where the application was lodged,
 - (g) the date any previous asylum application was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.
3. Furthermore, provided it is necessary for the examination of the asylum application, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the asylum seeker.
4. Any request for information shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the Member State requested, shall state on what evidence or what specific and verifiable part of the applicant's statements it is based.
5. The Member State requested shall be obliged to reply within one month. Where particular difficulties arise, the Member State requested may, within no more than two weeks, give a provisional reply stating the period in which it will be possible to give a definitive reply. Such period should be as brief as possible and may in no case be longer than six weeks. If the researches carried out by the Member State requested which has exercised the right to give a provisional reply yield information which shows that it is liable, that State may not invoke the expiry of the time limit provided for in Article 18(1) as a reason for refusing to comply with a request to take charge.
6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities the designation of which by each Member State has been communicated to the Commission, which shall inform the other Member States thereof.

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:
 - (a) the determination of the Member State which is responsible for examining the asylum application,
 - (b) examining the asylum application,
 - (c) implementing any obligation arising under this Regulation.
8. The Member State that forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.
9. The asylum seeker has the right to be informed, on request, of any data that is processed concerning him.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC, in particular because it is incomplete or inaccurate, he is entitled to have it corrected, erased or blocked.

The authority correcting, erasing or blocking the data shall inform, as appropriate, the State transmitting or receiving the information.
10. In each Member State concerned, a record shall be kept, either in the individual file for the person concerned or in a register, of the transmission and receipt of information exchanged.
11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.
12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State should take appropriate measures to ensure compliance with this Article through effective checks.

Article 23

Member States shall ensure that the departments responsible for fulfilling the obligations arising under this Regulation shall have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge and requests to take back.

Article 24

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of the Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:
 - (a) exchanges of liaison officers;
 - (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge and take back;
 - (c) a mechanism for rationalising transfers making it possible, at the end of an agreed period which may not exceed one month, to carry out, without prejudice to Articles 6, 7, 8, 15 and 16, the transfer only of those cases for which a Member State is still in debit vis-à-vis the other Member State, once acceptances which cancel each other out have been discounted. Any arrangement concerning the rationalisation of transfers shall state the criteria on the basis of which it is decided to perform, or not to perform, the transfer of the asylum seekers concerned.
2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall approve the arrangements referred to in subparagraphs (b) and (c), after it has checked that they do not infringe this Regulation.

CHAPTER VII

Transitional provisions and final provisions

Article 25

1. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990.
2. However, to ensure continuity of the arrangements for determining the Member State responsible for an asylum application, where an application has been lodged after the date mentioned in the second paragraph of Article 31, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.
3. Where, in Regulation (EC) No 2725/2000 reference is made to the Dublin Convention, such reference shall be taken to be a reference made to this Regulation.

Article 26

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 27

Member States shall apply this Regulation to asylum seekers without discrimination based on sex, race, colour, nationality or country of origin, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other opinion, membership of a national minority, wealth, birth, a handicap, age or sexual orientation.

Article 28

Member States shall determine the system of penalties for infringements of this Regulation and shall take any measures necessary to ensure their implementation. The penalties thus provided for should be effective, proportionate and dissuasive.

Article 29

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the Commission representative.
2. In those cases where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in accordance with Article 7 thereof.
3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

Article 30

At the latest three years after the date mentioned in the first paragraph of Article 31, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

Having presented the said report, the Commission shall report to the European Parliament and the Council on the application of this Regulation at the same time as it presents reports on the implementation of the Eurodac system provided for by Article 24(5) of Regulation (EC) No 2725/2000.

Article 31

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

It shall apply to asylum applications lodged as from the first day of the sixth month following its entry into force. The Member State responsible for the examination of an asylum application submitted before that date shall be determined in accordance with the criteria set out in the Dublin Convention.

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

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

1. TITLE OF OPERATION

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

2. BUDGET HEADING(S) INVOLVED

A - 7031

3. LEGAL BASIS

Article 63(1)(a) of the EC Treaty.

4. DESCRIPTION OF THE OPERATION

4.1 General objective

Determination of the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

4.2 Period covered and arrangements for renewal

Indefinite.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1 NCE

5.2 NDA

5.3 Type of revenue covered

Not applicable.

6. TYPE OF EXPENDITURE OR REVENUE

Not applicable.

7. FINANCIAL IMPACT

Administrative measures resulting from the introduction of the regulatory 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 (SECTION III, PART A OF THE BUDGET)

The general mobilisation of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, notably taking into account the manpower available and the supplementary amounts which have been granted by the budgetary authorities.

10.1 Effect on the number of posts

None.

10.2 Overall financial effect of additional human resources

None.

10.3 Increase in other administrative expenditure as a result of the operation, in particular costs incurred in meetings of committees and groups of experts

(EUR)

Budget line (No of heading)	Amounts	Method of calculation
A – 7031		Regulatory committee meeting three times a year after adoption of the Regulation. One-day meetings with the representatives of the Member States. Average cost per meeting: € 650 € 650 x 15 representatives = € 9 750
Total	€ 29 250	

The expenditure relating to A7 in point 10.3 will be covered by appropriations from the overall amount for DG JAI.