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van deskundigen in
internationaal vreemdelingen-,
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Comments by the Standing committee of experts on international immigration, refugee and criminal law 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. [26.7.2001, COM (2001) 447 final]

CM01-028

To the members of the European Parliament
The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (LIBE)
Rapporteur L. Marinho

The Standing Committee deplores that in the present proposal for the successor Regulation to the Dublin Convention the Commission has chosen for continuation in modified form of the present system of allocation of responsibility. The Standing Committee is strongly convinced that a system in which the State where the first application is lodged is in principle responsible, would operate far more efficiently, would be preferable in light of further integration of accepted claimants and would far more in accordance with the purposes and spirit of international asylum law.
Having said this, the Standing Committee will restrict its comments to four areas where the application of the proposed Regulation is likely to be incompatible with such obligations: (1) the denial of suspensive effect to appeals against decisions to transfer, (2) the fictitious transfer of applications under Article 4(5), (3), the humanitarian clause of Article 3(3) and Article 16 and (4) provisions on family reunification (3).

The Standing Committee notes that the numeration of Articles in the English and Dutch texts do not concur. E.g. the English Article 21(1)(f) ("the requesting State shall notify (…) within the set time limit.") corresponds with the Dutch Article 21(1)(e). Below reference is made to the English text and numeration.

1. Procedures against transfer

Description
The Regulation provides for two sets of rules for procedures against transfer of third country nationals, in Article 20 and Article 21.

The first set concerns the determination which Member State is responsible for the examination of the application. These rules apply when an asylum seeker has applied for asylum in another Member State than the one responsible on the basis of the criteria in the Regulation. According to Article 20(1), the transferring (not responsible) Member State should issue one decision implying, first, the inadmissibility of the application in the transferring Member State and, second, the decision to transfer. Article 20(2) stipulates that appeal against this decision lies at a court, and that such an appeal can not suspend the performance of the transfer.

The second set of rules concerns the situation when a third country national has lodged an application in one Member State and is subsequently present in another Member State; the procedure concerns the decision to transfer him to the responsible Member State. The Regulation discerns three such situations. Firstly, the asylum seeker lodged an application in one Member State, withdrew it, and subsequently lodged a new application in a second Member State (Article 4(6) and 17(1)(d)). Secondly, the asylum seeker went, during the examination of his application, without permission to another Member State (Article 17(1)(c)). Thirdly, the application is rejected and the concerned third country national is without permission present in another Member State than the one that was responsible. In all these situations the Member State where the third country national is present can transfer him to the other, responsible Member State. According to Article 21(1)(f), the third country national can appeal against such a decision to transfer; such an appeal however does not have suspensive effect.

The provisions in Article 20(2) and 21(1)(f), "Appeal shall not suspend the performance of the transfer", may (or will) prohibit national courts to suspend transfers except for the exceptional case the national court lodges a preliminary question to the ECJ.

Assessment

In the view of the Standing committee, the provisions denying the possibility to grant suspensive effect during appeal could well be at variance with the ECT for two reasons.

First, the question can be asked whether Article 63(1)(d) and not Article 63(1)(a) ECT is the proper legal basis for provisions on asylum procedures. Article 63(1)(d) provides for a basis to issue Community legislation on procedures for granting or withdrawing refugee status. There is no indication that an exception was intended as to the appeal procedures which are laid down in the current proposal. Also, it is at least unclear if such appeal proceedings could qualify as "criteria" or "mechanisms to determine which Member State is responsible for the examination" of an asylum application. According to Article 20(1) and 21(1) of the proposed Regulation, the decision to transfer the third country national is taken *after* determining which Member State is responsible. Consequently, the appeal procedures do not concern the determination of responsibility. So, the proper legal basis for procedures against decisions on inadmissibility and transfer as meant in Article 20(2), and Article 21(1)(f) in conjunction with Article 4(6) and 17(1)(d), would be Article 63(1)(d). (This does not apply to Article 21(1)(f) in conjunction

with Article 17(1)(c) and (e), as in these situations the third country national did not lodge an application in the transferring Member State, so the transfer does not take place in the context of asylum procedures in the Member States).

The proper legal basis is a point of major importance. Article 63(1)(d) states that Community measures adopted pursuant to it are "minimum standards", thus allow for national legislation to introduce or maintain more favourable provisions. Withdrawing procedural issues from the ambit of Article 63(1)(d) is an infringement upon the power of the Member States as well as upon the rights of third country nationals to those national, more favourable provisions. The provisions in the Regulation on procedural issues are therefore void.

As to provisions on the transfer of third country nationals whose application has been rejected (Article 17(1)(e) and Article 21), neither Article 63(1)(a) nor Article 63(1)(d) seem to offer a proper legal basis. Measures on rejected asylum seekers cannot qualify as measures concerning the *examination* of an asylum application, neither in the literal meaning of the word, still less according to the definition in Article 2(e) of the Regulation. Article 63(3)(b), concerning measures on (amongst other things) repatriation of illegal residents, might offer a legal basis. The second final clause of Article 63 states that measures pursuant to Article 63(3) shall not prevent Member States from maintaining or introducing national provisions which are compatible with the ECT and with international agreements. Consequently, the provisions on the transfer of rejected asylum seekers in a Regulation pursuant to Article 63(1)(a) infringe upon the powers of Member States under Article 63(3)(b) in conjunction with the second final clause of Article 63. These provisions are therefore at variance with the ECT.

Second, the provisions categorically withholding suspensive effect are evidently at odds with Member States' international law obligations. Transfer from one Member State to another can amount to chain refoulement, i.e. result in expulsion of the applicant to the country of origin contrary to the concerned Member States' (interpretation of its) international obligations. Chain refoulement is prohibited by Article 33 Geneva Convention as well as by Article 3 ECHR (cf ECtHR 7 March 2001, T.I. vs UK, nr. 43844/98). The Memorandum pertaining to to Article 20(2), p. 20 states that suspensive effect is not "necessary" as "transfer to another Member State is not likely to cause the person concerned serious loss that is hard to make good". This is obviously not correct. If appeal in the responsible Member State against rejection of the application is dismissed or rejected, the decision to transfer the applicant to that responsible Member State might very well result in expulsion to a third state, which would be hard to repair.

The Standing Committee appreciates the Commission's firm hope that the asylum law of the Member States will be harmonised to such an extent that a situation like ECtHR 7 March 2000 (*T.I. v UK*) could not occur any more. However, the present Proposals for the Directive on minimum standards for procedures and for the Directive on the qualification of third country nationals as refugees do not harmonise asylum law to that extent.

The requirement that a court reviewing a decision to transfer an asylum seeker to another country must have the power to grant the appeal proceedings suspensive effects follows from Article 3 in conjunction with Article 13 ECHR (cf. ECtHR 30 October 1991 (*Vilvarajah*), par. 125), Article 3 ECHR (*T.I. v UK*, The court's assessment, 3. The position of the applicant as a failed asylum-seeker if returned to Germany). On a slightly different basis, the same holds true for Article 33 Geneva Convention (Dutch Supreme Court 13 May 1988).

Conclusions
Consequently, the provisions prohibiting nationals to grant suspensive effect during appeal procedures against decisions to transfer asylum seekers out of the country are at variance with, or may result in breaches of obligations under international law resting on the Member States, notably Article 3 ECHR, Article 3 in conjunction with 13 ECHR and Article 33 Geneva Convention. This means that the said provisions are also at variance with Article 63(1) first clause, stating that measures pursuant to this Article should be in accordance with the Geneva Convention and other relevant treaties. Consequently, these provisions are void.

The present proposal does not eliminate the possibility of a clash between the ECtHR and the Regulation similar to *T.I. v UK*. On the contrary, it rather widens the possibility of transfers which are in breach with the ECHR.

Proposal
For the above named reasons, the Standing Committee holds the view that the Regulation should not contain the provisions on suspensive effect in Article 20(2) and 21(1)(f) in conjunction with Article 4(6)/17(1)(d) and (e). **The Standing committee on experts suggests to delete the clause "Appeal shall not suspend the performance of the transfer" in Article 20(2) and 21(1)(f).** In that case, the provision on suspensive effect in appeal procedures in the Proposal for a directive on procedures (Article 33), which seems to be well in line with the Member States' obligations, will apply to appeal against the decision to transfer an asylum seeker.

2. Article 4(5)

Description
Article 4(5) of the Proposal states that if an applicant is on the territory of one Member State and lodges an application with the authorities of another Member State (for example, its consulate), the State on whose territory the applicant is shall be responsible and, for the purposes of the Regulation, be regarded as the Member State with which the applicant was lodged. It follows that the latter Member State is responsible for determining the member State responsible for the examination of the claim and, if none of the other criteria is applicable, be regarded as the first Member State with which the application was lodged and thus responsible for examining it (Article 14). From this, it follows that Article 17(1)

does not apply. Consequently, the Member State with whose consular authorities the applicant lodged his application will not even dismiss it as inadmissible.

Assessment
The Standing committee is of the opinion that this provision is obviously at variance with Member States' obligations under international law. It enables Member States to flatly neglect applications lodged with its competent authorities and so to evade their obligations. It should be noted that the very reason for lodging a claim in another Member State than the one where the applicant is present might very well be that the protection offered by the latter falls short of international law standards as interpreted by the former. It has been shown above that the present system of European asylum law does very obviously allow for such various interpretations. To comply with its obligations under international law the Member State with whose competent authorities the asylum seeker in reality lodged his application should therefore at least issue a decision on the inadmissibility of the claim. In this procedure the applicant eventually can submit grounds why dismissal of the claim is at variance with its international law obligations (e.g. Article 3 ECHR).

Proposal
Therefore, the Standing committee **proposes to add to Article 4(5)** after the words "… be regarded as the member State with which the asylum application was lodged" the words ", **except for the application of Article 17 of this Regulation**."

3. The humanitarian clauses of Article 3(3) and Article 16

Article 3(3)

Scope
This Article provides for the possibility for member states to examine an asylum request, although according to the rules of this Regulation the member state is not responsible. The Memorandum clarifies that a member state may decide to do so for practical, political or humanitarian reasons. Although this is not explicitly mentioned in the Memorandum, Article 3(3) must be considered to replace Article 3(4) of the Dublin Convention. Contrary to Article 3(4) of the Dublin Convention, Article 3(3) Regulation does no longer require the consent of the applicant, as this consent is presupposed in the lodging of the request in that specific member state.

Assessment
Article 3(3) is especially relevant where protection issues are raised and where the principle of family unity is concerned. In practice, the 'sovereignty clause' of Article 3(4) Dublin Convention, usually regards cases mentioned in the Commission's evaluation of the Dublin Convention (SEC (2001)756, 13.06.2001):

'Most of the case law focuses on the application of Article 3(4), firstly as regards its relation to certain provisions of national law (constitution, reasons for administrative decisions, information given to the applicant, the authority duty of diligence, etc.), and secondly as regards international law - pricipally how it relates to Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 3 of the said Convention and Articles 1 and 33 of the Geneva Convention relating to the Status of Refugees…'
When applied in this context, Article 3(4) complements Article 9 Dublin Convention, which envisages situations where the applicant is not in the country where s/he desires to lodge an application. The Commission, while discussing Article 9 Dublin Convention in the aformentioned Evaluation (p.14), states that *'the entirely discretionary nature of Article 9 and the lack of explanation concerning the humanitarian reasons of a cultural or family nature are regarded by many Member States as a shortcoming which impedes the smooth operation of the Convention*.' In the view of the Standing Committee, the same holds true for Article 3(4). It is therefore recommended that the Regulation provides for binding provisions in cases where it is clear from the outset that a strict application of the rules set out by the Regulation would infringe on family unity or on other fundamental principles of humanitarian law. Certainly, it is not possible to cover all situations. In order to avoid divergences and gaps the scope of the provisions containing 'humanitarian clauses' should be as wide as possible, but also as precise as possible. The Standing Committee wishes to make the following remarks as to the scope and wording of Article 3(3).

First, it stands out that Article 3(3) does not specify in what cases the provision is to be applied. Only the Memorandum mentions political, humanitarian or political considerations. This vagueness is exactly one of the shortcomings of Article 3(4) Dublin. Especially where Article 16 of the Regulation seeks to regulate humanitarian reasons in a more precise way, and with reference to Decision 1/2000 of the Article 18 Committee, it is disappointing that Article 3(3) is not further elaborated. It should be noted that for example Decision 1/2000 of the Article 18 Committee refers to Article 9 as well as Article 3(4) Dublin Convention.
Second, the proposed Article 3(3) gives the member states the possibility *for political and practical reasons* to deviate from the Regulation's provisions without the consent of the applicant. The Standing Committee wishes to remark that not in all cases the submission of an application may be interpreted as the consent of the asylum seeker to have his request examined in that particular member state. For example in the situation where the asylum seeker is stopped at a member state's border, and lodges an application in order to avoid direct deportation or detention, this cannot *ipse facto* be construed as the asylum seeker's consent to have his request examined in this state. As such an examination may infringe, especially, on aspects related to family unity, the Standing Committee holds the view that the requirement of the applicant's explicit consent should not be abandoned and that, instead, in the wording of Article 3(3) it should be made clear that this consent needs to be explicit and cannot be a mere submission of an asylum request in a member state.

Article 16 Humanitarian Clause

Scope
The first sentence of Article 16 (1) reproduces Article 9 of the Dublin Convention unchanged. The second sentence is based on Decision 1/2000 of the Article 18 Committee: Member 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.

Assessment
The Standing Committee welcomes this provision, especially in light of its complementary function to more binding provisions aimed at preserving family unity in the Articles 5-15. As will be discussed below, the specific provisions in Article 5-15 on family unity do contain certain gaps, so that also under the Regulation the separation of families will be possible. The Standing Committee is of the opinion that these gaps should be amended first and foremost in binding provisions. The Standing Committee further holds that the scope of Article 16 is too narrow, where it only refers to family members. In the system of the Regulation this means family members as in Article 2 (i) . The Standing Committee would in the humanitarian cases mentioned in the second sentence plea for a more liberal approach. Thus, in the absence of family members in the sense of Article 2(i), reunification with relatives or friends should be seriously regarded in all situations where an asylum seeker is dependent on assistance and wishes to be reunited with this family member or friend.

Conclusions and recommendations
The Standing Committee holds that the discretionary provision of Article 3(3) and Article 16 should be more closely linked. Although these discretionary provisions are by themselves insufficient guarantee where protection issues are raised and especially where the principle of family unity is concerned, they can nevertheless fill gaps in more binding provisions. A flexible and liberal approach is therefore required.

The Standing Committee recommends in particular that:

1. Article 3(3) cannot be applied without the explicit consent of the asylum seeker. Therefore, the following words should be added to Article 3(3), first sentence, after 'this Regulation': *'...provided that the applicant consents'*.
2. Article 3(3) explicitly mentions the grounds for assuming the responsibility for the examination for the request. Therefore the following words should be added to Article 3(3), first sentence, after may: *'for political. practical or humanitarian reasons'*.
3. A second sentence should be added to Article 3(3), which is similar to the second sentence of Article 16.

4. The scope of this second sentence of Article 3(3) and Article 16 should be expanded, at least to the extent that reunification with other family members than meant in Article 2(i) or with friends should be regarded in situations where the applicant is dependent on assistance.

4. Family unity

Relation with other proposals

Before discussing the aspects of family unity as laid down in the Commission's proposal, the Standing Committee would like to point out that the provisions related to family unity in the proposed Regulation cannot be seen separately from other directives where family reunification is part of EU legislation. This regards especially the proposal for a Council directive on the right to family reunification (COM(1999)638-1999/0258 (CNS), which is currently being negotiated. There is a clear link between these two proposals, as is also mentioned by the Commission, for example when stating as a particular concern that the Regulation's provisions *cannot be abused to get round the rules on family reunification.* The Standing Committee wishes to remark in this respect that the directive on family reunification and this Regulation may be closely linked, but that both the scope and the legal nature of the instrument also differ. As to the scope, it can be noted that this Regulation envisages the member states' responsibility to examine asylum applications of those who are seeking international protection on individual grounds. With a view to an efficient and fair asylum procedure there are important reasons to have requests, that are likely to be related, examined in the same member state. As to the legal instrument, where the directive on family reunification lays down minimum standards, the proposed Regulation lays down binding rules as to the principle of family unity. Therefore the aim of the Regulation should be to reach harmonisation at the highest possible level.
In this respect, it should be noted that the Commission's proposal for a Directive laying down standards for the qualification of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or as persons who otherwise need international protection (COM(2001) 510, 12.9.2001, provisional version), gives the same rights to accompanying family members of the benificiaries of subsidiary protection as to the beneficiaries themselves. It is therefore recommended that the scope of the proposed Regulation will be extended to persons who otherwise need international protection.

New provisions protecting family unity

In the Explanatory Memorandum the protection of family unity is mentioned as one of the areas where the proposal includes innovations in comparison to the Dublin Convention. The Standing committee welcomes the proposal's aim to preserve the family unity in a more binding way than the Dublin Convention.

Definition family member

Article 2 (i) defines family members as*: '...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 their affiliation 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;'*
This broad definition is certainly a step forward compared to the narrow definition of the Dublin Convention, which until this moment, can lead to the separation of families and, in national procedures, gives rise to complicated legal discussions under Article 3(4) and Article 9 of the Dublin Convention. However, the proposed definition is also open for interpretation, insofar as the requirement of dependency between the asylum seeker and *'other persons to whom the applicant is related'* is concerned. Especially if family members used to live in the same home, there is much to be said not to require some form of dependency, both from a humanitarian perspective and from a protection perspective. As the Memorandum (Article 7) of the proposed Regulation righteously points out, the refugee's family may themselves be under threat. Such a threat will most likely also extend to other blood relatives living in the same home. For those relatives who used not to live in the same home, and who are dependent on the asylum seeker, Article 16 or 3 (3) may come in (see above).

Recommendation
The Standing Committee recommends that art 2(i) will be amended to the extent that the requirement *'if one of the persons is dependent on the other'* will be deleted.

Hierarchy of Criteria
Under Chapter III, Hierarchy of Criteria, the following provisions are relevant for the preserving of family unity: Article 6, Article 7, Article 8 and Article 15

Unaccompanied minors
Article 6 stipulates: *'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.'*
The Standing Committee wishes to remark that the definition of family member as laid down in Article 2 (i) could in practice mean that more extended family members, who are already in a member state, take charge of the child where this is in the best interests of the child. While welcoming this possibilty, the Committee wishes to point out that it is possible that the child's closer affiliates, especially the parents, apply for asylum in an EU state at a later date. Neither Article 6, nor any other Article, in such a case give the automatic right to family reunification of the parent with the child. As reunification with a

parent will in most cases be in the child's best interests and, in the words of the Memorandum under Article 4(4) *'the minor's situation must be regarded as indissociable from that of the adult on whom he is dependent'* such a binding provision should be in place. Especially Article 8, which will be discussed below, contains such limitations, that in some cases no binding provision exists to restore the family unity. In such cases the discretionary Article 3(3) or Article 16 could offer a solution. The Standing Committee, however, deems that a provision of a discretionary nature is insufficient to guarantee the child's interest to be reunited with his parent and recommends that the Articles 6 and 8 be amended in this regard. As the main concern of Article 6 is to avoid a minor being unaccompanied, it would be most logic to find the solution in the wording af Article 8.

Recommendation
The Standing Committee recommends that Article 8 (see below) will be amended to the extent that the member state which under Article 6 has become responsible for an unaccompanied minor, will also be responsible for both parents unless very serious reasons related to the quick and effective processing of asylum requests would stand in the way of this.

Family member with Convention refugee status;
Article 7 stipulates: *'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.'*
The Standing Committee welcomes this provision in combination with the broad definition of family member in Article 2(I). The Standing Committee would, especially in the context of this Article, welcome that the scope of the Regulation be extended to subsidiary forms of protection. This would both be in line with jurisprudence on Article 8 ECHR and with the Commission's proposal for a Directive laying down standards for the qualification of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or as persons who otherwise need international protection (COM(2001) 510, 12.9.2001, provisional version), which gives the same rights to accompanying family members of the benificiaries of subsidiary protection as to the beneficiaries themselves.

Family member in asylum procedure;
Article 8. Provides for the examination of asylum requests of an asylum seeker's family members in a member state, which is already in the process of examining the request of this asylum seeker. The Standing Committee welcomes this provision, and fully agrees with the Memorandum :'*that 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 [provides for] for consistent decisions to be taken in regard to them'*. However, the Standing Committee, deems that the scope of this Article is also limited, especially because family reunification is impossible after a negative first instance

decision, as will be discussed here below. The Committee is of the opinion that neither Article 16 nor Article 3(3) of the Regulation provide for solutions in cases where Article 8 does not stand in the way of the separation of family members. The experiences under the Dublin Convention show that discretionary provisions like Article 3(4) and Article 9 of the Dublin Convention, are often inadequate to amend gaps in humanitarian clauses. It was for that reason that Decision 1/2000 was introduced. Article 8 contains some of the provisions of Decision 1/2000, but does not fully adopt the spirit of the Decision, thus leaving the door open to a rigid separation of families.

The most essential restriction is that the family member may not have received a (first instance) negative decision. The Standing Committee is of the opinion that the principle of family unity, as well as the importance of processing related requests in one member states justify a more open approach, especially with a view to thoroughness, consistency and efficiency. There are certainly situations imaginable where the asylum procedure of a family member could be in such an advanced stage, that the responsibility for the requests of other family members, would affect the objective that applications should be processed quickly. The first negative decision can, however, not be seen as such an advanced phase of the procedure that family reunification should be ruled out. The practice in many member states shows that administrative review procedures and appeal procedures can take up to years. A separation of family members for such a long period could well be a breach of Article 8 ECHR.
In addition, the negative consequences of prolonging asylum procedures, are not likely to occur, or are at least mitigated, when indeed the asylum requests are related. In such cases the requests of the other family members could be seen in light of the asylum seeker's procedure, which would either lead to a rejection on the same grounds, or to a reconsideration of the asylum seeker's need of protection. This speaks very much in favour of a responsibility for the family members's requests throughout the asylum procedure. This may be different when it clearly concerns unrelated asylum requests, where no protection issues are raised which could concern the (rejected) asylum seeker, and where deportation of the asylum seeker would be hampered or seriously delayed by linking the asylum's seeker procedure to those of family members.

Recommendation
The Committee recommends to expand the scope of Article 8, so as to do more justice to principles of family unity, and thoroughness, consistency and efficiency in the processing of asylum applications. The Committee recommends the deletion in Article 8 (1), first sentence of the words '*…and has not yet been the subject of a decision by the authority for the determination within the meaning of the said Directive'*.

Family members in the same member state
Article 15, the last Article in Chapter III on the hierarchy of the responsibility rules, deals with the situation where family members lodge their request simultaneously or on dates

sufficiently close that their request can be processed together. If the application of the criteria set out in thr Regulation would lead them to be separated, the member state responsible for the majority of the requests would be responsible for all family members, or if there would not be such member state, the member state responsible for the oldest of the asylum seekers. The place of Article 15 under Chapter III - namely at the bottom of the 'hierarchy rules' - does not seem entirely logical. From the wording of Article 5 (1) it follows that under Chapter III the Articles 6 to 14 are to be applied before Article 15. Although one can only conclude that the application of the Articles 6 to 14 may lead to the separation of family members *after* examining if these provisions apply, it is obvious that the *application* of these Articles before applying Article 15 would render Article 15 without meaning. In other words, where the situation of Article 15 applies, it should normally apply before the other provisions. It is therefore recommended to place this Article in another Chapter.

The Standing Committee wishes to remark that if Article 8 were to be given a broader scope as described before, the need for Article 15 would probably no longer be there. Since there would always be one family member who is going through an asylum procedure in a member state, a separation under the Regulation would not take place. However, Article 15 could have a valuable complementary function, especially to Article 8, if it would apply in the case of family members not falling under the definition of Article 2(i).

Recommendation
The Standing Committee recommends to bring Article 15 under Chapter IV (humanitarian clauses) and expand its scope to situations where asylum seekers, especially other family members than those falling under Article 2(i), have submitted requests simultaneously or on dates sufficiently close that their asylum requests can be processed together, and where the application of the criteria set out in the Regulation would lead them to being separated.