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Towards common standards on asylum procedures

Preface

The Treaty establishing the European Community as amended by the Treaty of Amsterdam will require the Council to adopt measures on minimum standards on procedures in Member States for granting or withdrawing refugee status. The Commission intends to bring forward a proposal for a Community legal instrument on asylum procedures after the entry into force of the new treaty.

This working document is intended to launch a discussion on asylum procedures which will take place in the Council and the European Parliament. After this debate has taken place, the Commission will finalise a proposal for a Community legal instrument on asylum procedures. The paper will also serve as the basis for a dialogue with the United Nations High Commissioner for Refugees and with the non-governmental sector. This is consistent with declaration number 17 on the Treaty of Amsterdam, which states that consultations shall be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy.

A. Introduction

1. The European Union has already taken the first steps towards creating common standards for asylum procedures in the Member States. A number of non-binding "soft law" instruments relating to asylum procedures have been adopted. Prior to the entry into force of the Treaty on European Union, when European co-operation in the field of asylum operated on a purely intergovernmental basis outside the framework of the treaties, Ministers responsible for Immigration adopted conclusions on countries in which there is generally no serious risk of persecution, the resolution on manifestly unfounded applications for asylum, and the resolution on a harmonized approach to questions concerning host third countries (the so-called "London Resolutions" of 30 November and 1 December 1992)[1]. Since the entry into force of the Treaty on European Union, the Council has adopted the resolution of 20 June 1995 on minimum guarantees for asylum procedures[2]. In addition, its resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries[3] contains specific provisions on asylum procedures.

2. In its 1994 Communication to the Council and the European Parliament on immigration and asylum policies, the Commission identified the need for a legally binding instrument on asylum procedures.[4] The Commission originally intended to bring forward a proposal for a convention on asylum procedures under the Treaty on European Union. After the signing of the Treaty of Amsterdam, however, the Commission concluded that it is preferable for its proposal on asylum procedures to take the form of a binding Community legal instrument. Indeed the new treaty will require the Council to adopt, within five years of its entry into force, measures on minimum standards on procedures in Member States for granting or withdrawing refugee status[5].

3. In its 1994 Communication, the Commission argued that a legally binding instrument was required in order to ensure legal certainty for both asylum applicants and the Member States. The Commission suggested that a general approach might be to define objective criteria for fairness and efficiency, which would set a certain general framework, while leaving it to each Member State to fill in the exact nature of the asylum procedure. The importance of an approach focusing on criteria for fairness and efficiency has not diminished. Guarantees must be in place to ensure that persons in need of protection under the 1951 Geneva Convention relating to the status of refugees have access to asylum procedures and that all the circumstances of

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[1] These conclusions and resolutions have not been published in the Official Journal of the European Communities. The texts can, however, be found in the publication "Collection of international instruments and other legal texts concerning refugees and displaced persons", Volume II, Regional Instruments, UNHCR, Geneva 1995.

[2] OJ C 274, 19 September 1996, page 13.

[3] OJ C221, 19 July 1997, page 23.

[4] COM(94) 23 final, Brussels, 23 February 1994, paragraphs 86 – 90.

[5] Article 63(1)(d) of the Treaty establishing the European Community as amended by the Treaty of Amsterdam.

their claims are examined on an individual basis, in order to protect people who are refugees within the meaning of Article 1A of that Convention. At the same time, procedures must be efficient, so that refugees can be identified as quickly as possible, and applications from people who are not in need of international protection can be processed expeditiously.

B. The Treaty of Amsterdam: a work programme on asylum and protection issues

4. In considering the possible scope of a Community legal instrument on asylum procedures, it is important to take account of the work programme on asylum contained in the Treaty of Amsterdam. The new treaty will require the Council to adopt measures in a number of specific areas of asylum and protection policy, mostly within five years of its entry into force. In its Communication of July 1998 entitled "Towards an area of Freedom, Security and Justice", the Commission indicated a number of priorities in the field of asylum, including minimum standards for asylum procedures[6]. Further indications on priorities are contained in the "Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom security and justice" of December 1998 (hereafter referred to as the "Action Plan")[7]. In particular, the Action Plan identifies a number of measures in the field of asylum, including the adoption of minimum standards on procedures in Member States for granting or withdrawing refugee status, which should be taken within two years of the entry into force of the new treaty[8].

5. The legislative programme on asylum and protection issues following the entry into force of the Treaty of Amsterdam can be divided into the following eight topics[9]:

   (1) Criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States (Article 63(1)(a) TEC). This area is covered by the Dublin Convention, which will in due course need to be replaced by an instrument of Community law. In this context, it will be necessary to determine whether it will be sufficient simply to address certain weaknesses which have been identified in the Dublin system, or whether a fundamentally different approach is required.

   (2) Eurodac (Article 63(1)(a) TEC). This is a fingerprint comparison system which will be established for the purpose of implementing the Dublin Convention. It has been under negotiation in the form of a draft Convention and Protocol, but in December 1998 the Council asked the Commission to

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[6] COM(1998) 459 final, Brussels, 14.07.1998, page 6.

[7] OJ C19, 23 January 1999, pages 1-15.

[8] See paragraph 36 of the Action Plan.

[9] Paragraph 36(b)(iv) of the Action Plan also refers to measures in the field of asylum to limit "secondary movements" by asylum seekers between Member States, but does not specify what form such measures would take.

bring forward a proposal for Eurodac in the form of a Community regulation shortly after the entry into force of the Treaty of Amsterdam.

(3) Minimum standards on the reception of asylum seekers in Member States (Article 63(1)(b) TEC). The scope of an instrument in this field will cover such matters as accommodation, means of subsistence, medical care, education, employment and access to the labour market for asylum seekers.

(4) Minimum standards with respect to the qualification of nationals of third countries as refugees (Article 63(1)(c) TEC). An instrument in this area will be concerned with interpretation of the refugee definition contained in Article1 of the Geneva Convention i.e. with substantive questions of who is a refugee. Issues such as persecution by non-state agents, which has been a controversial feature of the 1996 Joint Position on the harmonized application of the term "refugee" in Article 1 of the Geneva Convention, will need to be revisited in the context of this instrument.

(5) Minimum standards on procedures in Member States for granting or withdrawing refugee status (Article 63(1)(d) TEC). The existing soft law is referred to in the introduction to this paper. The possible content of a future Community instrument is the subject of this Working Document.

(6) Minimum standards for complementary/subsidiary protection for persons in need of international protection (Article 63(2)(a) second part TEC). An instrument in this area will deal with the provision of protection on an individual basis to persons who are not refugees within the meaning of the Geneva Convention, but who are nevertheless in need of international protection in accordance with other international obligations or for humanitarian reasons.

(7) Minimum standards for giving temporary protection to displaced person from third countries who cannot return to their countries of origin (Article 63(2)(a) first part TEC). The Commission has already made a proposal on this subject[10], on the basis of the Treaty on European Union. After the entry into force of the new Treaty, the Commission will revise and represent its proposal as a draft Community instrument, with appropriate modifications.

(8) Promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons (Article 63(2)(b) TEC). This is also referred to as "solidarity" or "burden sharing". The Commission has already made a proposal on this subject in relation to the beneficiaries of temporary protection[11]. This proposal will

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[10] Proposal to the Council for a Joint Action based on Article K.3(2)(b) of the Treaty on European Union concerning temporary protection of displaced persons, COM(97) 93 final, 5 March 1997, also OJ C 106, 4 April 1997, page 13; amended proposal for a joint action concerning temporary protection of displaced persons, COM(98) 372 final, 24 June 1997, also OJ C268, 27 August 1998, page 13.

[11] Proposal for a joint action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons, COM(98) 372 final, 24 June 1997, also OJ C268, 27 August 1998, page 22.

also be revised and represented as a draft Community instrument after the entry into force of the new treaty.

Since the European Union has, in drawing up the existing soft law, already made progress on minimum standards for asylum procedures, and the Treaty of Amsterdam will allow the use of binding Community legal instruments in this area for the first time, the Commission considers that it is appropriate to start work under the new treaty with a proposal on asylum procedures.

The scope and content of an instrument on asylum procedures must be considered in the light of the overall work programme under the Treaty of Amsterdam. In some cases, it will be necessary to decide where the dividing line between asylum procedures and reception conditions lies. In other cases, it will similarly be necessary to draw a dividing line between asylum procedures and questions of interpreting the refugee definition.

Questions also arise on the relationship between guarantees for asylum procedures and the application of the Dublin Convention, and on the link between asylum procedures and procedures for examining claims for other forms of protection. These issues are addressed in section C of this Working Document.

6. The Treaty establishing the European Community as amended by the Treaty of Amsterdam specifically states that measures on asylum, including on asylum procedures, must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties. The Treaties thus enshrine the basic principle that Community legislation on asylum must be compatible with the key international refugee and human rights instruments.

   Proposals under Title IV of the amended Treaty establishing the European Community will be treated at variable geometry, in accordance with the relevant protocols. In this context, it should be noted that a proposal for a Community instrument on minimum standards on procedures in Member States for granting or withdrawing refugee status would not constitute a proposal or initiative to build upon the Schengen acquis.

7. The new treaty talks in terms of "minimum standards" in the field of asylum, in relation to procedures, to reception conditions, and to the refugee definition. Common minimum standards will support several objectives. In the first place, they are necessary in order to ensure that any individual asylum applicant would receive the same decision on his or her application, irrespective of the Member State in which he or she lodges the asylum claim. If the European Union is to maintain a system of determining which Member State is responsible for considering an asylum application and transferring asylum applicants from one Member State to another, it is important to ensure that this does not affect the individual's chances of receiving protection. In the second place, common minimum standards have a role to play in preventing secondary migration of asylum applicants between Member States.

C. Scope and content of a Community legal instrument on asylum procedures

8. This section is intended to raise a number of issues which arise in the context of preparing a future Community legal instrument on asylum procedures. It is not in any way intended to be a comprehensive inventory of every procedural issue which will need to be addressed. It is recalled that the document's function is to provide a basis for discussion and debate.

C.1 Broad approach

9. General approach. Broadly, there are two possible approaches to a first pillar instrument on asylum procedures:

(a) to establish a certain level of procedural safeguards and guarantees which all Member States would have to provide, in the interests of procedural fairness, whilst allowing Member States some degree of flexibility to determine the details of the administrative arrangements necessary for implementing these guarantees and to decide whether they wished to apply all the measures available for speeding up procedures; or

(b) to adopt a more prescriptive approach, which would require all Member States to apply exactly the same procedure , so that full harmonisation would be achieved.

The Commission envisages that in the first instance it will bring forward a proposal in line with approach (a) above, in view of the structure of the Action Plan on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice. The Action Plan envisages an instrument on asylum procedures within two years of the entry into force of the new treaty. Separately, it makes provision for a study with a view to establishing the merits of a single European asylum procedure, also within the two year timetable. This seems to imply that the European Union should first aim to put in place a binding instrument on asylum procedures, and then in the slightly longer term, on the basis of the study which the Action Plan calls for, should consider the merits of a single asylum system (which would presumably also cover such issues as reception and the refugee definition).

10. Scope of the proposal: the existing soft law. As mentioned in the introduction to this paper, the existing soft law (principally the 1995 resolution on minimum guarantees for asylum procedures and the 1992 London resolutions) can be viewed as the first steps towards common minimum standards on asylum procedures. The Commission takes the view that it will be necessary to revisit some of the concepts and principles found in the soft law and to propose the removal of some of the exceptions and derogations which weaken these instruments. In general terms, however, the Commission regards these resolutions as the starting point in preparing a proposal for a Community legal instrument.

11. Scope of the proposal: subsidiary protection. Both the Council and the European Parliament have already begun to examine the issue of complementary or subsidiary forms of protection. As previously mentioned in this paper, the Treaty of Amsterdam will require the adoption of measures relating to complementary protection. There is a good case for using a single procedure to determine both whether a person qualifies for protection under the Geneva Convention and whether they qualify for protection under some other international instrument or are

otherwise in need of protection. This would avoid having different procedures which might have to be applied consecutively, thus extending the time it takes to deal with an individual case. Moreover, an applicant's interests would appear to be best served by a single general review of all the circumstances and different aspects of their case. A single procedure would seem to imply a single set of procedural guarantees for asylum and for complementary forms of protection.

Whilst there is therefore a good case for establishing a single procedure for examining all the protection issues raised by an individual case, there are equally persuasive arguments for excluding procedures for granting complementary forms of protection from the scope of the forthcoming proposal. The Action Plan places asylum procedures within the two year timetable, whilst complementary protection is within the five year timetable. This distinction is made for a good reason. A considerable amount of work still needs to be done on defining which types of cases should be covered by complementary protection arrangements. It therefore seems sensible to restrict the scope of a Community legal instrument on asylum procedures to claims for protection under the Geneva Convention. When at a later date a proposal on complementary forms of protection is drawn up, this instrument could make provision for a single procedure for asylum and subsidiary protection issues.

C.2 Responsibility for considering an asylum application

12. Issues related to the Dublin Convention. Although the area covered by the Dublin Convention will in due course be the subject of a Community regulation or directive, issues related to the Dublin system do not fall entirely outside the scope of a Community legal instrument on asylum procedures. For example, the 1992 resolution on a harmonized approach to questions concerning host third countries deals with the relationship between the Dublin system and the application of the safe third country concept. This relationship will also need to be addressed in a Community legal instrument on asylum procedures.

Another issue which will need to be addressed, either in a Community legal instrument on asylum procedures or in a future instrument replacing the Dublin Convention, is that of procedural guarantees in relation to determining which Member State is responsible considering an application for asylum. When the 1995 resolution on minimum guarantees for asylum procedures was negotiated, it was agreed that procedural guarantees relating to the application of the Dublin Convention would be drawn up by the Article 18 Committee, and this is reflected in section I of that resolution. The implementing measures which have been adopted by the Article 18 Committee since the Dublin Convention's entry into force do not, however, include specific procedural guarantees. The Commission attaches importance to the adoption of such guarantees, and believes that they should be contained in a binding legal instrument. It will be necessary to determine whether such procedural guarantees should be contained in the proposal for a Community legal instrument on asylum procedures, or in a Community instrument replacing the Dublin Convention. Whilst the former approach could be justified on the basis of the link between Dublin procedures, safe third country procedures, and substantive asylum procedures, the latter approach might be more appropriate if it became clear that there was a consensus in favour of a fundamental revision of the Dublin system.

13. The safe third country concept and refusing applications on objective grounds. Paragraph 2 of the resolution on manifestly unfounded applications for asylum states that Member States may operate admissibility procedures under which applications may be rejected very quickly on objective grounds. The resolution offers no further clarification of what is meant by "objective grounds". The Commission envisages that a Community legal instrument on asylum procedures would draw a clear distinction between a decision not to consider the substance of an asylum application because the applicant could be returned to a third country, and a decision to refuse an asylum application on the substance. The Commission envisages that the Community legal instrument would employ a concept of "admissibility" which is restricted to determining whether the Member States in question should consider the substance of the asylum application, or whether the applicant should be sent to a third country under the safe or host third country concept or to another Member State under the Dublin Convention. Member States would still retain the flexibility to refuse asylum claims rapidly on substantive grounds, provided that they applied the basic procedural safeguards which the Community legal instrument would prescribe for all cases where Member States examine the substance of the claim to fear persecution.

14. The safe third country concept: a common approach. The 1992 resolution on a harmonized approach to questions concerning host third countries lays down a procedure for examining whether an asylum applicant can be sent to a safe third country (outside the European Union). The application of the safe third country concept must be subject to stringent safeguards in order to ensure that the principle of non-refoulement contained in Article 33 of the Geneva Convention is given effect. Paragraph 2 of the resolution duly sets out four fundamental requirements for determining the safety of a third country. Paragraph 4 of the resolution states that these procedures should be reviewed from time to time, and that consideration should be given to whether any additional measures are necessary. A comparison of national practices has been undertaken in accordance with the Council decision on monitoring the implementation of instruments adopted concerning asylum[12], and this has revealed some areas where Member States' practices vary significantly. The Commission has identified the following issues which could usefully be reviewed with a view to adopting additional measures or clarifying existing measures: (i) the need for contacts with the third country and the provision of documentation to ensure that the asylum applicant will be readmitted and that the third country is aware that the substance of the applicant's asylum claim has not been examined; (ii), whether the requirement currently set out in paragraph 2(d) of the resolution that the applicant must be afforded effective protection in the host third country against refoulement should be amended to state that effective protection must include the availability of an effective remedy in the third country; (iii) clarification of the obligation to assess in each individual case that the fundamental requirements for the determination of a host third country are fulfilled; (iv) the scope for common assessments of third countries, for the purpose of assessing whether an applicant's life or freedom would be threatened in the third country (paragraph 2(a) of the resolution) and whether an applicant would be exposed to torture or inhuman or degrading treatment in the third country (paragraph 2(b) of the resolution), and the

[12] OJ L178, 7 July 1997, page 6.

role of safe third country lists; (v) the application of the concept in situations of "mere transit".

C. 3 Substantive asylum procedures

15. Speeding up asylum procedures. The Action Plan states that measures on asylum procedures should be adopted "with a view, inter alia, to reducing the duration of asylum procedures"[13]. The Commission agrees that it is important to ensure that asylum procedures should not be so long and drawn out that people in need of protection have to go through a long period of uncertainty before their cases are decided, and people who have no need of protection but who wish to remain on the territory of the Member States see an asylum application as a means of prolonging their stay by several years. At the same time, it is essential that asylum procedures contain the necessary safeguards to ensure that all those in need of protection are correctly identified. The Commission does not consider that the level of guarantees envisaged in the resolution on minimum guarantees for asylum procedures in relation to such basic safeguards as appeal rights, legal advice and interpretation facilities can be reduced (indeed, as indicated in paragraph 10 above it will be necessary to revisit some of the derogations and exceptions). There is, however, certainly scope for reducing the duration of asylum procedures, although this issue should be approached from the starting point of increasing efficiency rather than weakening existing safeguards.

16. Speeding up procedures: a simple structure for the asylum system. The Commission proposes to adopt an approach which envisages a simple structure for the asylum system. The Community legal instrument would not, for instance, require Member States to introduce or maintain multi-tiered appeal systems. The extent to which Member States will be able to simplify appeal arrangements will of course be determined to a significant extent by their judicial systems and in some cases by constitutional requirements. The starting point of the proposal will, however, be that provided the necessary safeguards are in place to ensure a good standard of decision making by asylum determination bodies, a single appeal or review of the substance of the decision will normally be sufficient (without prejudice to the power of higher courts to rule on points of law).

17. Speeding up procedures: working practices. The Commission sees scope for a more detailed examination of some of the ideas which were presented at the end of 1997 by the Danish and UK delegations in Council papers on the swift processing of asylum applications. These papers focused, inter alia, on issues such as good practice in relation to management, training, the use of information technology etc. If the conclusion of a discussion on these issues was that changes were required in working practices, rather than in the basic legislative framework, there would be scope for following this up in the framework of the Odysseus programme[14].

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[13] Paragraph 36 b) iii) (see footnote 7 for OJ reference).

[14] Joint Action of 19 March 1998 adopted by the Council, on the basis of Article K.3 of the Treaty on European Union, introducing a programme of training, exchanges and co-operation in the field of asylum, immigration and crossing of external borders (Odysseus-programme), OJ L 99, 31 March 1998, page 2.

18. Speeding up procedures: time limits. The 1992 resolution on manifestly unfounded applications for asylum applied time limits to manifestly unfounded cases, setting 1 month as a target time for taking an initial decision in such cases. The one month time limit has apparently proved to be over ambitious and unrealistic in many cases. Nevertheless, in negotiations on the Action Plan, Member States have indicated that reducing the duration of asylum procedures is a priority. It is therefore worth considering whether prescribed time limits have a role to play in future minimum standards for asylum procedures. Time limits could be used at each stage of the procedure. For example, at the admissibility stage, there could be a time limit after which the safe third country concept could not be applied. The imposition of a time limit does not in itself provide Member States with a tool to reduce the duration of the asylum procedure. In order to meet any time limits, Member States would have to ensure that their asylum determination authorities were adequately resourced (a requirement of the 1995 resolution on minimum guarantees for asylum procedures), and that their working practices were efficient. They would also be free to make use of the procedural devices which the instrument would permit for accelerating the handling of certain types of cases. In drawing up time limits, it would be necessary to examine whether an element of flexibility could be introduced to take account of increases in the number of new asylum applications which a Member State received.

19. Speeding up procedures: repeat asylum applications. The resolutions which have already been adopted on asylum procedures do not address the issue of repeat asylum applications. In principle, a refused asylum applicant who has no need of international protection should not be able to postpone the requirement for him or her to leave the territory of the Member State which has considered his asylum application by lodging a second asylum application. At the same time, it is necessary to ensure that there are appropriate safeguards to cover cases where a genuine change of circumstances has taken place or new evidence has come to light. The Council has recently taken steps to collate information on national practice in relation to repeat asylum applications. It will be appropriate to consider, in the light of this information, whether there is scope for introducing legislation at the European level on this point.

20. Standard of proof. The case for including a provision on the standard of proof which should be applied when determining asylum applications should be seriously considered. Whilst the issues of establishment of the evidence and benefit of the doubt have been addressed in the soft law which has been adopted on the basis of the Treaty on European Union[15], the specific standard of proof has not been. But arguably, it is one of the most important procedural issues. One of the main purposes of the package of measures on asylum envisaged by the Treaty of Amsterdam is to ensure that an applicant for asylum would receive the same decision irrespective of which Member State considered his or her application for asylum. Clearly, the attainment of this objective requires measures which are outside the scope of an instrument on asylum procedures, including a common interpretation of the refugee definition and a common approach to the situation in

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[15] Paragraph 3 of the Joint Position of 4 March 1996 on harmonized application of the term "refugee" in Article 1 of the Geneva Convention. OJ L 63, 13 March 1996, pages 2 – 7. See also paragraphs 195 – 205 of the UNHCR Handbook on procedures and criteria for determining refugee status.

countries of origin. But in the procedural area, it is important to ensure that some Member States do not require a significantly higher standard of proof than others, with the consequence that the same claim would result in acceptance as a refugee in some Member States but not in others. Disparities in national practices may have the consequence that a greater proportion of asylum applicants will seek asylum in the Member States which are regarded as less demanding in this respect, which has consequences for achieving the objective of promoting an equitable balance between the Member States. The Commission recognises, however that the standard of proof is a difficult issue related to Member States' individual legal systems, and it would be necessary to proceed with caution in this area.

21. The "manifestly unfounded" concept. The 1992 resolution on manifestly unfounded applications for asylum makes provision for the consideration of asylum applications to be subject to accelerated procedures in certain circumstances. The Commission envisages that its proposal for a Community legal instrument will maintain this general concept, with certain modifications. First, a more appropriate name might be found for the concept, since it is arguably inaccurate to describe a case as manifestly unfounded whilst the procedures to determine precisely whether or not the case is well founded are still in operation. Second, there is a case for stating more specifically what procedural consequences the application of the "manifestly unfounded" concept could have. Third, whilst the Commission envisages proposing the retention of the concept for most categories of cases currently covered by the 1992 resolution, it considers that the arguments for applying the concept on the grounds that the applicant lacks credibility, or that an internal flight alternative is available, or that the "exclusion clauses" in Article 1F of the Geneva Convention apply deserve to be re-examined. Fourth, as indicated in paragraph 13 above, the Commission envisages spelling out more clearly the distinction between on the one hand cases which are "manifestly unfounded" because the safe third country concept can be applied, and on the other "manifestly unfounded" cases where the substance of the asylum claim is examined.

22. The safe country of origin concept. The use of the "safe country of origin" concept also merits re-examination. This concept is set out in the 1992 resolution on manifestly unfounded applications for asylum, and in the conclusions on countries in which there is generally no serious risk of persecution. These conclusions indicate a number of elements of assessment which a Member State must as a minimum take into account when considering whether a particular country in one in which there is generally no serious risk of persecution. Nevertheless, the recent monitoring exercise[16] has shown that Member States' practice in using this concept varies widely, in particular in relation to the countries which they treat as "safe". In addition, it is the only ground for applying an accelerated procedure to an asylum claim which does not depend on an individual rather than a general factor in the case. It is therefore appropriate to review the use of this concept. Broadly, there are three options for proceeding:

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[16] Conducted under the Council Decision of 26 June 1997 on monitoring the implementation of instruments adopted concerning asylum, OJ L 178, 7 July 1997, page 6.

(a) To abandon the safe country of origin concept. In looking at this option, the considerations might be: whether it is procedurally fair to apply a mechanism which does not take account of the individual circumstances of the case; whether, in the light of experience, the concept has genuinely been useful to Member States in enabling them to speed up the processing of individual cases; and whether the Member States have noted a sustained decrease in the number and proportion of unfounded claims which they have received from countries which they treat as "safe".

(b) to retain the concept, but to address the differences in national lists of "safe countries of origin" by providing for a central determination of safe countries within the framework of the Council. Such an approach would be justified if there was a consensus that the safe country concept was useful and justifiable, but that it was procedurally unfair for one Member State to apply the safe country of origin concept in relation to a country which no other Member State regards as "safe".

(c) to retain the concept in its present form, and to allow for the adoption of implementing measures which would be broadly along the lines of the 1992 conclusions, so that each Member State would decide independently to which countries of origin it would apply the concept, if indeed it chose to make use of the concept at all.

C.4 Other issues

23. Vulnerable groups. The Action Plan on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice states that in the context of an instrument on asylum procedures special attention should be paid to the situation of children. The resolution on minimum guarantees for asylum procedures contains specific provisions on children and women, and the resolution on unaccompanied minors who are nationals of third countries contains specific provisions on asylum procedures in relation to unaccompanied minors. The Commission envisages that the Community legal instrument will contain specific procedural safeguards in relation to children and women, building on those already contained in the soft law. It will also be necessary to consider whether specific procedural safeguards are appropriate in relation to victims of torture and victims of persecution of a sexual nature.

24. Withdrawal of refugee status. The legal basis in the amended Treaty establishing the European Community (Article 63(1)(d)) refers to minimum standards on procedures in Member States for granting or withdrawing refugee status. Withdrawal of refugee status can be subdivided into (a) cancellation when it transpired that the grant had been made on the basis of false information and (b) application of the cessation clauses (Article 1C of the Geneva Convention) when the person concerned was no longer in need of international protection.

(a) Cancellation. Neither the Geneva Convention nor the soft law of the European Union address the issue of cancellation of refugee status, and the Commission is not persuaded that cancellation is a sufficiently common occurrence to merit the inclusion of provisions in a Community legal instrument.

(b) Cessation. The joint position on the harmonized application of the term "refugee" in Article 1 of the Geneva Convention contains some provisions on cessation: that investigation should be on an individual basis; that Member States should make efforts to harmonise their practice through the exchange of information; and that the circumstance in which cessation is applied should be of a fundamental nature and should be determined in an objective and verifiable manner. It will be appropriate to consider whether the principle of investigating cessation on an individual basis should be incorporated in a Community legal instrument on asylum procedures. (In this context, it is worth noting that EXCOM conclusion no.69 makes provision for applying the cessation clauses on a group basis; provided that all refugees affected by a group or class decision have the possibility, on request, to have the application of the cessation clauses in their cases reconsidered on grounds relevant to their individual case.) It will also be appropriate to consider whether the Community legal instrument should provide that other safeguards which are available during the procedure for granting refugee status should also be available in any procedure conducted with a view to withdrawing refugee status.