

Brussels, 27 July 2001

Examination of asylum applications in the EU ("Dublin II")

Yesterday the European Commission adopted a proposal for a Council Regulation laying down the criteria and mechanisms for determining the Member State responsible for examining an application for asylum submitted in one of the Member States.

The purpose of the proposal for a Regulation is to replace by a Community legal instrument the Convention on determining the Member State responsible for examining an application for asylum submitted in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (the Dublin Convention). The proposal, based on Article 63(1)(a) of the EC Treaty, follows three initiatives presented by the Commission in the asylum field with a view to establishing the common European system of asylum called for by the Tampere European Council: the 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), the proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000)578) and the proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States (COM(2001)181).

Principles

The proposal for a Regulation is based on the same principles as the Dublin Convention: to ensure that the applications of all asylum seekers in the European Union are examined by at least one Member State, rules for allocating responsibility must be established which are based on objective and universally accepted criteria. These criteria reflect the fact that, in a region where the freedom of movement of individuals is guaranteed in accordance with the Treaty, each Member State is accountable to all the others for its actions as regards the entry and residence of third-country nationals and must assume responsibility for the consequences in a spirit of solidarity and cooperation.

This general approach is reflected in the main criteria for allocating responsibility and their presentation in order of importance: responsibility lies with the Member State which has played the largest part in enabling asylum-seekers to enter the territories of the Member States and remain there, whether by issuing them with visas or residence permits, failing to maintain adequate border controls or allowing people to enter the country without a visa.

Objectives

The main objectives of the proposal for a Regulation are to:

- **guarantee asylum-seekers proper access to procedures for the recognition of refugee status** by providing the necessary links with these procedures as defined in the proposal for a Directive on the minimum standards applicable and laying down rules setting out the penalties for exceeding deadlines;
- **prevent abuse of the asylum procedures** by one person submitting several applications simultaneously or successively in several Member States, with the sole aim of prolonging his or her stay in the European Union;
- **remedy the omissions and correct the imprecisions in the Dublin Convention;**
- **adjust legal provisions in line with the new state of affairs resulting from the progress made towards the establishment of an area without internal frontiers**, by, in particular, drawing appropriate conclusions from 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;
- make it possible to **identify the country responsible as quickly as possible**, by stipulating reasonable deadlines for the various stages of the procedure and laying down in detail the level of proof required to establish whether or not a Member State is responsible;
- **increase the efficiency of the legal provisions** by allowing the Member States a more realistic deadline for implementing decisions on the transfer of asylum-seekers and providing an appropriate framework for special implementation arrangements between Member States which jointly deal with a large number of cases involving the identification of the country responsible.

Innovations with respect to the previous situation

Taking account of lessons learned from the past, the proposal for a Regulation includes a number of new features:

- New provisions which emphasize that each Member State bears responsibility vis-à-vis its Union partners for allowing people to live illegally within its territory on a long-term basis:
 - A Member State which has consciously tolerated for more than two months the illegal presence of a third-country national within its territory, without taking any measures either to deport that person or to regularise his/her situation, must accept responsibility vis-à-vis the other Member States for having allowed such a state of affairs to continue;
 - A Member State within whose territory a third-country national has illegally spent more than six months must accept responsibility for the consequences of its failure to take action to counter illegal immigration.
- Procedural deadlines are to be tightened up very considerably and brought into line with the deadlines proposed for the procedures for the granting and withdrawal of refugee status, the aim being to ensure that asylum applications are dealt with in good time:
 - The deadline for the submission of a request for another Member State to assume responsibility for the case has been reduced from six months to sixty-five working days;
 - The deadline for replying to such a request has been reduced from three months to one month;

- The option of demanding a reply as a matter of urgency has been introduced;
- The proposal for a Regulation lays down new stipulations as to the level of proof required to establish whether or not a Member State is responsible.
- The deadline for carrying out transfers to the Member State responsible has been increased from one to six months so as to take account of the practical difficulties which such transfers entail; since a transfer to another Member State must not cause serious harm which cannot readily be remedied, the option of suspending such a measure has been abolished;
- New provisions have been introduced to maintain the family unity of asylum-seekers, insofar as this is compatible with the other objectives of asylum and immigration policy, that is, with the aim of dealing with asylum applications as quickly as possible, using a fair and efficient procedure, and with the aim of preventing misuse of these provisions to circumvent the rules on family reunification proposed by the Commission in its proposal for a Council Directive on the right to family reunification (COM(1999) 638), which is currently under negotiation:
 - The proposal adds a provision to ensure that unaccompanied minors are reunited with an adult member of their family already living in a Member State, who is able to take care of them;
 - The proposal also states that responsibility for examining an asylum application shall be allocated to the Member State following standard procedure (within the meaning of the proposal for a Directive on minimum standards on the procedure for granting refugee status) to examine an application submitted by a member of the same family who arrived earlier and on whose case a decision at first instance has not yet been taken;
 - Finally, to avoid situations in which rigid application of the responsibility criteria might separate family members who have submitted an application in the same Member State, there is a provision to the effect that exemptions will be made from the usual way in which criteria are applied in order to keep families together in the same Member State.