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REPORT

on the 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

(COM(2001) 447 – C5-0403/2001 – 2001/0182(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Luís Marinho

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 30 August 2001 the Council consulted Parliament, pursuant to Article 67(1) of the EC Treaty on the 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 (COM(2001) 447 – 2001/0182(CNS)).

At the sitting of 3 September 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0403/2001).

At the sitting of 4 October 2001 the President of Parliament announced that she had also referred the proposal to the Committee on Petitions for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Luís Marinho rapporteur at its meeting of 13 September 2001.

The committee considered the Commission proposal and the draft report at its meetings of 15 October 2001, 20 February 2002 and 19 March 2002.

At the last meeting it adopted the draft legislative resolution by 34 votes to 9, with 1 abstention.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Robert J.E. Evans, Lousewies van der Laan and Giacomo Santini, vice-chairmen; Luís Marinho, rapporteur; Maria Berger (for Ozan Ceyhun), Hans Blokland (for Ole Krarup pursuant to Rule 153(2)), Christian Ulrik von Boetticher, Mario Borghezio, Mogens N.J. Camre (for Niall Andrews), Marco Cappato (for Maurizio Turco), Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Evelyne Gebhardt (for Gerhard Schmid), Marie-Thérèse Hermange (for Thierry Cornillet), Jorge Salvador Hernández Mollar, Pierre Jonckheer, Anna Karamanou (for Carmen Cerdeira Morterero), Margot Keßler, Timothy Kirkhope, Eva Klamt, Jean Lambert (for Alima Boumediene-Thiery), Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Hartmut Nassauer, Arie M. Oostlander (for The Lord Bethell), Elena Ornella Paciotti, Paolo Pastorelli (for Bernd Posselt), Hubert Pirker, Martine Roure, Heide Rühle, Olle Schmidt (for Francesco Rutelli), Ilka Schröder, Patsy Sørensen, The Earl of Stockton (for Mary Elizabeth Banotti), Joke Swiebel, Anna Terrón i Cusí, Astrid Thors (for William Francis Newton Dunn pursuant to Rule 153(2)), Gianni Vattimo (for Sérgio Sousa Pinto), Christos Zacharakis (for Giuseppe Brienza) and Olga Zrihen Zaari (for Adeline Hazan).

The opinion of the Committee on Petitions is attached; the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 4 September 2001 not to deliver an opinion and the Committee on Legal Affairs and the Internal Market decided on 11 September 2001 not to deliver an opinion.

The report was tabled on 20 March 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

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 (COM(2001) 447 – C5-0403/2001 – 2001/0182(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 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 .../.../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Such a method should be based on ***legal certainty and predictability, and 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 .../.../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Justification

The importance of the asylum seeker having legal certainty and the possibility of understanding the rules and regulations cannot be emphasised enough.

Amendment 2 Article 3, paragraph 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.

An asylum application shall be examined by a single Member State ***in accordance with its international obligations***. That Member State shall be the one which the criteria set out in Chapter III indicate is

¹ OJ C 304, 30.10.2001, p. 192.

criteria set out in Chapter III indicate is responsible.

Justification

Self-evident.

Amendment 3
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.

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

Justification

Processing an asylum application made by an unaccompanied minor raises a whole range of problems. In the interests of minors and completing procedures rapidly, the group of people who can take charge of the child should not be restricted unnecessarily.

Amendment 4
Article 9, paragraph 5

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.

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 **that was instrumental in determining the allocation of responsibility** was committed after the document/visa had been issued.

Justification

Not all fraud but only fraud which was a decisive factor in allocating responsibility should invalidate that responsibility. If the State would have been responsible even if the fraud had not occurred, it must remain so.

Amendment 5
Article 15, introduction

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:

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, ***provided that the persons concerned so desire:***

Justification

The best interest of each individual applicant must always be considered and each asylum application must always be subject to individual consideration.

Amendment 6
Article 16, paragraph 1

2. 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

2. 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.

seeker with a member of his family **or other relative** 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.

Justification

The definition of family member seems to be too narrow in this instance as it concerns cases in which the needs of family members are taken into account, for instance on health grounds. It would be appropriate to widen the family circle in this case.

Amendment 7 Article 16, paragraph 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).

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).

Member States shall inform the asylum seeker of his right to request that another Member State assume responsibility for processing his application for humanitarian reasons.

Justification

Member States should have to inform the asylum applicant of the possibility of seeking family reunification or transfer on the basis of cultural or other humanitarian needs under the Proposal in order to enable the asylum seeker to present relevant information and to facilitate the implementation of Article 16.

Amendment 8
Article 18, paragraph 1

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.

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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.

Where the asylum seeker is an unaccompanied minor pursuant to Article 6, the deadline shall be suspended during the period required to examine the suitability of the family member or other relative to take charge of the child.

Where the determination of the State responsible pursuant to Article 8(2) depends on the outcome of an admissibility procedure in another State, the deadline shall be suspended from the time when that State is notified until the requesting State has been informed of the outcome.

Justification

In both these cases the time limit of 65 working days is too short. It should therefore be stipulated that the period in which the suitability of the family member is being examined or the admissibility of the asylum procedure is being considered should not count as part of the time limit, which should only start to run afterwards.

Amendment 9
Article 20, paragraph 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.

Where the State requested accepts that it should take charge, the State in which the asylum application was lodged shall communicate to the applicant, ***in a language he understands***, 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.

Justification

As the notification supplies important information to the applicant concerning the basis for the transfer and what date he must appear in the receiving Member State, this information must be provided in a language the applicant understands.

Amendment 10
Article 22, paragraph 2(a)

(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),

(a) personal details of the applicant, and, ***where required for the purposes of the investigation by the State responsible for considering the asylum application***, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth),

Justification

It should be spelled out clearly that the personal details of family members should not be passed on unless this is necessary for the investigation being conducted by the State

responsible for considering the asylum application.

Amendment 11
Article 23, paragraph 3

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

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

If no personal interview with the applicant has been conducted, the time-limit for taking a decision ***dismissing an application for asylum under Article 18(b) or (c) as inadmissible shall be 65 working days. The time limits for taking a decision rejecting an application for asylum under Article 18(a) shall be calculated in accordance with the provisions of Article 18 et seq. of the 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.***

Justification

Article 23(3) of the proposal for a directive on minimum standards on procedures sets a time limit of 65 working days for decisions on all admissibility procedures including, pursuant to Article 18(a), the procedure for determining the Member State responsible for considering an asylum application. The present proposal for a regulation however allows longer time limits for a decision of this kind and this is particularly justified in the case of a request that another Member State should take charge of an asylum seeker. Article 23(3) of the proposal for a directive on minimum standards on procedures should therefore be modified accordingly.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council regulation on 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 (COM(2001) 447 – C5-0403/2001 – 2001/0182(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2001) 447¹),
 - having regard to Article 63 of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67(1) of the EC Treaty (C5-0403/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Petitions (A5-0081/2002),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 304, 30.10.2001, p. 192.

EXPLANATORY STATEMENT

Introduction

To ensure that every asylum application within the European Union is actually examined and, at the same time, to avoid procedures relating to the same case being carried out in different Member States simultaneously as result of multiple applications, it is necessary to have uniform rules to determine which Member State is responsible for examining a request for asylum. At present this matter is governed by the Dublin Convention¹. However, as Article 63(1) of the EC Treaty requires the Council to adopt within a period of five years after the entry into force of the Treaty of Amsterdam criteria and mechanisms for determining which Member State is responsible for considering an application for asylum, Community legislation is required to replace the Convention. Replacing the Convention with a Regulation, which is subject to interpretation by the Court of Justice and monitoring by the Court and by the Commission, is a further step towards achieving an area of freedom, security and justice. Furthermore, the new legislative procedure provides an opportunity to remedy shortcomings in the Dublin Convention.

Commission proposal

The broad lines of the proposal for a regulation are modelled on the Dublin Convention. However, an effort has been made to draw the lessons learnt from earlier reviews of the convention² by maintaining the original criteria for responsibility but adding new criteria.

Firstly, greater prominence is given to the idea that a State must take responsibility for people who have entered its territory illegally and are living there. As in the Dublin Convention, it is the Member State which allowed those people to cross the borders into its territory illegally or issued a residence document or visa, which is responsible for examining the asylum application. Under the new criteria, a State is also responsible if it has tolerated the unlawful presence of asylum seekers in its territory for more than two months or if the asylum seekers have remained in the State illegally for more than six months.

Secondly, greater importance is attached to family unification, even though the concept of family member is still very narrowly defined. Under this proposal, asylum applications by minors, accompanied by the person who has custody of them, are automatically considered in the same State as the asylum application of the person with custody. If an unaccompanied minor makes an application for asylum, it will be considered as far as possible in the State where there is a family member who can take charge of the child. In addition, an effort has been made to bundle applications by family members in such a way that a State becomes responsible for considering the asylum applications of family members as soon as one asylum application by a family member is being considered under the regular procedure rather than only after one family member has been granted refugee status (as was the case under the Dublin Convention). If an admissibility procedure is underway, however, its outcome will be awaited.

¹ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, OJ C 254, 19.8.1997.

² Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member States (SEC(2000)522 final, 21.3.2000; Evaluation of the Dublin Convention, SEC(2001) 756, 13.6.2001.

As well as introducing these new criteria, a number of changes have been made to the procedure for taking charge of or taking back asylum seekers. The deadline for taking back has been shortened from six months to 65 working days and the State requested has to take a decision within one month (instead of three months). The time limit for transferring an asylum seeker has been lengthened significantly: the transfer has to take place within six months otherwise responsibility reverts to the Member State where the application was lodged. The asylum seeker must be notified of the transfer decision and the reasons for it. An appeal may be lodged but will not have suspensive effect.

Appraisal

Not least because of the absence of viable alternatives, the right approach seems to be to continue the tried and tested system of the Dublin Convention.

The greater emphasis put on the principle of the responsibility of the Member States for nationals of non-member countries who illegally enter their territory via their external borders or who have been living there illegally for a considerable period of time seems to be appropriate in the light of the experience acquired over recent years.

Similarly, the greater importance attached to family unity is to be welcomed. Under the proposal for a regulation, the definition of family member covers only spouses or partners, minor children and, where the asylum seeker is a minor, the parents or guardian. Other relatives fall under the heading of family members only to a limited extent, i.e. if they used to live in the same home in the country of origin and were dependent on the asylum seeker. Consequently, the definition is extremely narrow, albeit a little broader than that in the Dublin Convention, which failed to include unmarried partners.

This definition seems to be appropriate in cases where a family member has been recognised as refugee in one Member State or his asylum application is being considered under a regular procedure, in which case the asylum application by another family member will be considered in the same Member State. The Commission proposal, which allows applications by these close family members to be considered together, is likely to result in more consistent decisions in similar cases and must therefore be endorsed not only on humanitarian grounds but also from the point of view of efficiency and the practicalities.

The fact that, because of the narrow definition, the effect on family unity lags far behind what is provided for asylum seekers under the heading of family reunification¹ when special conditions are met, can be explained by the different objectives of the two proposals. This difference also seems to be justified in so far as the question of family reunification is to be decided separately from that of the right to asylum.

However, there are two cases where the proposed definition of family members is too narrow.

Firstly in Article 6, which covers the case of an unaccompanied minor. Where an unaccompanied minor makes an asylum application, a great many problems arise. Not only is it necessary to provide accommodation and care, but a legal representative must also be appointed for the procedure. If it is possible to find a relative in one of the Member States

¹ COM(2000)578 final, 20.9.2000.

who is willing and suitable to take charge of the child, this is undoubtedly the best solution for all concerned. Consequently, it is not sensible to restrict those eligible to take charge of the child de facto to the parents. Grandparents, uncles or aunts or grown-up brothers and sisters might be equally suitable. (Amendment 3)

Secondly, the definition of family members is too narrow for the purposes of Article 16, which provides for asylum seekers to be brought together where one family member is living, on humanitarian grounds. (Amendment 6)

As far as the length of the procedure is concerned, shortening the deadline for submitting requests to take charge to 65 days is to be welcomed in principle. However, there are two cases where this does not seem to allow sufficient time: in Article 6, when it has to be ascertained whether a relative is fit to take charge of the child and it is necessary to examine not only material conditions but also subjective conditions, and in the case of Article 8(2) when it is necessary to wait for the outcome of an admissibility procedure relating to the asylum application of a family member. In both cases, it should be stipulated that the time limit is suspended while the suitability of the family member is being examined or the admissibility procedure is going on and that it should start to run thereafter. (Amendment 8)

Finally, it should be pointed out that in its present form the proposal also necessitates a change in the Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status¹. Article 23(3) of that directive sets a deadline of 65 working days for decisions on all admissibility procedures, including, under Article 18(a), the procedure in this draft regulation. However, for the purposes of the present proposal for a regulation, this deadline is too short where the State with which the asylum application has been lodged wishes to request another Member State to take charge of the asylum seeker. It is barely feasible to complete the whole procedure in 65 working days and the time limits in the current proposal for a regulation seem much more realistic. Under the present proposal the taking charge request pursuant to Article 18(1) must be made within 65 working days and the State requested has a further month in which to take a decision. The applicant is then notified of the decision within 15 days. The best way round this problem seems to be to bring the deadlines for admissibility procedures set out in Article 23(3) of the minimum standards directive into line with the deadlines set in the current proposal for a regulation. (Amendment 11).

¹ COM(2000) 578 final, 20.9.2000.

28 November 2001

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the 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
(COM(2001) 447 – C5-0403/2001 – 2001/0182 (CNS))

Draftsman: Luciana Sbarbati

PROCEDURE

The Committee on Petitions appointed Luciana Sbarbati draftsman at its meeting of 13 September 2001.

It considered the draft opinion at its meetings of 26-7 November 2001.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Vitaliano Gemelli, chairman; Roy Perry and Proinsias De Rossa, vice-chairmen; Felipe Camisón Asensio, Laura González Álvarez, Jean Lambert, Ioannis Marinos and Jens Dyhr Okking (for Véronique Mathieu).

SHORT JUSTIFICATION

Preliminary considerations

Is this regulation an alternative to the Dublin Convention? Not exactly, but it is an improvement on it.

1. The draft Council regulation presented by the Commission aims to replace the Dublin Convention, which determines the Member State responsible for examining an asylum application. It is no secret that there have been many practical and legal difficulties in the application of this convention and that it has come in for strong criticism from several humanitarian organisations and, of course, refugee applicants. Traces of this criticism can also be found in a Commission working paper on the re-examination of this convention (SEC(2000) 522 final of 21 March 2000). Amnesty International¹, the Conference of Churches on migrants in Europe, the UNHCR (UN High Commissioner's Office for Refugees) and others strongly criticised this document.
2. Does this regulation constitute an alternative or a different approach to that taken by the Dublin Convention?

No, because from the outset the Commission considers that *'it would ... 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'*. Moreover, Recital 13 clearly states that the regulation's territorial application is the same as that for the Dublin Convention. This is due to the fact that the 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 have a direct influence on the destination chosen by asylum seekers.

3. Almost daily the press and other media show pictures of hundreds of asylum seekers blocking the roads leading to the Channel tunnel (hence the ironic headline in *le Soir* of 6 September 2001 – *'Les demandeurs d'asile font la Manche'* ('Asylum seekers queue up and beg at Channel port'). This is due not only to the fact that these Afghans, Kurds, Iranians and Iraqis wish to leave the unbearable Sangatte detention centre² but, above all, to the fact that they want to obtain political refugee status in the United Kingdom, to which they are often more closely linked by language, culture and family connections³. Although it is estimated that 400 000 people enter the United Kingdom annually, nobody really knows how many refugees arrive each year, as Harriet Sergeant points out in a report for the Centre for Policy Studies which she has ironically entitled *'Welcome to the asylum'*. In any case, everyone knows, for example, that when the *East-Sea* ran aground off southern France in February 2001, the hundreds of Kurds, Syrians and Iraqis whom

¹ See 'The Asylum Crisis'.

² Since this reception centre opened in September 1999, 40 000 immigrants have stayed there.

³ As soon as they arrive in the United Kingdom, the 'Migrant Help Line', a non-governmental organisation subsidised by the state, takes responsibility for asylum seekers. Adults over 25 have a right to a weekly allowance, and vouchers for food and clothes. English lessons are given and if there has been no decision six months after the asylum request was lodged, the applicant may request a work permit. In France, however, asylum seekers do not have the right to work while in receipt of a financial allowance, they can find no accommodation in the overcrowded reception centres, and 80% of asylum seekers must manage by themselves.

the French authorities attempted to take in almost all ‘evaporated’ from reception centres and moved to Germany where the structured Kurdish community was more obviously equipped to integrate them than Modan or Béziers, particularly since other family members were often already in Germany.

The same holds true for the dozens of overloaded old tubs which land in Puglia or the rickety boats piled up with illegal immigrants and refugees in the same plight heading for Andalucia.

4. In this opinion your rapporteur does not wish to single out certain provisions of the regulation for particular criticism, such as Article 12¹, which certain humanitarian organisations have nonetheless dubbed ‘the special Sangatte article’. Nor will she censure the conduct of those Member States which prefer to concentrate on the most repressive aspects of the law and to give higher priority to border control than the protection of individuals. In the review of Yasmine Kassari’s documentary film, ‘*When men cry*’, published in the 10 October 2001 issue of *Le Monde*, we read and recognise the relevance of the following passage: ‘Labelled as *Moros* (Moors) and considered as ‘heathens’ by the local population in a terrifying resurgence of the old religious wars, which still seem to burn brightly today, these men are the butt of abject racism and suffer the humiliation of a modern kind of slavery ... This excellent documentary draws the audience close to **that painful continent called exile**’.
5. Your rapporteur restricts herself to noting that this regulation seeks to find a balance between two opposing demands, namely preventing abuse of asylum procedures, such as multiple asylum applications submitted by the same person in several Member States, while at the same time ensuring that asylum seekers have effective access to the procedures for determining refugee status, reducing delays and above all facilitating and protecting family group unity, in line with humanitarian concerns.

The regulation introduces new criteria or derogations that were not included in the Dublin Convention, in order to preserve the unity of family groups in one Member State. A second group of criteria also places more responsibility on a Member State which does not take effective action against the illegal presence of third-country nationals on its territory, making liability equivalent to that of a Member State which fails to control its borders properly. **This approach, which is taken to several situations, constitutes, together with the other point mentioned above, an undeniable improvement as compared with the Dublin Convention.** When the Commission replaces the convention with this regulation, your rapporteur will therefore not accuse it of acting as if ‘*something had to change, so that everything could stay the same*’².

6. She points out once again that in reality illegal immigrants and those applying for political refugee status all too often follow the same routes and take the same boats, since the provisions of the Geneva Convention on asylum are applied by all the Member States in a way that is increasingly over-restrictive. Sometimes even before their application has been

¹ This article provides that ‘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’.

² Quotation from the Prince of Salina, hero of *The Leopard* by Lampedusa.

rejected asylum seekers swell the ranks of those without rights, without homes and without papers who call out to us in their plight, as the group study '*New citizenships: refugees and those without papers in the European area*'¹ confirms. In any case she stresses – in a spirit of realism and not cynicism – that in erecting manifold barriers to hold back the flood of asylum seekers, the Member States have forgotten a simple but obvious fact: that throughout history, no matter what the geographical circumstances, no barrier has been able to prevent people in search of refuge finding a way to cross the border.

7. Finally, as the Commission itself states in the introductory section to the regulation, it will only be possible to abandon the criteria used in the Dublin Convention when a common procedure and uniform status for asylum seekers is introduced. This idea was the subject of a Commission Communication, on which the Committee on Petitions has already given an opinion (written by your rapporteur). Therefore we reiterate our request for the introduction – in compliance with the wishes of the special meeting of the European Council in Tampere – of a 'fair and efficient' asylum procedure and a 'clear and workable' method including new provisions on the criteria and mechanisms for determining the Member State responsible for examining an asylum application.

CONCLUSIONS

The Committee on Petitions calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to take account of the following points:

1. Welcomes the proposal for a Council regulation, in general terms;
2. Welcomes the principle 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;
3. Calls on the Union, however, to introduce in the very near future a common procedure and uniform status for the asylum procedure, valid throughout the Union, as the Commission proposed in its Communication of 22 November 2000;
4. Welcomes the exceptions, designed to protect family unity, to the general principle determining the Member State with responsibility for examining an asylum application;
5. Welcomes the fact that, to ensure that applications for asylum are processed rapidly, much shorter procedural deadlines have been set which are consistent with the procedures for granting and withdrawing refugee status;
6. Welcomes the provision designed to unite unaccompanied minors with adult members of their family who are already present in a Member State and are able to take charge of them;

¹ Published by the French Institute of International Relations (IFRI), Paris, 2001.

7. Considers that the possibility of asking for an urgent response to an asylum application and the obligation on the Member State to notify applicants of the decision taken within shorter and more consistent deadlines are positive steps;
8. Expresses concern, on the other hand, over the fact that on the grounds that an appeal against a rejection of an asylum application can be used as a stalling tactic, appeals no longer have suspensive effect;
9. Reiterates its concern about the restrictive application of national rules on political refugees, which gives rise to a corresponding increase in illegal immigrants, who are frequently exploited shamelessly by gangs;
10. Welcomes, in particular, the fact that Article 27 of the regulation bans any 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'*. In its precision and detail, this list seems particularly progressive and modern, and takes due account of the provisions of the European Union's Charter of Fundamental Rights.