

## *Is there a need for a further harmonisation of European Asylum Policy?*



### **- BACHELOR THESIS -**

**PUBLIC ADMINISTRATION BACHELOR  
EUROPEAN STUDIES  
UNIVERSITY TWENTE ENSCHEDE  
SUPERVISOR: DR. RAMSES WESSEL**

**ANNA-LENA HANKE  
GEMENWEG 120  
48149 MÜNSTER  
S0101796**

**NOVEMBER 2006**

**TABLE OF CONTENTS**

<b><u>ABBREVIATIONS.....</u></b>	<b><u>3</u></b>
<b><u>1. INTRODUCTION, METHODOLOGY AND PROCEEDING .....</u></b>	<b><u>4</u></b>
<b><u>2. STAGES OF THE DEVELOPMENT OF A EUROPEAN HARMONISATION IN THE FIELD OF ASYLUM POLICIES/ LEGISLATION .....</u></b>	<b><u>7</u></b>
2.1 THE FIRST PHASE OF THE EUROPEANISATION OF REFUGEE POLICIES: INTERGOVERNMENTAL COOPERATION UNTIL SCHENGEN & DUBLIN (1953-1990).....	7
2.2 SECOND PHASE OF EUROPEANISATION OF REFUGEE POLICIES: MOVING TOWARDS THE COMMUNITY LEVEL (1992-1999) .....	12
2.3 THIRD PHASE: SHIFT OF ASYLUM POLICY TO THE COMMUNITY LEVEL (1997-2005) .....	15
2.4 SUB-CONCLUSION .....	19
<b><u>3. STATUS QUO: THE CURRENT DEBATE ON A COMMON EUROPEAN ASYLUM SYSTEM (CEAS).....</u></b>	<b><u>20</u></b>
SUB-CONCLUSION.....	28
<b><u>4. PROBLEMS AND DEFICITS OF A PARTLY HARMONISED EUROPEAN ASYLUM SYSTEM.....</u></b>	<b><u>29</u></b>
4.1 RESTRICTION SPIRAL .....	29
4.2 GEOGRAPHIC DISTINCTIONS OF THE MEMBER STATES .....	33
4.3 BURDEN SHARING .....	36
4.4 DIFFERENT RECOGNITION OF REFUGEES IN THE MEMBER STATES (CO-EXISTENCE OF EUROPEAN AND NATIONAL LEGISLATION) .....	41
4.5 DEFICITS OF THE DUBLIN CONVENTION/ DUBLIN II REGULATION .....	42
4.5.1 EXAMPLE 1: TRIANGLE CASE .....	43
4.5.2 EXAMPLE 2: RESPONSIBILITY OF THE SAFE THIRD COUNTRY OR THE STATE THAT ISSUED A VISA? .....	44
4.5.3 EXAMPLE 3: CROSSING THE EXTERNAL BORDER.....	45
4.5.4 EXAMPLE 4: SUBSIDIARY RESPONSIBILITY .....	46
4.5.5 EXAMPLE 5: PRACTICE OF THE DUBLIN II REGULATION .....	47
4.6 SUB-CONCLUSION.....	50
<b><u>5. CONCLUSION &amp; RECOMMENDATIONS .....</u></b>	<b><u>53</u></b>
<b><u>6. REFERENCES .....</u></b>	<b><u>56</u></b>
<b><u>7. APPENDIX.....</u></b>	<b><u>61</u></b>
(A) DUBLIN CONVENTION.....	61
(B) DUBLIN II REGULATION .....	75

**ABBREVIATIONS**

DC	Dublin Convention
ECRE	European Council on Refugees and Exiles
EEC	European Communities
EP	European Parliament
ERF	European Refugee Fund
EU	European Union
GDP	Gross Domestic Product
SIA	Schengen Implementation Agreement
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## 1. INTRODUCTION, METHODOLOGY AND PROCEEDING

Long time guarded as part of domestic policy, refugee and asylum policies were introduced onto the agenda of the European integration process. Already in 1987, the European Parliament recognised: “*An international problem cannot be dealt with by national provisions, because this only means that the problems are passed on to another country*”.<sup>1</sup>

Many agreements, treaties, regulations and summits later, the EU has two parallel legislation systems in the field of asylum policy: on the one hand the national provisions of each particular Member State and on the other hand the Community law that binds the Member States in order to provide for harmonised approaches.

Therefore there is no complete harmonised European asylum system, even if the actual circumstances with massive flows of asylum seekers would call for it.

Due to this partly harmonised status quo, this thesis raises the question, ***if there is a need for further harmonisation in the field of asylum policy in the European Union.***

Thereby the research is based on a political scientific perspective, with the main focus on the impacts on the European Member States, the European Union level, but also the effects on asylum seekers. These three fields of analysis are the relevant key variables in this paper.

### **METHODOLOGY**

The thesis does not explicitly deal with testing a theory, but due to its scientific character, the theoretical background shall present a theoretical framework in which the topic is embedded.

Within the (relevant) area of European Studies the research topic of this thesis can be best explained with ***EU integration theories***: Here, two theories oppose each other: The ***Neo-functionalism*** has the starting point

---

<sup>1</sup> EP 1987a:§§3,16; in: Lavenex 2001: 105

that competencies in policy fields are shifted towards the supranational level in order to conduct them more effectively, whereas the **Intergovernmentalism** derives from the realism and deals with the idea of the nation state as main actor within the international arena, disposed to cooperate with other states, but guarding its sovereign right to decide upon bilateral or multilateral treaties or agreements.

Even this paper does not name the theories in the following explicitly but the opposed approaches of these two theories become apparent through the whole European development in the field of asylum policy and this dual nature of the Integration theories is kept within this paper.

States can choose between a strict national behaviour, that means regulating policy matters on the domestic level on their own, or, if the will to cooperate exist, between an intergovernmental or supranational character.

Although the research question is more explorative, the thesis needs also for descriptive analysis.

The **first part** of the paper is elaborated from a positive perspective: The focus lies on the descriptive analysis of the status quo of the development of a common asylum policy within the European Union and its Member States.

A combination of normative and positive approaches is persecuted in the **second part**: the analysis of problems and deficits within the field of a partly harmonised European asylum policy needs for explanatory elements but on the basis of these outcomes also offers opinions and arguments on the further harmonisation process.

The conclusion aims at answering the initial research question and therewith contributes to the question on how far integration should proceed, which also decides between Supranationalism (propagated in the Neo-functionalism) and Intergovernmentalism.

This subdivision has been chosen to meet the requirements of the topic and to go conform with the nature of integration theories which is two-folded as well.

**PROCEEDING**

To bring the methodological proceeding in a context of the topic, an overview about the different parts will be given. This proceeding is directly connected to the research question and refers through sub-question to it continuously.

The first sub-question which is raised is: *Why did it become necessary for the European Member States to cooperate in the field of asylum policy?*

In the first part this question is analysed in form of a **historical overview** about the (relevant) stages of the development of a harmonised European asylum policy.

Coming to a sub-conclusion at the end of the chapter, leads over to the next part, which deals with the question about *the on-goings at the present that provoke the Member States to still co-operate and still shift competences to the Community level in the field of asylum policy*. Chapter two presents the recent developments in the field of asylum and refugee policy on the EU level but gives also an overview about the current situation and main events of the public debate.

Problems and points of criticism which already have been addressed in the previous chapter will be analysed in more detail in the third part to answer the *question after the problems and deficits of a partly harmonised asylum system*, which is necessary to come to an conclusion on the initial research question at the end of the paper.

By raising the sub-questions and coming to sub-conclusions at the end of each chapter and putting all relevant information together, the necessity for a completely harmonised European asylum policy will be weighed up in the conclusion at the end of the thesis.

One word shall be said regarding the use of literature: because of the topicality of the topic it was difficult to set a publication deadline until which literature will be used for the thesis. The found compromise is to rely

mainly on literature published until the end of 2005. But to pay tribute to the topicality, some articles from 2006 are used in exceptional cases.

## **2. STAGES OF THE DEVELOPMENT OF A EUROPEAN HARMONISATION IN THE FIELD OF ASYLUM POLICIES/ LEGISLATION**

The first stage within the research of this thesis is the historical development of a harmonisation process within the field of the European asylum policy.

This development is necessary to look at in order to understand the reasons for the cooperation in this sector and to evaluate later if these reasons are still relevant at the present point of time.

*Why did it become necessary for the European Member States to cooperate in the field of asylum policy? In order to answer this question other aspects become relevant: Which circumstances provoked the actors to shift over power from the national to the supranational level? Why was intergovernmental cooperation not a sufficient instrument? And in how far a harmonised European asylum system has been reached already?*

These questions shall be examined in the following chapter in order to get an overview about the process of harmonisation taken place in the past and providing the necessary information for the further research.

### **2.1 THE FIRST PHASE OF THE EUROPEANISATION OF REFUGEE POLICIES: INTERGOVERNMENTAL COOPERATION UNTIL SCHENGEN & DUBLIN (1953-1990)**

The harmonisation process of refugee matters in Europe already began within the framework of the Council of Europe, on the basis of intergovernmental cooperation.

Already in 1953 the refugee issue was recognised as a common European problem by a Resolution of the Council of Europe.<sup>2</sup>

---

<sup>2</sup> Resolution 28 on the promotion of a European policy for assisting refugees, Parliamentary Assembly, Council of Europe 1953, in: HREA 2006 and: Lavenex 2001: 76

One of the first evolutions in the field of refugee and immigration policies was the establishment of the **Committee on Migration, Refugees and Demography (CDMG)**. The recommendations made by this committee shaped the work of the Council of Europe- even when they were not legally binding. Still very general, the **Resolution of 1967** was the first important and legally binding resolution of the Committee of Ministers “*on asylum and to persons in danger and of persecution*” that asserts that governments of the Member States “*should act in a particular liberal and humanitarian spirit in relation to persons who seek asylum on their territory*”<sup>3</sup>.

Due to the necessities of the topicality of the subject of foreign immigrant workers at that time, in **1974** an “**Action Programme in favour of migrant workers and their families**” was published by the European Commission that encouraged the Member States to adopt common labour migration policies.<sup>4</sup>

In finding concrete solutions regarding the harmonisation of the asylum policies of the Member States, the **Ad Hoc Committee of Experts on the Legal Aspects of Refugees (CAHAR)** was set up in **1977**, which is seen as a forerunner to the key provisions of the Schengen and Dublin Conventions (1990).<sup>5</sup> This Ad Hoc Committee was concerned with the introduction of a harmonised definition on ‘first country of asylum’ to avoid the *refugee in orbit-phenomenon*<sup>6</sup>, but the first and second draft (1981 and 1986) were rejected by the Member States because of discordance about the contents.

This was the temporary end of the harmonisation process within the European framework. From now on the further developments were made on the basis of intergovernmental cooperation in the **Ad-Hoc Group on Immigration**<sup>7</sup> and the **Schengen Group**. Both groups were composed of representatives of the Member States, whereas the Schengen Group was made up of only five Member States (Germany, France, Benelux

---

<sup>3</sup> Council of Europe 1967 in: Lavenex 2001: 77

<sup>4</sup> Lavenex 2001: 84

<sup>5</sup> Lavenex 2001: 80

<sup>6</sup> those asylum seekers that are disposed from one country to another and no country attends their application

<sup>7</sup> created in October 1986

countries) and the supranational EU institutions had no competencies in their negotiations.

In contrast to the work on the Community level, the intergovernmental cooperation was affected by the aim of the restriction criteria, namely the aim of safeguarding internal security, fighting against bogus asylum applications as well as illegal immigration and install strict entry conditions for third country nationals.

The fears expressed were closely linked to the abolition of internal border controls through the **Single European Act (1986)** and the foreseen establishment of the Freedom of Movement in 1992.<sup>8</sup> This abolition of border controls provoked fears because of a lack of control regarding third country nationals that would benefit unintentional of this freedom of movement as well.

From these cooperation emanated two important international agreements, namely the **Schengen Implementation Agreement** and the **Dublin Convention** (both in 1990).

With the **First Schengen Agreement**, adopted in 1985, the Member States France, Germany and the Benelux countries decided on the abolition of controls at their borders on the basis of an international agreement. No mention is made of refugees or asylum seekers. Lavenex speaks about this cooperation as *“a measure promoting the realisation of the Single Market among a core of motivated Member States”*<sup>9</sup>. But the actual relevant agreement was the following **Schengen Implementation Agreement** (Second Schengen Agreement Applying Schengen I)<sup>10</sup>, that turned out to become the motor of EU-wide approximation regarding the question of a common refugee policy. Because, the Schengen Agreement served as a blueprint version for the **Dublin Convention (1990)**<sup>11</sup>, that nearly took over most of the provisions of Schengen. The SIA emphasised more the focus on issues relating to third country nationals and the

---

<sup>8</sup> the Single European Act foresees the establishment of an *“internal market (which) shall comprise an area without frontiers in which the free movement of...persons...is ensured...”* (Article 8a of the EEC Treaty) with the deadline for its completion of 31.12.1992; in: Monar & Morgan 1994: 101-102

<sup>9</sup> Lavenex 2001: 88

<sup>10</sup> in the following: SIA; this second Schengen Agreement, also referred to as ‘Schengen Convention’ applies the first Agreement

<sup>11</sup> *Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities 97/C 254/01*; in the following: DC

establishment of alternative control mechanisms. Cornerstone of both agreements, SIA and DC, is the introduction of a responsibility rule of the contracting states that depends on a number of criteria, most prominently: *“Only one contracting party- normally the country which the asylum seeker reaches first- shall be responsible for processing an application”*<sup>12</sup> According to the DC, the asylum seeker must already have found protection or asylum in the particular state to be sent back (‘First Host Country’). There is a guarantee in the preamble of the DC<sup>13</sup> for asylum seekers that their application will be examined by one of the Member States, to prevent the *refugee in orbit-phenomenon*<sup>14</sup>. But besides this, each state still has the possibility to refuse the entry of or expel asylum applicants on the basis of its national asylum provisions.<sup>15 16</sup>

Both agreements show the intention to reduce the number of asylum seekers, through the installation of restrictive conditions within the EU-wide asylum proceedings: the *asylum shopping-phenomenon*<sup>17</sup> is tried to be prevented through strict entry requirements and control mechanisms and the single responsibility rule regarding the applications of asylum seekers.

Another outcome of the SIA/DC was the installation of the **Schengen Information System (SIS)** that later lead to the **European Information System (EIS)** among all twelve Member States, which establishes a central database for the exchange of information among the Member States.

Alongside these intergovernmental developments, progressed the work on the European level as following: A number of **recommendations**<sup>18</sup> were released that dealt with the adoption of common procedural standards. But

<sup>12</sup> in: Lavenex 2001: 96; see: Art.29 III SA and Art.3 II DC

<sup>13</sup> Preamble of the DC, in: Lavenex 2001: 97

<sup>14</sup> see definition above (footnote 6)

<sup>15</sup> Art.29 III SA, quoted in: Lavenex 2001: 96

<sup>16</sup> *“(...) neither the Dublin nor the Schengen Convention provide for an obligation to grant asylum once an application has been positively determined”*, in: Lavenex 2001: 98

<sup>17</sup> the possibility of multiple asylum applications by one asylum seeker in different Member States

<sup>18</sup> e.g. The non-binding *Recommendation by the Committee of Ministers on the adoption of common procedural standards (1981)*; *Recommendation from the Parliamentary Assembly (1985)* that proposed the harmonised recognition criteria and status determination procedures in refugee policies; *Resolution “Guidelines for a Community Policy on migration”* of the Council of Europe

these recommendations were still not legally binding<sup>19</sup> and too general to approximate towards a harmonisation of national asylum procedures.

The establishment of common rules on residence, entry and access to employment of third-country nationals and the harmonisation of asylum policies in the Member States that were suggested by the **European Commission** in its **White Paper** in **1985**, failed because of the unwillingness of the Member States.

In contrast to the intergovernmental work, the Communitarisation of the field of refugee policy put more emphasis on the humanitarian approach and claimed the free movement of persons with a rather liberal way of handling the refugee problematic, whereas the intergovernmental cooperation was mainly based on the premise of safeguarding internal security and elaborating measures against the abuse of asylum procedures etc.

The work within intergovernmental groups clearly shows the unwillingness of the Member States to shift this sensitive domestic topic on the communitarian level and their fear of a loss of national sovereignty.

Putting it in a nutshell, the prospect of the abolition of internal border controls through the realisation of a Single European Market and the herewith connected freedom of movement was the catalyst for the cooperation in the field of a harmonised asylum policy.

The developments of the first generation are marked through the opposite ideas of the Member States that wanted to obtain their sovereignty and avoid the influx of asylum seekers or illegal immigrants (as possible consequence of the abolition of border controls) on the one hand and the supranational Community organs that wanted to maintain the humanitarian approach of asylum policy and that condemned the restrictive asylum policies of the Member States.

---

<sup>19</sup> Due to International Law: *“Resolutions and recommendations do not bind the Member States. Their application is totally reliant on the good will of the States.”*, in: Monar & Morgan 1994: 116

## 2.2 SECOND PHASE OF EUROPEANISATION OF REFUGEE POLICIES: MOVING TOWARDS THE COMMUNITY LEVEL (1992-1999)

Even if the intergovernmental cooperation was an expression of the unwillingness of the Member States to cooperate on the communitarian level, this cooperation finally led to the Communitarisation of the policy field because the intrinsic reason for the cooperation still remain the security aspect. And as realised later, things could become solved better on the Community level.

In **1992** the **Treaty on European Union**<sup>20</sup> was agreed on with asylum and immigration matters as part of the **Title IV**, which makes part of the third pillar (Justice and Home Affairs) of the “temple structure”. This introduction of asylum and refugee policy in the Community structure was basically a formalisation of the previous intergovernmental structure in this field. But actually the Treaty did not provide a supranational mode of addressing the issue because the instruments were limited to the possibility to adopt joint decisions or conventions. That means that in fact the cooperation mainly remained on the intergovernmental level<sup>21</sup>, between the ministries of the Member States- but now officially formalised under the EU-Treaty.

The legal instruments which have been provided for the cooperation under the Third Pillar were not the traditional concepts of Community law, rather specific norms, namely *Joint Positions*, *Joint Actions* and *Recommendations* to adopt Conventions.

After the Maastricht Treaty, a huge number of Resolutions, Conclusions, Recommendations, Decisions and Joint Positions were released, which were supposed to present the realisation of the Maastricht programme.<sup>22</sup>

Even not legally binding, of special relevance in the further development of a common asylum policy were the **London Resolutions in 1992** that mainly aimed at the restriction of asylum applications within the EU

---

<sup>20</sup> agreed on: 08.02.1992; came into force in 1993; in the following: EU-Treaty or Maastricht Treaty

<sup>21</sup> Cloos et al. have described it as “*improved intergovernmental*” cooperation; in: Cloos/ Reinesch/ Vignes/ Weyland 1993: 49-512, in: Monar & Morgan 1994: 118

<sup>22</sup> see footnote 31

Member States. Or the way Peers express it: *“the principle that Member States should seek to find a state outside the EC in which the asylum-seeker should have claimed asylum, before considering whether another Member State should be responsible for the application”*<sup>23</sup>

The (First) **Resolution on manifestly unfounded applications (RMUA)** determines the possibility to carry out an accelerated procedure in cases where asylum applications are based on an abuse of asylum procedures or where there is *“no substance to fear persecution”* in the applicants country.<sup>24</sup> Though this first Resolution only applies to those applicants that are not recognised as refugees due to the named reasons. Whereas the (Second) **Resolution on a harmonised approach to questions concerning host third countries (RSTC)** applies to all asylum seekers and defines the concept of **safe third countries**: according to this, a Member State is only responsible to examine an asylum application where the asylum seeker had not crossed a third state or no other third state exists where the applicant can be sent to. With this Safe third country concept the Second Resolution represents a determination of the Single Responsibility Rule first introduced in the Schengen and Dublin Convention.

To determine whether a state is regarded as “safe”, the immigration ministers adopted at the same meeting a **Conclusion on countries in which there is generally no risk of persecution** (or: Safe Countries of Origin (CSCO))<sup>25</sup>, which names criteria for the Member States to assess if a country can be declared as “safe”.<sup>26</sup>

With a **Draft Recommendation**<sup>27</sup> the Council provided the basis for readmission agreements between the single Member States and Third Countries, to regulate the retraction of asylum seekers.<sup>28</sup>

<sup>23</sup> in: Peers 2000: 107

<sup>24</sup> §§ 2-3 RMUA, quoted in: Lavenex 2001: 112-113

<sup>25</sup> all Resolutions and Conclusions were adopted on the conference of immigration ministers in London, 30.11./ 01.12.1992

<sup>26</sup> following criteria are named in the Conclusion: (1) Previous numbers of refugees (who came from this country in the past) and recognition rates; (2) Observance of human rights; (3) Democratic institutions; (4) Stability of the country; in: Council Conclusion on Countries in Which There is Generally No Serious Risk of Persecution (1992)

<sup>27</sup> *Draft Council Recommendation concerning a specimen bilateral readmission agreement*, adopted in the Council of JHA on 30.11./ 1.12.1994; in: Lavenex 2001: 114

<sup>28</sup> *“Readmission agreements are bilateral agreements between the EU and a non-EU country and are designed to facilitate the expulsion of illegal immigrants. It introduces an obligation on the non-EU*

The London Resolutions and Conclusions were followed by **Constitutional Amendments**, especially in the traditional asylum countries (Germany and France), which were marked as necessary changes in order to implement the Schengen and Dublin Convention and London Resolutions into national law. But this is only half the truth: An amendment of the German Constitution, for instance, would not have been legally necessary.<sup>29</sup>

In the following, the Member States show growing disinterest in closer cooperation or the establishment of a harmonised European asylum system. Their main aim, namely the restriction on the intake of asylum seekers, was already established through the London Resolutions and the reforms of their domestic laws.

But the functioning of the Responsibility rule of the SIA and the DC required at least the harmonisation of procedural standards in the asylum policy. This recognition led to the adoption of the **Resolutions on minimum procedural standards** in 1995<sup>30</sup> where the rights of the asylum seekers during the appeal, examination and revision phase of their application within the Member States are laid down. The Resolution is non-binding and has been criticised as comprising only the lowest common denominator among the Member States by lacking the necessary safeguards to ensure its realisation. Furthermore, in case of a 'manifestly unfounded' asylum claim, the applicant cannot appeal to the minimal procedural standards.

---

*country to readmit, without any formalities, its own nationals and people coming from or having lived in that country.*" (in: EurActiv 2005); Lavenex (2001) criticises that these readmission agreements are used as legal basis for the return of asylum seekers before applying the Safe Third Country Rule

<sup>29</sup> The necessity of this Constitutional Amendment was controversial: But legally, the relevant Article 16a paragraph 2 (2) of the Grundgesetz (GG) (German Constitution) was not opposed to one of the Conventions or Resolutions. Especially important is the Article 29 IV of the Schengen Agreement and Article 3 IV of the Dublin Convention in this context, which state "the sovereign right of any contracting party to examine an application, even when it is not determined as being responsible" (Lavenex 2001: 97). Generous provisions, like the Article 16 GG, would therefore not present a problem. Insofar, an amendment would not have been necessary from a legal perspective. But irrespective of the already achieved responsibility rule, Germany (like other Member States as well) feared the increase of asylum applications and asylum abuse if they would have less rigid provisions than the other Member States.

<sup>30</sup> 20.06.1995

Like this Resolution, many other Resolutions and Recommendations have been adopted, that, for instance, dealt with expulsion practices of the Member States or aimed at a harmonised European definition of the refugee-term.<sup>31</sup>

Due to a lack of EU competence to enact binding laws in this policy field, until this time the cooperation of the Member States within asylum policy was still on the basis of multilateral agreements.

### 2.3 THIRD PHASE: SHIFT OF ASYLUM POLICY TO THE COMMUNITY LEVEL (1997-2005)

In order to maintain their capacity to act in the area of asylum policy, the Member States had to transfer competencies to the EU level, because the instruments of intergovernmental co-operation did not provide sufficient binding force to unfold effect on the Member States.

Therefore, in **1997** the **Amsterdam Treaty**<sup>32</sup> was established and lead to the transfer of asylum policy from the third (intergovernmental cooperation) to the first pillar, with the consequence that asylum policy was from now on part of the EC Treaty and therewith part of the Community law, where the EU had the ability to enact binding law. From now on, asylum policy would be included in the new Title IV in the EC Treaty “*Visa, Asylum, Immigration and other policies related to the Free Movement of Persons*” Additionally

---

<sup>31</sup> **Conclusion on the general principle of admission of such persons for temporary protection** (1992; unpublished in: Peers 2000: 122); **Resolution on family reunion** (1992); **Recommendation on the control and expulsion of persons in irregular situations** (1992); **Conclusions on how to deal with persons displaced as a result of the conflict in ex-Yugoslavia** (1992); **Resolution on common rules for the admission of particularly vulnerable people emanating from ex-Yugoslavia** (1993); **Resolution that expands the personal scope to sexual assault victims** (1993); **Resolution 13665/97** (23.12.1997) & **Decision 8053/98** (28.04.1998) were adopted to agree on a joint approach in case of future mass influx; **Joint Position 96/196/JHA on the Harmonised application of the definition of the term “refugee” under the Geneva Convention** (04.03.1996); **Recommendation Regarding Practices Followed by Member States on Expulsion** (30.11.92) states new instruments for a facilitated return of asylum seekers to their countries of origin or ‘safe third countries’; **Resolution on the Harmonization of National Policies on Family Reunification** (1.6.93);

<sup>32</sup> entry into force: 01.05.1999; the Amsterdam Treaty presents an amendment of the Treaty of the European Communities (EC Treaty)

the Schengen Agreement and the Dublin Convention were incorporated into Community Law.

**Article 63 EC** requires the Council to adopt different measures in the field of asylum policy within a five year-period (until 1<sup>st</sup> May 2004): thereby the determination of EU-wide minimum standards is outstanding.<sup>33</sup> Nearly all measures mentioned refer to already existing and proposed European asylum measures, which only lack the force to bind the Member States. Thus, this Treaty presents the framework for cooperation on the Community level, but still has to be filled out by the necessary measures.<sup>34</sup>

According to the Amsterdam Treaty, the development of an area of freedom, security and justice, progressed in the following years:

At its meeting in **Tampere** in **1999**<sup>35</sup> the Council agreed upon working towards a Common European Asylum System with common asylum procedure and common refugee status by emphasising again the elements mentioned in Article 63 EC Treaty and setting out a five years period for the adoption of measures in this policy field.

The Council also calls for a financial reserve in case of emergency measures (e.g. mass influx of asylum seekers) which led to the establishment of the **European Refugee Fund (ERF)** in 2000.<sup>36</sup> The ERF aimed at helping the Member States to receive asylum seekers and formed a first attempt to install the burden sharing-approach between the European Member States. The budget of the ERF was distributed as a flat rate to each Member State and the remainder in proportion to the number of displaced persons in the country.

---

<sup>33</sup> (1) determination which Member State is responsible for the examination of an asylum application; (2) minimum standards on the reception of asylum seekers in Member States; (3) Minimum standards on the qualification of third country nationals as refugees and beneficiaries of subsidiary protection; (4) Minimum standards on procedures for granting and withdrawing refugee status; (5) Minimum standards for giving temporary protection; (6) promoting a balance of effort between Member States regarding refugees (Burden-sharing approach); Article 63 EC, in: Peers 2000: 126

<sup>34</sup> the EC Treaty provides in its Article 249 for *four different types of measures* that from now on are also applicable on the field of asylum policy: (1) **Regulation**: is binding for the Member States and directly applicable; (2) **Directive**: is binding, but still has to be transformed into national law (free choice of form and methods); (3) **Decision**: binding in its entirety upon certain directly addressed states; (4) **Recommendations/ Opinions**: have no binding force

<sup>35</sup> 15./ 16. October 1999

<sup>36</sup> the ERF was installed on 28.09.2000 and operated until 31.12.2004; in the **Council Decision 2004/904/EC establishing the European Refugee Fund for the period 2005-2010** (02.12.2004) the EU decided about a continuation of the ERF

The main objective of the Nice Treaty, adopted at the **European Summit in Nice in 2000**<sup>37</sup>, was the implementation of institutional reforms regarding the simplification of the decision-making processes, to provide the necessary conditions for a further enlargement of the EU<sup>38</sup>. In the field of asylum policy the shift from unanimity vote, which was regarded as obstacle for co-operation, to qualified majority voting within the Council was aimed at simplify the procedures and ensure a more efficient outcome. But this intention failed because of the reluctance of the Member States.

Also in Nice, the EU agreed on a **Charter of Fundamental Rights**, that contains in its Article 18<sup>39</sup> the right to asylum and in Article 19<sup>40</sup> the protection of expulsion. The Charter is not legally binding and has therefore only a symbolic character.

The following European summits, **Laeken (2001)** and **Seville (2002)**<sup>41</sup> did not bring about changes but continued to emphasise the importance of a further intensification of the integrated work within the field of asylum and migration policies, the need for common procedures and standards, exchange of information and readmission agreements.

In the course of the implementation of measures imposed by the Treaty of Amsterdam, the first legally binding community enactments were implemented in the field of asylum policy. Namely the **Directive on**

---

<sup>37</sup> 11 February 2000 several months of debate began in the framework of intergovernmental conferences and result in the summit and the signing of the Nice Treaty on 2 December 2000

<sup>38</sup> the so-called Eastern enlargement was prospected in May 2004 with the joining of 10 new Member States

<sup>39</sup> "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community." (Article 18 of the Charter of Fundamental Rights, 2000); in: Lavenex 2001: 133

<sup>40</sup> "1. Collective expulsions are prohibited. 2. No one may be removed, or expelled or extradited to a State, where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment." (Article 19 of the Charter of Fundamental Rights, 2000); in: Lavenex 2001: 133

<sup>41</sup> European Council Summit in Sevilla on illegal immigration, 21.-22.06.2002

**minimum standards for the reception of asylum seekers<sup>42</sup> (2003)** that sets out minimum standards for asylum applicants during the reception phase, regarding for example the comparable living conditions, freedom of movement and residence, access to education and health care.

Replacing the Dublin Convention, the Dublin **Regulation (Dublin II)<sup>43</sup>** determines the responsibility criteria for the examination of asylum applications by use of the central database Eurodac<sup>44</sup>.

To ensure a common determination of the refugee status, the so-called **Qualification Directive<sup>45</sup>** sets out common standards to define third state nationals as refugees and lays down a definition for persons eligible for subsidiary protection.<sup>46</sup>

Like the above mentioned, the EU adopted certain other regulations and directives<sup>47</sup> within the five years transition period alleged in the Article 63 EC Treaty.

In **2004**, the European Council proposed within its multi-annual **Hague Programme** plans for a uniform procedure for granting refugee status and subsidiary protection<sup>48</sup> and evaluated the Tampere programme. Especially the return of asylum seekers played again an important role in the

---

<sup>42</sup> **Council Directive 2003/ 9/ EC** of 27 January 2003; entry into force: 06.02.2003; final date for implementation in the Member States: 06.02.2005

<sup>43</sup> **Council Regulation (EC) No 343/2003** 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 (18 February 2003); this Regulation is also named **Dublin Regulation (Dublin II)** replaces the Dublin Convention of 1990; in the following abbreviated as 'DC II'

<sup>44</sup> **Regulation (EC) No 2725/2000** concerning the establishment of the database "Eurodac" for the comparison of fingerprints for the effective application of the DC (11 December 2000)

<sup>45</sup>, **Council Directive 2004/ 83/ EC** on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (29 April 2004)

<sup>46</sup> e.g.: in case of a recognized refugee status the refugee must received a residence permit for the minimum of three years, which can be renewable and persons who fall under the subsidiary protection status must at least receive a one year residence permit, which shall also be renewable

<sup>47</sup> e.g.: the **Council Directive 2001/ 55/ EC** on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (20 July 2001); or the **Council Directive 2005/ 85/ EC** on minimum standards on procedures in Member States for granting and withdrawing refugee status (01 December 2005)

<sup>48</sup> for the period until 2010 (Hague Programme adopted on 5 November 2004; scheduled for the approval by the European Council by 16/17 June 2005)

programme: measures were proposed regarding minimum standards for return procedures, joint country- and region-specific return programmes, the establishment of a European return fund by 2007 and the completion of readmission agreements.

Moreover, the introduction of biometric features in visas and residence permit and the establishment of a visa information system (VIS) in order to prevent the phenomenon of asylum shopping and increase security in the Member States, especially regarding illegal immigration, is addressed in the Programme.

In order to tackle the problem of asylum migration at its roots, the Hague Programme put emphasis on the asylum policy within Community foreign policy.

The Hague programme has been criticised as being less ambitious than the forerunner programme of Tampere, too vague and even as a “backward step”.<sup>49</sup>

But on the other hand, Hague is also presented as an important step towards the establishment of a Common European Asylum System, setting the deadline for its completion in 2010.<sup>50</sup>

## 2.4 SUB-CONCLUSION

The engine for the cooperation of the Member States in the field of asylum policy and (finally) the shift of competences to the supranational EU level was the foreseeable *Single European Market* in 1992 with the *freedom of movement of persons* and the *abolition of internal border controls*. The fear of the third country nationals who would benefit from this freedom as well presented a security deficit which the European Member States tried to fill through the adoption of the Schengen agreement and the Dublin Convention within the framework of intergovernmental cooperation.

Due to the lack to bind the Member States effectively, these intergovernmental instruments made the co-operation, also after the adoption of the EU Treaty vulnerable for interferences and failures. For

---

<sup>49</sup> see: Bendel 2005

<sup>50</sup> Richt 2006: 21

example in case of a long delayed implementation of the agreements by some of the Member States which years later still did not stick to the rules or provisions of the agreements. This awareness finally led to the shift of competences towards the EU level in the field of asylum policy. From now on the Amsterdam Treaty provided for the necessary framework of a supranational cooperation.

After the adoption of the provisions in the Treaty of Amsterdam a changing point has marked: from now on for the first time it was possibly to cooperate on the Community level in asylum and refugee issues, which was realised in a number of following directives, regulations and decisions, which led at least to a partly harmonised asylum legislation within the Member States, which was often criticised as presenting only the lowest common denominator.

At the present point of time there is still no total harmonisation in the field of asylum policy in the EU reached. The established minimum standards show the will of the Member States to agree upon common standards, even if on a very low level. But on the other side the Member States are still reluctant to shift over (more) competences to the EU, which refers to the well known problem of the conflict between the two opposing approaches within the European integration theory: on the one hand, the Member States are willing to cooperate in an area where they expect to benefit from, like in the case of restrictions for the entrance of third country nationals on their territory, but not at the expense of the loss of their national sovereignty.

In the next chapter, the status quo will be described and analysed more profoundly.

### **3. STATUS QUO: THE CURRENT DEBATE ON A COMMON EUROPEAN ASYLUM SYSTEM (CEAS)**

After having taken a look at the events and catalysts that initiated the beginning of cooperation of the Member States within the field of asylum

policy, the question must be raised: *what are the main driving power(s) that provoke the Member States to continue co-operating today?* And to remind the initial research question, it is also relevant to find out in this chapter, *which current on-goings would call for a further, maybe even closer, co-operation.*

This is an important question, because as already seen, the Member States always tried to maintain their sovereignty in the area of domestic politics, which made a co-operation very cumbersome.

To answer these relevant sub-questions, the chapter will focus on three main problem fields that have been recently or are currently the central topics of debate in this area. The positions of some of the principal actors are presented regarding these actual problems to analyse the different points of view. These actual conditions shall already give a foretaste of the existing problems and deficits in a partly harmonised European asylum system which will be further examined in the following chapter.

### ***General overview: recent developments***

The recent developments within the EU harmonisation process of a common asylum system can be characterized by a continuing unwillingness of the Member States to hand over their sovereign right over asylum legislation<sup>51</sup>. And secondly by the emphasis of the security aspect, whereas the worries shifted from the internal to Europe's external borders, which shall be dispelled by intensified border controls in form of a common European external border policy<sup>52</sup>.

---

<sup>51</sup> Due to International Law asylum and refugee policy always was part of the internal policies of the sovereign state and therefore long time marked as a 'no-go'-subject for European legislation because it affects the sovereign right of the state to protect and regulate the entry of third state nationals on its territory. See UN Charter: *"The Organisation is based on the principle of the sovereign equality of all its Members."* (Article 2, UN Charter) and: Lavenex: *"(...) the admission of refugees and the granting of protection are subject to the fundamental norm of state sovereignty which provides the right of states to admit or refuse the admission of aliens into their territory."* (Lavenex 2001: 7) And: *"The Europeanisation of this policy field (...) refers to the integration of a core issue of state sovereignty, namely the authority of a state to control the entry into its territory and the composition of its population."* (Lavenex 2001: 16))

<sup>52</sup> **Council Regulation (EC) No 2007/ 2004** establishing a European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union (External Borders Agency) (26 October 2004); in place since May 2005, evaluation by the end of 2007

In this context of “restrictive measures” fits the aim of establishing return programmes and a return fund for asylum seekers and re-admission agreements with third countries, especially stressed in the Hague Programme.

But besides these further restrictions and a general rejected attitude to give up sovereignty, the ministers of the Member States emphasised throughout the various summits- Tampere (1999), Seville (2002) and Luxemburg (Hague Programme) (2004)- the importance of the establishment of a harmonised European asylum system with harmonised standards and procedures, which points at their will to continue the harmonisation process.

### ***Discordance about qualified majority voting***

With regard to procedural standards within the EU, the current debate concentrates on the decision-making procedure. Due to the Amsterdam Treaty, the decision-making procedure in the European Council was based on the unanimity requirement during the five years-transitional period until 1.May 2004. The problem until recently therefore was a decision making process that was very cumbersome and failed with the blockade of a single Member State. After the end of this period, the Treaty constituted the possibility to establish a qualified majority voting in the Council and provided for a co-decision procedure of the Council together with the European Parliament, which would make the adoption of new provision easier and faster. Scepticism comes from the Member States that again fear their loss of sovereignty in a domestic policy field like asylum policy.<sup>53</sup> Until today, no agreement on a change of the procedural standards within the decision-making process has been reached.

Besides the debate on the decision making procedures within the EU institutions, the current or recent public debate is affected by two main developments, which at the same time present a development political challenge: the on-going and increasing refugee flows from Africa and in

---

<sup>53</sup> for example in Germany (compare: Schwarze 2003)

this context the claim of some politicians to establish so-called refugee camps in North Africa, as well as the recent shift of the European eastern borders because of the European enlargement in 2004.

***EU eastern expansion: fear of floods of migrants from the east***

On 1.May 2004 ten new Member States accessed the EU, most of them situated in the east of the European continent, wherefore this enlargement is also known as the '*EU eastern enlargement*'. This enlargement provoked great fears within the European population, which were further stoke by the press coverage<sup>54</sup>: First the uncontrolled migration of people from the new Member States that will enjoy freedom of movement within the old Member States as well and second, the migration flows of people from other third countries who would try to seek entrance into the European territory through the eastern borders which by now are formed by the new Member States.

The fears were further stoke by the *German Visa Affair* in 2005, which resulted from the easier issuing of visa for people from Eastern non-EU-Member States and lead to the overwhelming fear of criminals benefiting from these easier access conditions and could enter the EU territory.<sup>55</sup>

To face these anxieties, the EU Member States again fell back on a familiar instrument<sup>56</sup>: restricting the entry of people from new Member States into the territory of the old Member States for an initial period of two years and the possibility of a prolongation for further five years. The resulting strict border control systems at these new external frontiers bring about a new problem: even refugees will have greater difficulties in entering the territory and therewith problems of finding protection<sup>57</sup>, a fact, which questions the *non-refoulement-principle*.<sup>58</sup>

---

<sup>54</sup> e.g. *Daily Express newspaper* (Great Britain): "1.6 million migrants from the new EU Member States" (in: Esser 2005)

<sup>55</sup> The visa affair clearly demonstrated how the media and politicians played with the fears of the European population and how sensitive a topic within the field of migration can be

<sup>56</sup> with the exception of Great Britain, Ireland and Schweden

<sup>57</sup> as criticised by the UNHCR: "*But we are extremely concerned that strict border control systems make it impossible even for refugees to cross.*" (Lloyd Dakin, UNHCR regional representative in Budapest; in: UNHCR 2006)

<sup>58</sup> = no refugee shall be returned to a country where s/he is likely to face persecution or torture

In the last year, the focus of the press coverage shifted from the migrants from Eastern Europe towards those coming from the African continent, which became more prominently because of increasing numbers of asylum seekers trying to enter and seek asylum in the European territory.

### ***Refugee flows from Africa***

The influx of African refugees who travel through the Northern African states Algeria, Morocco, Liberia or Tunisia in order to reach the European continent with the aim to apply for asylum, has perceived as increased over the last years.<sup>59</sup>

One problem is that it is often difficult to clarify the question if these asylum seekers are refugees who have been persecuted or economic refugees who would not be entitled to apply for asylum.

Second, there is a lack of international agreements that provide binding rules on the way of proceeding with third country nationals who have been rescued beyond the territorial waters of the EU and who tried to enter the EU in order to apply for asylum.

Directly connected to the refugee flows from Africa is the approach to tackle the situation of refugees from a development political site, namely the shift to the field of external policies. This approach already has been put on the agenda of various European summits and programmes. And it has been recognised that one important focus must lie on the support by development aid of these countries.

But the *modus operandi* towards these continuing flows of African migrants still lies more within the higher protection of Europe's Southern external borders through advanced technological monitoring systems, to prevent the asylum seekers from entering into the European territory. Therefore the arrival of refugees by boats shall be prevented by radar technology by air. And it is even further planned to control the Sahara-

---

<sup>59</sup> this paper does not provide sufficient space to debate on this topic, if the perception by European politicians and the media is right or wrong

Sahel zone by the border police together with the military and the European and American secret service.

In the control of the Strait of Gibraltar and the Canary Islands it is already made use by a surveillance tower with an electromagnetic identification technique that is able to scan nearly the whole strait and the Moroccan coast<sup>60</sup>.

### ***Refugee camps in North Africa***

Besides these strengthened control measures, some politicians of the European Member States brought about the idea to establish refugee camps in the North African countries. This idea is accompanied by the above named control measures that shall prevent asylum seeker from entering the European continent. The idea of these so-called *off-shore centres* has been put forward first by the British Tony Blair in 2003<sup>61</sup> and was taken up again by Otto Schily and Giuseppe Pisanu, the German and the Italian Interior ministers, in 2004<sup>62</sup>.

Further the idea comprises the installation of reception centres within the Northern African states Liberia, Morocco, Tunisia, Mauritania and Algeria. These Northern African states function as main transit countries on the way of the asylum seekers to Europe and the centres shall practice in accordance with the EU standards for the reception of asylum seekers.

These proposal are accompanied by many criticism: especially the maintenance of the non-refoulement principle<sup>63</sup> in consideration of the proposed measures is doubtful.<sup>64</sup>

---

<sup>60</sup> information due to Dietrich 2004, in: Statewatch 2005

<sup>61</sup> "New vision for refugees", March 2003; in this publication Blair imagined a 'camp universe' that is set up by EU officers and made up of Transit Processing Centres (TPC), outside the EU territory

<sup>62</sup> Their proposal puts forward to return refugees coming through the Mediterranean to camps located in the Arab states; in: Dietrich 2004, in: Statewatch 2005

<sup>63</sup> which is prohibited in the Geneva Refugee Convention of 1951

<sup>64</sup> Dietrich criticises: "This practise is called refoulement and is explicitly prohibited in the Geneva Refugee Convention"; in: Dietrich 2004, in: Statewatch 2005

***Spain's amnesty towards illegal immigrants***

Connected with the current situation of African asylum seekers, the focus lies on Spain in the recent years, where most of the Africans enter the European territory.

At the beginning of 2005, the European Member States were alarmed about the Spanish offer towards its foreign nationals: they were granted a legal status with residence permit in case they have a job contract and lived in the country for a minimum of six months.<sup>65</sup> This offer presented an amnesty towards those immigrants who were still illegal in the country and provoked the fear by the other Member States that Spain becomes the doorway for illegal immigrants who will end up moving freely throughout the whole European territory. This unilateral measure of the Spanish government was criticised as being opposed to a common European asylum and immigration policy.

Of course, fears were stoking primarily by the media which shows busloads of illegal immigrants entering the Spanish territory. But they did not speak about the reverse side of the coin, namely that only few of these foreign nationals was in possess of such a work permit.<sup>66</sup>

***Point of view of the actors***

Three main view points in the field of European asylum and refugee policy shall presented here in order to give a more complete picture of the current situation:

The **Member States** still are the principal actors within the establishment of a Common European Asylum System (CEAS). They still fear a loss of their sovereignty and control in the field of domestic policies, especially regarding the access of asylum seekers to social benefits and work. Scopes which will be aimed at regulated on the Community level.

On the Community level, especially the **European Commission** operates in favour of a harmonisation process in the field of asylum policy and therewith does credit to their name as the *motor/ engine of the European*

---

<sup>65</sup> during a four months-period from the beginning of 7.February 2005

<sup>66</sup> And only 150,000 to 200,000 are supposed to apply to benefit from this offer (Andalusi 2005)

*integration process.*<sup>67</sup> Besides its focus on the advancement of the harmonisation process, the Commission tends to achieve solidarity among the Member States through the initiation of burden sharing instruments. Besides, in the field of refugee and asylum policy, **Non-governmental organisations (NGOs)**, even they don't have much influence; they are carrying important functions, because often they are the only institution that represents the interest of the asylum seekers. Their general view is the fear of an erosion of the protection standards for refugees. That applies to the reception standards within the Member States, as well as the criteria of expulsion. Especially the expulsion to so-called 'safe third countries' has been criticised by various NGO's<sup>68</sup> because of an insufficient guarantee of human rights in some of the non-European countries. Furthermore, they denounce the different treatment of asylum seekers in the different Member States with their different national laws<sup>69</sup>: *"Even after five years of harmonisation of EU asylum policy, a person can have a 90% chance of being accepted as a refugee in one EU country, while her chances are virtually nil next door."*<sup>70</sup>

### **Fortress Europe?**

The presented problems support the critics who denounced the European Union as building up a fortress<sup>71</sup> towards refugee streams in the recent years by implementing legal restrictions within the European asylum system and establishing low minimum standards.

Intensified controls at the external European eastern borders that were claimed in order to ensure the increased security requirements and the idea of building up a refugee camp in Northern Africa to prevent the entry

---

<sup>67</sup> the Commission is often called *engine* or *motor* of the European integration process

<sup>68</sup> Amnesty International, Statewatch, International Federation for Human Rights, in: EurActiv 2005; Statewatch claims that several European Member States included *"countries on the "safe" list while admitting they had inadequate time and information to make a credible assessment"*, and that due to the EU's own criteria the seven African countries that have been concluded on the proposed safe list cannot be regarded as 100 percent safe and should therefore not be used as basis for the rejection of asylum applications as 'manifestly unfounded'; in: Statewatch 2004: 15-16

<sup>69</sup> ECRE calls for the end of the "European asylum lottery" because of the uncertain chances of asylum seekers to get a fair treatment in the Member States (ECRE 2004)

<sup>70</sup> Peer Baneke, General Secretary of European Council on Refugees and Exiles, in: ECRE 2004

<sup>71</sup> a term that was mainly introduced and shaped by NGO's

of asylum seekers on European territory, supports clearly the picture of Europe as a fortress that does not allow the entrance of asylum seekers.

Another aspect is that many asylum seekers are deterred from even getting access with their application to the regular examination procedure, in case they fell under the clause of “*manifestly unfounded*” claims<sup>72</sup>. Then they are only entitled to an abbreviated procedure.

Brochmann suggests that the metaphor of ‘*Fortress Europe*’ is reflecting the likely scenario of how the harmonisation will develop in the EU<sup>73</sup>, which is a rather cheerless future prospect.

### SUB-CONCLUSION

The on-goings and recent developments in the field of asylum policy in Europe clearly demonstrate the main rationale behind the Member States’ will to cooperate within a European framework: the fear of the huge influx of asylum seekers on the European territory. This rationale can be observed as a thread within the current events and finds its expression as temporary restrictions regarding the freedom of movement for citizen of Eastern EU member states and as increased technological innovations that shall be installed to deter African refugees. Restriction measures and stricter external border controls satisfy the Member States desire for more security.

Even if the willingness of the Member States to establish a Common European Asylum System had been expressed frequently, their action conveys the impression that the European level is used to assert the restriction measures of the Member States. This would indicate that a further shift of competencies to the EU level would not be sufficient to meet the current problems, rather a race in the wrong direction.

---

<sup>72</sup> An asylum claim is deemed as ‘manifestly unfounded’ when the claim is based on an abuse of the asylum procedures (e.g. false identity or bogus documents) or when the reasons for the claim do not meet the criteria set out in the 1951 Geneva Convention; determined in: *Resolution on manifestly unfounded applications (RMUA)* (1992); and as EU legislative act: *Article 28 ‘Unfounded applications’ of the Council Directive 2005/ 85/ EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (01 December 2005)* referring to *Directive 2004/83/EC*

<sup>73</sup> Brochmann 1996; in: Richt 2006: 36

Nonetheless, as indicated by the current events, a common European solution for the present problems concerning refugees and asylum seekers is indispensable as the particular Member States otherwise are left alone with the overload.

#### **4. PROBLEMS AND DEFICITS OF A PARTLY HARMONISED EUROPEAN ASYLUM SYSTEM**

The previous chapters demonstrated that within the actual EU there can hardly be found a complete European asylum system, rather can the actual picture be characterized as a co-existence of a supranational system with a number of minimum standards set out for the Member States and the particular legislative provisions by the individual Member States.

*What are the main problems and deficits of this system? And what kind of problems would re-emerge in the case of a disappearance of the already harmonised areas and would therefore speak in favour of a perpetuation of the harmonisation goal?*

Problems and deficits are presented and analysed from the perspective of *their impact within an Europe without internal borders.*

Considering the outcomes of this chapter, it shall be weighed up, *if a further harmonisation within the field of European asylum policy would be necessary.*

##### **4.1 RESTRICTION SPIRAL**

The increase of the numbers of asylum seekers in the 1990's<sup>74</sup> provoked the implementation of restrictive asylum practices within the Member States.

---

<sup>74</sup> E.g. in Germany: From 37,423 in 1982, the number of asylum applications arose up to 103,076 in 1988 and found its temporary maximum in 1992 with 438,191 applications. In: ECRE 2006 and Hailbronner 1993: 19

Thielemann<sup>75</sup> names three different techniques of deterrence measures to restrict the inflow of asylum seekers: (1) access control, (2) the determination process, and (3) migrant integration policy. Policy makers use these instruments to make their country less attractive for the asylum seekers.

Most of the Member States made use of some sort of restrictive measures in the early 1990s. Most prominently were the *constitutional amendments* in France and Germany<sup>76</sup>, two Member States with traditionally high numbers of asylum applications. Another form of restriction was the introduction of the category of *manifestly unfounded asylum claims* in the asylum system, first as national provision and as international agreements, also known as ‘London Resolutions’<sup>77</sup>, and then under the umbrella of the EU as Council Directive<sup>78</sup>. According to this, an asylum claim is deemed as ‘manifestly unfounded’ when the claim is based on an abuse of the asylum procedures (e.g. false identity or bogus documents) or when the reasons for the claim does not meet the criteria set out in the 1951 Geneva Convention.

Those restrictions bring about different impacts: **First**, acting on the assumption that the restrictions deter the asylum seekers, **external costs are put on the other, especially on the neighbouring, states**. Barbou des Places and Deffains describe it as ‘*beggar-thy-neighbour-attitude*’<sup>79</sup> and blame the Member States to use their national legislation as ‘*strategic weapon*’ to fend asylum seekers. Rote/ Vogler/ Zimmermann for example

---

<sup>75</sup> Thielemann 2003: 12-13

<sup>76</sup> The *Constitutional Amendment in France* of 26.11.1991 brought about the introduction of Article 53 (1) in the Title IV which leads to a modification of the asylum right that formerly guaranteed asylum to all persecuted persons, and now transfers the right into a provision of giving back the right to the state to examine asylum claims. And the *Constitutional amendment in Germany* on 1.July 1993 leads to a restriction of the constitutionally guaranteed right for asylum for politically persecuted persons, together with changes in the asylum procedures.

<sup>77</sup> Resolution of 30 November 1992 on manifestly unfounded applications for asylum; Resolution of 30 November 1992 on a harmonised approach to questions concerning host third countries; Conclusions of 30 November 1992 on countries in which there is generally no serious risk of persecution

<sup>78</sup> **Council Directive 2005/ 85/ EC on minimum standards on procedures in Member States for granting and withdrawing refugee status**; referring to the safe third country concept (Art.27; 29-31; 36) and unfounded asylum applications (Art.28)

<sup>79</sup> Barbou des Places and Deffains 2004 : 354

see the reason for the increase of asylum seekers in Germany in the French law reforms in 1991.<sup>80</sup>

Thereby there is no proof that restrictive measures lead to the absence of asylum seekers<sup>81</sup>: due to Barbou des Places and Deffains a *“state with a more “generous” asylum legislation has to cope with a higher afflux of asylum seekers whereas the states with strict systems don’t let the refugees on their territory”*.<sup>82</sup> And Thielemann<sup>83</sup> puts forward that the restrictions introduced to the German Basic Law and the legislation relating to foreigners attributed to the reduction of asylum applications in Germany between 1992 and 1994.

But regardless of the truth of this theory, without a harmonisation of the legal provisions, the Member States would compete against each other evidently up to the ultimate limit, which is reached in form of the provisions of the Geneva Convention on Refugees of 1951.<sup>84</sup>

The problem that results from the establishment of restrictive measures is the copycat behaviour of the other states regarding the introduced measures. As consequence, the desired outcome of the measure is not reached because the other states already come along with the same or even further restrictions in their asylum systems and the measure of origin has only short term effects, if at all.

This competitive behaviour within the field of asylum policy leads to the **second** impact, the so-called ‘**spiral of restriction**’ or ‘**race to the bottom**’ and is observed critically by many experts. The Member States try to underbid themselves by introducing even more restrictive measures.

---

<sup>80</sup> Rotte, Vogler and Zimmermann 1996 in: Barbou des Places and Deffains 2004: p.353 The number of asylum claims in Germany rose from 256,112 in 1991 to 438,191 in 1992, whereas the number of applications in France decreased from 47,380 to 28,872. A correlation here can be suspected but other external factors are decisive as well.

<sup>81</sup> Thielemann is here contradictory: first he says that *“the relative (...) restrictiveness of a country’s asylum policy has a highly significant effect on the number of applications received”* (Thielemann 2003: 19), whereas he later states that a couple of different factors influence the decision of asylum seekers to choose a particular country and that there is only a *“weak positive correlation between relative asylum burden and policy related deterrence measures”* (Thielemann 2005: 9)

<sup>82</sup> Barbou des Place and Deffains 2004:

<sup>83</sup> Thielemann 2003: 7-8

<sup>84</sup> The Geneva Convention on Refugees of 1951 is an international convention that sets out a refugee definition, rights of refugees and legal obligations of the signing states; The 1967 modifying Protocol removed geographical and temporal restrictions from the Convention (UNHCR 2006)

This behaviour is especially worrying regarding the maintenance of human rights standards. Alarming for instance is the use of detention: Normally, detention centres should only be used in exceptional cases, where there is the obvious danger that the asylum seeker otherwise could go into hiding. But today, the safekeeping of asylum seekers in detention centres, during the examination of their applications or their waiting for deportation, is very common. Some asylum seekers have to stay lasting for months in detention centres, and sometimes even in prisons, without having committed a crime<sup>85</sup>. Also, this aspect is regulated today on the European level<sup>86</sup> there are no sufficient control mechanisms. NGOs are normally the only control entities that observe and claim erroneous trends in this area. But these NGOs are often detained from controlling the circumstances and conditions within the detention centres by the police of the Member States.

The restriction of the entrance of asylum seekers provokes another problem: irregular movements of asylum seekers and illegal immigration. The UNHCR states that the controlled flow of asylum seekers therefore is likely to change into the movement of irregular migrants, which is even more difficult to control.<sup>87</sup>

In order to look at this topic from another perspective, the argument can be put forward that within the EU there have been restriction measures implemented in the past years as well. Most prominently can be named the London Resolutions and Conclusions<sup>88</sup> and furthermore the resolution

---

<sup>85</sup> Villaine 2005

<sup>86</sup> The legal provisions can be found in the International agreements **Refugee Convention of 1951**, **International Covenant on Civil and Political Rights (ICCPR)**, the **Universal Declaration of Human Rights** and the **European Convention on Human Rights** which states in its Art.5: "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law; (...) (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition (...) 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The **Council Directive 2005/ 85/ EC** determines that "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum" (Art.18 (1))

<sup>87</sup> UNHCR 1997, in: Barbou des Place and Deffains 2004: 357

<sup>88</sup> see above

of 1995 and the decision of 1996<sup>89</sup>, which introduced the status of temporary protection asylum seekers as response to the massive influx of asylum seekers into the European territory through the Balkan crisis in the 1990s. The already presented criticism of Europe as a fortress resulted from the restriction instruments Europe has used to defend from asylum seekers entering the Member States. Regarded from this perspective, shifting more competencies on the European level would not be an adequate solution for this problematic because operations in this policy field are still expression of the will of the Member States.

To conclude, it can be said, that the use of restrictive measure regarding asylum seekers in an EU without internal border controls are dubiously regarding the external effects these measures put on the other Member States.

In the past, the absence of common European regulations resulted inevitably in the emergence of further restrictions of the national asylum systems. This problem can only be tackled by a harmonisation of the national asylum systems, in order to guarantee the same legal conditions in all Member States and renders negative competition impossible.

But a further shift of competencies from the national to the European level maybe would not be appropriate in counteracting the developments of further restriction spirals, because as recent developments demonstrated, even on EU level, the trend towards restrictive measures continues here as well.

## 4.2 GEOGRAPHIC DISTINCTIONS OF THE MEMBER STATES

The aim of establishing a common European asylum system with the same asylum procedures and the admission of an approximately equal number of asylum seekers holds a problem: due to their geographical location, the Member States are affected unequally by the influx of asylum

---

<sup>89</sup> **Council Resolution 95/C 262/01** on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (25 September 1995); **Council Decision 96/198/JAI** on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (4 March 1996)

seekers. This needs for compensatory measures in combination with the development of a common asylum system.

But instead, the *Dublin II Regulation*<sup>90</sup> defines criteria that determine which Member State is responsible for the examination of an application and this is normally, when the asylum seeker does not have a family member or a valid visa for one of the Member States, the first country that enables the entry of an asylum seeker on the common territory.<sup>91</sup>

Therefore, European Member States which have an external border with Non-European countries are disproportionately high affected by asylum seekers, because here the asylum seekers usually first enter the territory of the EU.

In view of the enlargement of the EU in 2004, the eastern Member States are new places of refuge for many asylum seekers with the consequence that especially those new Member States, whose asylum systems are comparables lacking in infrastructure, are disproportionately high affected by asylum flows and have to bear high influxes on their own.

Another example are the Southern EU-Member States Spain, Greece or Italy which are affected because many asylum seekers reach the European territory here first or even apply for asylum in these countries. In

<sup>90</sup> **Council Regulation (EC) No 343/2003** 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 (18 February 2003); this Regulation is also named **Dublin Regulation (Dublin II)** replaces the Dublin Convention of 1990; in the following: Dublin II Convention; or: DC II

<sup>91</sup> "Responsibility for handing an asylum claim is placed on the state which first enables the entry of an asylum seeker into the common territory." (Lavenex 2001: 99-100); The **Articles 4-8 of the Dublin Convention** name the responsibility criteria in the order of their application: *Art.4*: Responsible is the state where the asylum seeker has a family member with refugee status; *Art.5*: Responsible is the state which issued a valid residence permit or visa for the asylum seeker; *Art.6*: where an asylum seeker has irregularly crossed the border of the EU, this Member State is responsible; *Art.7*: the responsibility lies within the state that is responsible for the entry of the asylum seeker on the Member State's territory; *Art.8*: is applied in all those cases where the competence for dealing with an application cannot be determined; in this case, the first state with which the application for asylum is lodged, is responsible; In the Dublin II Regulation of 2003, the **Articles 7-13** name the hierarchy of responsibility criteria: *Art.7 & Art.8*: Responsible is the state where the asylum seeker has a family member with refugee status; *Art.9*: Responsible is the state which issued a valid residence permit or visa for the asylum seeker; *Art.10*: where an asylum seeker has irregularly crossed the border of the EU, this Member State is responsible; *Art.11*: if the need for the asylum seeker to have a visa is waived in one Member State, this state is responsible for the examination of the claim; *Art.12*: in case of an asylum application in an international transit area of an airport, the particular Member State is responsible; *Art.13*: the first Member State is responsible where the application is lodged when due to the previous criteria no responsible state could be found; *Art.14*: In case of simultaneous applications of family members in different Member States, the state is responsible where the majority of the family members applied or where the oldest applied

case they only use these countries as 'transit states', that means, travel through them, due to Art. 7 DC, respectively Art. 10 DC II, the other Member States have the right to send the applicant back to the first EU country the applicant entered<sup>92</sup> even they applied for asylum first in another country.

The impact of the Dublin II Regulation on the distribution of asylum seekers in the EU needs according to the UNHCR further study to be capable to give well-founded data. As approximated value the UNHCR speaks about 15 per cent of the 237,840 asylum applications in 2005 in the EU, which were subject to determination of responsibility under the Dublin II Regulation.<sup>93</sup>

Also according to the operation of the Dublin II Regulation in practice, there is a lack of comprehensive data. During the period for which the UNHCR has data available, only about 30 per cent of the accepted requests for transfer were actually effected. That also points at another resulting problem, namely that governments increasingly use detention as instrument to cope with asylum seekers. When there is uncertainty about the responsibility or in case the national law does not provide for the possibility to reopen an asylum procedure. This problem will be discussed in further detail under point 4.5.5.

The available data show however that there is indeed a disproportionately high number of incoming transfers under the Dublin II Regulation in those Member States located at the Eastern or Southern EU external borders in comparison with the outgoing transfers they effect. Effected are especially the countries Greece, Hungary, Italy, Poland, Slovakia and Spain.

Even if the numbers of asylum seekers that by means of the Dublin II Regulation are sent back to the first country in which they entered the EU territory, are still not worth mentioning, as already seen in the previous chapter, the problematic of asylum seekers that enter Spain becomes even more topical: most of the African refugees enter the European

---

<sup>92</sup> due to Art. 7 DC and Art. 10 DC II, the responsibility to examine an application is incumbent on the Member State that permitted the entry of the asylum seeker

<sup>93</sup> UNHCR 2006(2): 7

territory through the Spanish territory or the Spanish islands, whereas in 2004 70 percent of the asylum seekers in Spain came from African countries.<sup>94</sup> From January until July 2006, 9467 Africans arrived on the Canary Islands, thereof 5414 on Tenerife.<sup>95</sup> The current situation on the island Tenerife is in an exceptional circumstance: normally there are 1500 reception places, but now there are 6000 asylum seekers on the island. Most of them come from countries that already cancelled their readmission agreements<sup>96</sup> with the EU or the asylum seekers have destroyed their documents, which prove their origin, so that Spain cannot send them back to their country of origin. That means, they stay about 40 days in reception camps and after that are send to the Spanish continent, where many of them go into hiding and remain illegally in Europe.

The main problem of this situation is that there is a lack of will to find a common European solution for this problem. The Canary Islands are overloaded with asylum seekers and Europe does not present instruments to tackle the problem in form of a burden-sharing system or a relief in form of a reform of the responsibility criteria.

Especially the actual problematic of the floods of asylum seekers from Africa entering Europe through the Spanish territory shows the (urgent) need for a European solution and that harmonised asylum practices without a burden sharing system are insufficient. Until now the only attempts been made to compensate the geographical differences of the Member States on the EU level were of temporary character which is insufficient for the affected states because of a lack of reliability.

### 4.3 BURDEN SHARING

Along with the previous problematic of the geographical differences goes the need for the installation of burden sharing measures within the

---

<sup>94</sup> ECRE 2004: 1

<sup>95</sup> Die Zeit, 20 July 2006

<sup>96</sup> "Readmission agreements are used increasingly as a legal basis to return asylum seekers before their status has been determined on the grounds of the safe third country rule." (Lavenex 2001: 114)

European Union, in order to guarantee the same premises and burden for all Member States.

Thielemann argues that *“the distribution of asylum applications has been highly unbalanced”*<sup>97</sup> and is *“highly unequal”*<sup>98</sup>. Since the 1980s some of the Member States<sup>99</sup> have borne a disproportionately higher per capita burden than the EU average. Especially Germany had to cope with 66 percent of all European asylum applications in 1992<sup>100</sup> and still in 2005/2006 it is on the third place among the countries with the highest number of asylum applications- with France as the main attractor of asylum seekers and the United Kingdom with the second-largest amount of applications.<sup>101</sup> Regarding asylum seekers in relation to the population size, Switzerland had to bear the largest amount of asylum seekers in the period between 1985 and 1999.<sup>102</sup> Within the EU there can be found similar examples: the EU Commission names Austria and Sweden as the two Member States which have the largest number of asylum applications relative to their total population.<sup>103</sup>

These cases exemplify that there are large differences between the burdens of the Member States and that within a Common European Asylum System (CEAS) there is a need for compensatory measures.

The reasons for these differences lie within the geographical differences<sup>104</sup> that have been discussed in the previous section and within the differences in structural pull factors.<sup>105</sup> Thielemann even argues that the restrictiveness of a country influences the distribution of asylum

---

<sup>97</sup> Thielemann 2003

<sup>98</sup> Thielemann 2005: 22

<sup>99</sup> Thielemann names Switzerland, Sweden and Germany

<sup>100</sup> Germany received over 438,000 asylum applications in 1992; in: Thielemann 2003

<sup>101</sup> data according to UNHCR Statistics, 2006

<sup>102</sup> compared with EU Member States (asylum applications relative to the population size): Switzerland had 30 percent more asylum applications than Sweden, 40 percent more than Germany, 6 times as many as France and the UK, 30 times as many as Italy and 300 times as many as Portugal and Sweden (Thielemann 2005: 2)

<sup>103</sup> Austria: 32,360; Sweden: 31,410 applications; in: European Commission 2004

<sup>104</sup> *“those countries which are more closely situated in geographic terms to important countries of origin, are the ones more likely to encounter a disproportionate share of asylum applications”*; Thielemann 2005: 8

<sup>105</sup> = non-policy related factors that make some host countries more attractive than others, for example: prosperity and employment possibilities of a country and language compliance; in: Thielemann 2005: 8

burdens<sup>106</sup>. Furthermore the co-existence of national and European legislations contributes to the maintenance of the differences among the Member States. Besides the common minimum standards that are binding for the Member States, there are still national legislative provisions which distinguish them.

The idea of the installation of a burden sharing system emerged already in the 1990s and found entrance on the political agendas as a response to the massive influx of asylum seekers through the Balkan crisis.

The first substantial **burden sharing proposal** was initiated by Germany in **1992**, because it was among the countries which were most affected by the refugees from Ex-Yugoslavia in that period of time. Its proposal mainly dealt with the physical dispersal of temporary protection seekers (refugees) among all Member States according to their population size, GDP<sup>107</sup> and size of territory. The proposal was rejected. Instead the *EU Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis* calls for a “shared” and “balanced” reception of temporary protection seekers.<sup>108</sup> Thielemann considers this burden sharing model as the most effective one to address disparities in refugee burdens.<sup>109</sup>

In **2000**<sup>110</sup> the **European Refugee Fund (ERF)** was agreed on in order to support those Member States which had to deal with a greater amount of refugees and asylum seekers. The first phase of the ERF operates from 2000 to 2004 and a continuation of the Fund for the years 2005 until 2010 was determined in the Council Decision of 2004.<sup>111</sup>

In the first phase the ERF had a financial volume of EUR 216 million which was disbursed to its members as following: first, an equal flat rate amount

---

<sup>106</sup> Thielemann 2004, in: Richt 2006: 38-39

<sup>107</sup> see abbreviations

<sup>108</sup> **Council Resolution 95/C 262/01** on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (25 September 1995); **Council Decision 96/198/JAI** on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (4 March 1996); at this point of time European measures did not unfold binding force on the Member States;

<sup>109</sup> Thielemann 2005: 17-18

<sup>110</sup> **Council Decision 2000/596/EC** establishing a European Refugee Fund (28 September 2000)

<sup>111</sup> **Council Decision 2004/904/EC** establishing the European Refugee Fund for the period 2005 to 2010 (2 December 2004)

was given to each participating Member State irrespective of its asylum burden<sup>112</sup> and the remaining financial resources are distributed proportionately to the number of asylum seekers in the Member States. Whereas the real burden sharing character is realised only in the proportionate distribution. This fact is criticised by many experts. Thielemann claims that the Refugee Fund does not present a progress because each Member State in the first instance receives the same amount of money. Even this fixed amount supports Member States with a less developed protection system it also supports those that already have well developed systems with only small numbers of asylum seekers. Thielemann denies the distribution of the fixed element as effective expression of the Communities' solidarity.

Moreover, he calls the proportional part of the Fund "*very much sub-optimal*"<sup>113</sup> because countries with large absolute numbers of refugees benefit from the Fund disproportionately high regardless of their relative burden regarding to factors population size or GDP. This leads to the problem that some countries have to bear a much greater burden which is not sufficiently compensated through the Fund.

Thielemann concludes that the European Refugee Fund is more of symbolic value than fulfilling the burden sharing approach by mentioning an example: Britain, which is the second largest recipient of the Fund in 2002, received 100 Euro per asylum application each year, whereas its spending for an asylum seeker in 2002 were 30,000 Euro.

Additionally, the harmonisation of asylum legislation throughout the EU is seen as **indirect burden sharing approach** as well. Because it tackles the problem of uneven distribution at its roots, namely the assumption, that some Member States attract more asylum seekers because of their relatively generous legislations. The indirect approach is based on the assumption that "*a convergence of law in this area would lead to a more just distribution*"<sup>114</sup>, whereas not only the laws have to be harmonised but

---

<sup>112</sup> in 2000: 500,000 EUR; in 2001: 400,000 EUR; in 2002: 300,000 EUR; in 2003: 200,000; in 2004: 100,000 EUR

<sup>113</sup> Thielemann 2005: 16-17

<sup>114</sup> Boswell 2003

also their practice. Thielemann argues that policy harmonisation as indirect burden sharing tool is too slow and remains limited in its effect<sup>115</sup> because besides the relative restrictiveness of the asylum regimes, there are other reasons for the unbalanced burdens of asylum seekers.

Until today there has no burden sharing system been installed that deserves that name. Richt concludes that *“the idea of burden sharing seems not to be working”* and that the *“pursuit of burden sharing seems to be lost when looking at the great differences in the number of applications lodged in the different Member States.”*<sup>116</sup>

This lack of an appropriate burden sharing system to share responsibility will leave particular EU states overburdened and will provoke continuing conflicts among the Member States in the future.

Especially regarding the occurrence of future crisis or external shocks that go along with the massive influx of refugees seeking protection in the European Member States, a burden sharing system could function as insurance.

The EU has to put up with the accusation that it shifts the responsibility to states located on the external border of the EU instead of developing a suitable burden sharing system.<sup>117</sup>

As the harmonisation of asylum laws and practices among the Member States already present one form of burden sharing, the further harmonisation is needed in order to guarantee a more equal distribution among the Member States. As said above, practice harmonisation is as important as law harmonisation.

Moreover, to install a common burden sharing system in the future, the development of a further harmonised European asylum system is required.

---

<sup>115</sup> Thielemann 2005: 16

<sup>116</sup> Richt 2006: 62 & 67

<sup>117</sup> Ruud Lubbers, United Nations High Commissioner for Refugees, in 2005; in: Thielemann 2005: 11

#### 4.4 DIFFERENT RECOGNITION OF REFUGEES IN THE MEMBER STATES (CO-EXISTENCE OF EUROPEAN AND NATIONAL LEGISLATION)

The main objective of the previous years of harmonisation process was to reach the same recognition conditions for asylum seekers in all Member States.

But although there are harmonised European provisions, there are still different recognition practices in the particular member states because of a co-existence of European and national laws within the present European asylum system.

Procedures and laws cumber each other and lead in each particular Member State to different operation modes of the European laws in combination with the particular national laws.

A Chechen asylum seeker for instance has a recognition rate of over 50 percent in various EU Member States but at the same time only a slight chance to be granted asylum in the Slovak Republic: in 2004 until 30 September only two out of 1,081 people were granted asylum.<sup>118</sup>

This case does not present an exceptional case and result in the *asylum-shopping phenomenon*<sup>119</sup> that should have been avoided through the provisions of the DC in 1992.<sup>120</sup> Consequently, asylum seekers will look for countries where their claim has better chances of being recognized.

This unequal treatment of asylum seekers leads to the accusation that the previous harmonisation process within the field of asylum policy did not bring about sufficient results. The previous agreements in this policy field were met on the lowest common denominator and besides these harmonised regulations, there exist a range of other national laws that are

---

<sup>118</sup> Lubbers, United Nations High Commissioner for Refugees, 5 November 2004 & 29 January 2005; in: Thielemann 2005: 4-5

<sup>119</sup> = multiple asylum applications made by one asylum seeker in different Member States, with the aim of receiving the best outcome respecting the protection status

<sup>120</sup> due to the **Dublin Convention of 1992** and as part of the Community law as **Dublin II Council Regulation of 2003**, an asylum seeker can only lodge an application one time in one of the European Member States ("one chance only-principle"), whereas the responsible Member State emanates from the mentioned criteria (Art.3 I DC)

legally subordinate to the European provisions but in practice present national regulations which works additionally.

In the following part these shortcomings of the current European Asylum System are analysed more detailed.

#### 4.5 DEFICITS OF THE DUBLIN CONVENTION/ DUBLIN II REGULATION

Even today, 16 years after its adoption, the Dublin Convention (DC) still presents one of the most important documents in the development of a European asylum system: Adopted in 1990 in order to meet the arising security deficits, resulted through the foreseen establishment of the freedom of movement of persons within the European territory, the DC was included into European law in 2003 through a Council Regulation<sup>121</sup>.

The DC was supposed to determine, which Member State is responsible for the examination of an asylum application. But the responsibility criteria turned out to be very difficult to apply in practice and raises new questions and problems rather than solving them, as will be shown at the following schematic examples.

The DC regulates the responsibility of a Member State to examine an asylum claim according to the different criteria named in the Articles 4-8 DC, which are applied in a hierarchical order. These criteria shall be named here in short for a better understanding of the examples<sup>122</sup>. The examples partly refer to the period of time, when the DC still was in force, therefore it will be referred to the DC and the Dublin II Regulation at the same time. The overview of the criteria hierarchy here is due to the DC, but can also be found in the DC II<sup>123</sup>.

---

<sup>121</sup> see footnote 43

<sup>122</sup> for detailed information, see: Dublin Convention of 1992 and Dublin II Regulation in the Appendix

<sup>123</sup> In the **Dublin II Regulation of 2003**, the **Articles 7-13** name the hierarchy of responsibility criteria: *Art.7 & Art.8*: Responsible is the state where the asylum seeker has a family member with refugee status; *Art.9*: Responsible is the state which issued a valid residence permit or visa for the asylum seeker; *Art.10*: where an asylum seeker has irregularly crossed the border of the EU, this Member State is responsible; *Art.11*: if the need for the asylum seeker to have a visa is waived in one Member State, this state is responsible for the examination of the claim; *Art.12*: in case of an asylum application in an international transit area of an airport, the particular Member State is responsible;

*Article 4:* Responsible is the state where the asylum seeker has a family member with refugee status;

*Article 5:* Responsible is the state which issued a valid residence permit or visa for the asylum seeker;

*Article 6:* where an asylum seeker has irregularly crossed the border of the EU, this Member State is responsible;

*Article 7:* the responsibility lies within the state that is responsible for the entry of the asylum seeker on the Member State's territory;

*Article 8:* is applied in all those cases where the competence for dealing with an application cannot be determined; in this case, the first state with which the application for asylum is lodged, is responsible.

The normal procedure is to apply these Articles in their named order in case of an asylum application in order to determine the responsible Member State. But the following examples will show the problems of their application in practice.

#### **4.5.1 EXAMPLE 1: TRIANGLE CASE<sup>124</sup>**

An alien illegally crosses the external border of Member State A, goes to Member State B. Here the alien applies for asylum and travels on to Member State C.

The question here is whether Member State A or B is responsible. Due to Article 6 DC, Member State A is responsible because it enables the entry of the alien on the European territory. But in case that Member State A denies its responsibility because of lack of proof, the question arises if Member State B is responsible.

The Dublin II Convention of 2003 regulates this topic in its Article 10: Paragraph 1 determines the state responsible which enables the third

---

*Art. 13:* the first Member State is responsible where the application is lodged when due to the previous criteria no responsible state could be found; *Art. 14:* In case of simultaneous applications of family members in different Member States, the state is responsible where the majority of the family members applied or where the oldest applied

<sup>124</sup> case presented in: Marinho 2000: 14

country national to cross the border, but only for a period of “12 months after the date on which the irregular border crossing took place”<sup>125</sup>.

Paragraph 2 of Article 10 states the possibility that the asylum seeker already lived for a period of at least five months in another Member State. In this case this Member State is responsible for the examination of the asylum claim. The Article 10 also refers to the common circumstance that an asylum seeker already lived in several Member States. The most recent case is responsible for the examination of the application.

Relating to the example, Article 10 restricts the responsibility of Member State A in that extent that it can send the asylum seeker to Member State B if it can be proved that s/he already lived here for at least five months. But it does not offer a solution in case of a lack of proof of the travel route of the alien. Instead it brings about a new problem: if the asylum seeker lived in several Member States without proof where s/he lived, after 12 months there is a new uncertainty about which Member State is responsible.

#### **4.5.2 EXAMPLE 2<sup>126</sup>: RESPONSIBILITY OF THE SAFE THIRD COUNTRY OR THE STATE THAT ISSUED A VISA?**

A third country national applies, who is already in possession of a Schengen visa issued by France, for asylum at the German-Polish border before the Eastern Enlargement in 2004. Germany has two possibilities to reject the claim: (1) to send the asylum seeker back to Poland (according to the *safe third country concept*<sup>127</sup>) or: (2) to send the asylum seeker to France because it issued the visa for the third country national which makes France responsible according to Article 5 DC.<sup>128</sup>

The problem of the unclarity of this case is that two regulating concepts collide with each other: namely, the responsibility criteria of the DC and the *safe third country concept* that legally does not make part of the DC. It

<sup>125</sup> Article 10 (1) Council Regulation 2003/ 343/ EC

<sup>126</sup> case presented in: Marinho 2000: 20

<sup>127</sup> according to the *Safe third country concept* Poland can be regarded as “safe” and Germany can send the asylum seeker back

<sup>128</sup> Article 9 Council Regulation 2003/ 343/ EC

also does not fall within the sole competence of the EU because other third countries outside the EU are involved. There is no regulation which concept is to apply subordinated, also because there are not readmission agreements with all “safe third countries”. Its application therefore depends on the particular Member States that is in the position of deciding (in this case: Germany) and if there exists a readmission agreement among the particular Member State and the relevant third country.

#### 4.5.3 EXAMPLE 3: CROSSING THE EXTERNAL BORDER

The third case which is presented by Marinho<sup>129</sup> deals with the problem of an alien who enters the EU territory through Member State A, where s/he does not apply for asylum, then leaves the country, and crosses a third country and subsequently enters again the EU territory through Member State B.

The determination of responsibility in this case is a bit more complex, because many provisions have to be considered in the right order.

Due to the hierarchy of the criteria established in the DC, Article 6 has to be considered first in this case. According to this, Member State A would be responsible because it first enabled the entry of the alien into the EU territory. In case that the alien left the EU territory for a period over three months, Article 10 (3) can be applied: *“the obligations (...) shall cease to apply if the alien concerned has left the territory of the Member States for a period of at least three months.”*<sup>130</sup> In that case Member State B would be responsible.

Another view presented by Marinho is that the Article 10 is not applicable “from the outset”<sup>131</sup> which means that Member State A is therefore not responsible. Because the alien left the territory of this Member State and entered into a third country and therewith the responsibility of Member State A ceases. Moreover, the alien never lodged an asylum claim in Member State A.

---

<sup>129</sup> Marinho 2000: 24-25

<sup>130</sup> Article 10 (3) DC

<sup>131</sup> Marinho 2000: 24-25

Whereas when the alien enters Member State B and lodges an asylum application here, the previous entry can be disregarded. Marinho states, that *“the DC does not answer this question”* and that the responsibility criteria of the DC are based on the main principle that the responsibility lies within *“the state which is responsible for the presence of the asylum seeker in the territory of the Member States”*<sup>132</sup>.

Article 13 DC II can be applied in case no Member State can be determined according to the responsibility criteria mentioned in the regulation. Then *“the first Member State with which the application for asylum was lodged shall be responsible for examining it”*.<sup>133</sup> In the relevant case, Member State B would be responsible because the alien did not apply for asylum in Member State A.

#### 4.5.4 EXAMPLE 4: SUBSIDIARY RESPONSIBILITY

An asylum applicant enters Member State A and travels to Member State B, where s/he lodges an asylum claim. After that, the applicant travels to Member State C to lodge another application.

Due to Article 6 and 7 DC, responsible is the Member State that enables the asylum seeker the border-crossing into the EU territory, which means: Member State A is responsible. Member State C has to send a request to Member State A in order to attain that Member State A takes charge of the asylum seeker's application. The potential problem that could arise is that Member State A rejects the responsibility by referring to a lack of proof. A circumstance that is addressed by Article 10 DC II: thus, the responsibility of this Member State can only be determined *“on basis of proof or circumstantial evidence”*<sup>134</sup>. Then, Article 8 DC, respectively Article 13 DC II can be applied which puts the responsibility on this Member State, in which the asylum seeker first lodged an asylum claim, in this case: Member State B. Due to Marinho, this is disputed in practice.<sup>135</sup>

---

<sup>132</sup> Marinho 2000: 24-25

<sup>133</sup> Article 13 Regulation 2003/ 343/ EC

<sup>134</sup> Article 10 (1) Regulation 2003/ 343/ EC

<sup>135</sup> Marinho 2000: 26

The listed problems refer to problems that appeared until 2000, until the transfer of the provisions to the European law through the Dublin II Regulation in 2003. This Regulation led to the addressing of some of the problems, as seen for instance in the event of *triangle cases* (*example one*). From this point of view, the shift of previously bi-national or international agreements towards the supranational level can be appreciated. It would therefore speak in favour of a further harmonisation process within the field of asylum policy because apparently the development on a supranational basis put major attention on continuous evaluation which in the long run leads to improvements in legal provisions. But there are also still unsolved problems and deficits as some of the examples showed and the following topical case will demonstrate:

#### 4.5.5 EXAMPLE 5: PRACTICE OF THE DUBLIN II REGULATION

Prevailing for the present circumstances regarding the practice of the Dublin II Convention in some Member States is the following example cited by the UNHCR: A refugee from the civil war region Dafur, Sudan, lodged an asylum application in Greece in June 2003. During the application procedure the asylum seeker has been held in detention and has not been sufficiently informed about his rights, an obligation which is laid down in the *Directive on minimum standards for the reception of asylum seekers*<sup>136</sup>, but which at this point of time still was not implemented in all Member States. After released from detention, the asylum applicant left Greece because of a lack of accommodation, work and governmental support.

He applied for asylum in the United Kingdom, where the *Eurodac fingerprint system*<sup>137</sup> revealed that he already applied for asylum in Greece. Due to the *Dublin II Convention* Greece is the responsible state for the examination of the asylum claim. But this procedure of determining

<sup>136</sup> Council Directive 2003/ 9/ EC of 27 January 2003; entry into force: 06.02.2003; final date for implementation in the Member States: 06.02.2005

<sup>137</sup> in operation since 15 January 2003

the responsibility of a Member State takes time, so that the applicant is detained another six months in the UK, until he is send back to Greece in June 2004. But due to Grecian national law, the examination of the asylum seekers' application was interrupted and therefore *"not possible to pursue any further"*.<sup>138</sup> So that the asylum seeker is detained again for three months and after that is told to leave the country.

This case is no exceptional case: due to ECRE<sup>139</sup>, since 2004 Greece has interrupted the examination of asylum applications for persons who have been returned to Greece under the Dublin II procedure.<sup>140</sup>

This example points at a main problem within the actual European asylum system: the co-existence and the insufficient compliance of European legislation and national laws.

Actually, the Dublin II Regulation provides very well for a regulation of cases of "taking back" or taking charge" on the European level: in its chapter five the Regulation unequivocally determines that the responsible Member State is obliged to terminate the examination of an application even when the applicant is in another Member State without permission.<sup>141</sup>

But Greece draws upon its Article 2 (8) of the Presidential Decree 61/99 *"which allows the Ministry of Public Order to interrupt the examination of an asylum claim when the applicant 'arbitrarily leaves his/her stated place of residence'"*<sup>142</sup>. Greece uses this provision as justification for not continuing the examination of applications of asylum seekers who went illegally to other Member States and are returned to Greece under the Dublin II Regulation. With the consequence that these asylum seekers don't get access to an asylum procedure as foreseen by the Dublin II Regulation.<sup>143</sup>

---

<sup>138</sup> UNHCR 2006

<sup>139</sup> = European Council on Refugees and Exiles

<sup>140</sup> For a full description and analysis of this practice see P.N. Papadimitriou & I.F. Papageorgiou, *The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek Authorities*, Journal of Refugee Studies Vol. 18, No. 3 2005; in: ECRE 2006

<sup>141</sup> Article 16 Regulation 2003/ 343/ EC

<sup>142</sup> ECRE 2006: 150

<sup>143</sup> see Chapter III 'General Principles', Art.3 of the DC II: *"Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum.(...)"*

Due to Sitaropoulos Greece is a 'peripheral state' regarding its Europeanization process. He asserts that it has serious shortcomings in the legal and social protection of refugees and is still in its infancy regarding the establishment of an efficient refugee protection system.<sup>144</sup> Thereby the excessive detention of asylum seekers, informal deportations of illegal migrants and asylum seekers and the lack of trained interpreters at the entry points or training for border authorities are criticised by many different institutions and academics.<sup>145</sup>

But it is not only Greece that lacks shortcomings regarding the practice of the DC II: "*Similar to the Greek practice, a number of other Member States restrict or deny access to a procedure to individuals returned under Dublin II.*"<sup>146</sup> Applicants who have left the particular responsible Member State during the application procedure, are confronted with the following problem: a number of states close the asylum case "*if the applicant is deemed to have implicitly withdrawn or abandoned an asylum application*"<sup>147</sup> which is taken for granted for instance when the applicant is not present during the application procedure. ECRE accuses the Member States Belgium, France, Ireland, Italy, the Netherlands, Slovenia and Spain for using this mode of operation. The consequence for the asylum seeker is that the only option left is a subsequent second application which is only permitted in exceptional cases fulfilling strict criteria.

The shortcomings of the DC point at a grave deficit: "*the Dublin II Regulation was designed for a Europe where asylum laws and practices are truly harmonized*",<sup>148</sup> which obviously is not the case. Therefore, where regulations don't function and national laws oppose European legislation, the Dublin II Regulation does more harm than regulate asylum matters in Europe.

---

<sup>144</sup> Sitaropoulos 2000: 1 and 4

<sup>145</sup> e.g. by the Danish Refugee Council (DRC 1997); *Eleftherotypia on Sunday* (15 February 1998); Amnesty International (1998); UNHCR (1999); in: Sitaropoulos 2000: 7-9; and: P.N. Papadimitriou & I.F. Papageorgiou (2005); Skordas and Sitaropoulos (2004); in: ECRE 2006

<sup>146</sup> ECRE 2006: 151

<sup>147</sup> ECRE 2006: 151

<sup>148</sup> Judith Kumin, UNHCR's Representative in Brussels, in: UNHCR: 2006

Richt concludes: *“Dublin II is not fair towards the asylum seeker. The asylum claims stated in the application might prove valid in one Member State while it might be rejected in another Member State.”*<sup>149</sup>

As seen, the main problem of the DC, respectively DC II, is their application in practice: it is often not possible to prove that an asylum seeker had travelled through a certain Member State and therefore still more difficult to achieve the Member States' recognition. Furthermore, the distinctions among the Member States lead to a different application and realisation of the DC in practice.

As consequence, as accounted by Lavenex, in the practice the asylum seekers are confronted with *“protracted and uncertain asylum procedures”* and are often shifted from one state to another or even *“kept in detention without being able to find a state willing to examine their claim”*.<sup>150</sup>

ECRE even sees the risk of *refoulement* through the *“inefficient and resource-intensive Dublin system”*<sup>151</sup>

The Member States tend towards sending the asylum seekers back to third countries by the use of readmission agreements or to other Member States.

ECRE therefore sees another problem for the EU Member States: *“the Regulation creates unequal burdens and works as a disincentive for states to give full access to fair asylum procedures or even to their territories”*<sup>152</sup>, which hints again at the already mentioned problems and deficits.

#### 4.6 SUB-CONCLUSION

The mentioned problems and deficits of the actual European Asylum System show that here the research question has to be extended in order to get the necessary outcomes for the research question: it is not only the question, *if there is a need for further harmonisation but also, if this*

---

<sup>149</sup> Richt 2006: 46-47

<sup>150</sup> Lavenex 2001: 116

<sup>151</sup> ECRE 2005: 7

<sup>152</sup> ECRE 2005: 7

*harmonisation needs for a common European solution or if harmonisation among the Member States would be sufficient.*

Regarding this question this chapter showed different answers and will later help to find an overall answer for the actual research question:

The use of **restriction measures** in order to deter asylum seekers does not need for a concrete European instance but can also simply be controlled by the harmonisation of the asylum systems among the Member States. Anyhow, the influence of Europe as a regulating instance would be appreciated as well.

On the other hand, regarding the **geographical differences** of the Member States appears an urgent need for the involvement of the EU to regulate developments and to establish a Common European Asylum System (CEAS) with compensatory measures among the Member States. A conclusion that also applies for the next deficit: the lack of effective **burden sharing** also needs for a European solution that is regulated centralised on a supranational level. The great disparities regarding the influx of asylum seekers in the particular Member States require a system that distributes persons or/ and financial means by considering different factors. On a bi-national basis the implementation and realisation would be even more difficult to attain because of opposing national interests of the particular Member States.

The **differences of the recognition of asylum seekers** among the Member States show that there is still a need to harmonise the national provisions before the installation of a CEAS. Therefore, this problem points at the deficit of harmonisation of national law that already should have been harmonised in the past in order to be ready for the adoption of European regulations and directives.

The analysis of the **DC** and **Dublin II Regulation** presented a lot of deficits and problems, especially affecting their application in practice: unclarity about the application of the responsibility criteria in combination with a different application of the provisions in practice and the differing national provisions of the particular Member States. Factors, that lead to an inefficient application of the regulation, and bring uncertain conditions and the risk of refoulement for the asylum seekers. Moreover it creates

unequal burdens for its Member States in the long run. Nevertheless, also in this case, a shift to the supranational level can be regarded as positive because the examples clarify that some problems were solved through the instalment of the Dublin II Regulation because of continues evaluation and improvements concerted on the basis of the evaluation of the practice.

In sum, the examples point at the necessity of the installation of a CEAS in combination with a further harmonisation of the national law of the Member States. Many of the problems and deficits result from the transition period and a lack of coordination and adaptation of national laws with European regulations.

## **5. CONCLUSION & RECOMMENDATIONS**

The particular stages of the development of a European Asylum policy showed that a co-operation in the field of asylum policy between the Member States was indispensable because of the abolition of internal border controls within the European territory in 1992. This arisen security deficit should be closed by establishing common provisions which address the problem of dealing with third country nationals, respectively refugees. This presented the main incentive to move from a strict national way of dealing with asylum policies to the perception of the necessity to cooperation.

A shift from intergovernmental to supranational cooperation became necessary because of the perception that the use of intergovernmental instruments made the co-operation vulnerable for Member States interests and more likely to fail in some areas.

Nonetheless, a complete harmonisation is still lacking, which has wide impacts on the present situation.

The current situation and recent developments also showed that the reached status of harmonisation is still not sufficient as it lacks necessary European solutions regarding events of overburdening of Member States with refugees. On the other hand, the recent developments convey the impression that the measures of restricting the access of refugees to the European territory is to be continued on European level after shifting over competencies to the supranational level.

Nevertheless, a further proceeding in the direction of European harmonisation is indispensable at the present, because a change of direction is neither feasible due to the already reached development status nor reasonable because the Member States alone would not be able to face the current problems.

The analysis of some of the problems and deficits within the present European Asylum System(s) showed the necessity to weigh up about the suitability to establish a Common European Asylum System as a

supranational instance or if the simple harmonisation of Member State's law would be sufficient to address the current problems.

The particular problems and shortcomings provided for different results regarding the posed research question: The tendency of the establishment of restriction measures for asylum seekers is a measure that has been used in the framework of intergovernmental cooperation as well as on EU-level. A supranational solution therefore would be not a promising remedy. Different from the geographical rooted inequalities among the Member States, which need for compensatory measures on the European level, to guarantee each state approximate equal conditions. In this context, a European burden sharing system seems to be indispensable.

Especially the various problems within the application of the Dublin Convention, respectively Dublin II Regulation, in practice pointed at two grave existing deficits: the unclarity about the application of the responsibility criteria of the Dublin II Regulation, which results in a condition of uncertainty within the European Union, and the co-existence of European and national laws, which in the long run creates unequal burdens for the Member States. Even if the integration of the Dublin II Regulation into Community law did not provide solutions for all uncertainties, a revision could be perceived.

It became apparent that the EU would be better of installing control mechanisms regarding the implementation of European provisions and their enforcement in practice within the Member States.

As it could be observed during the harmonisation process, the main **opposing factors** are the Member States' fear of a loss of national sovereignty and the guarding of their national interests.

Nevertheless the continuing European developments regarding asylum policy revealed also the **driving forces** within this policy field, which are predominantly the past and present conditions and the progressive European integration process that made a further harmonisation necessary and reasonable.

Thus, the necessity to a closer co-operation has been recognised but the realisation failed because of another opposing factor: the decision-making

procedures and the possibilities to block decisions impede the installation of a CEAS.

But especially confronted with the current developments, a further harmonisation would not only be advisable or necessary but inescapable. A partly harmonised asylum system as can be found nowadays within the European Union is not capable of acting- it rather produces new problems and shortcomings.

## 6. REFERENCES

### Books:

- § **Angenendt, Steffen, 1999**, *Gibt es ein europäisches Asyl- und Migrationsproblem?, Unterschiede und Gemeinsamkeiten der asyl- und migrationspolitischen Problemen und der politischen Strategien in den Staaten der Europäischen Union*, Europa Union Verlag, 2000 (Arbeitspapiere zur Internationalen Politik; 102)
- § **Barbou des Places, Ségolène and Deffains, Bruno, 2004**, *Cooperation in the shadow of regulatory competition: the case of asylum legislation in Europe*, in: *International Review of Law and Economics* 23 (2004)
- § **Basso-Sekretariat Berlin (ed.), 1995**, *Festung Europa auf der Anklagebank, Dokumentation des Basso-Tribunals zum Asylrecht in Europa*, Verlag Westfälisches Dampfboot, Münster
- § **Blaschke, Jochen and Pfohman, Shannon (eds.), 2004**, *The Decentralisation of Asylum, Refugee Reception Procedures in the European Union*, Edition Parabolis, Berlin
- § **Efionayi-Mäder, Denise/ Chimienti, Milena/ Dahinden, Janine/ Piguet, Etienne, 2001**, *Asyldestination Europa, Eine Geographie der Asylbewegungen*, Seismo Verlag, Zürich
- § **Gerber, Bettina, 2004**, *Die Asylrechtsharmonisierung in der Europäischen Union, Unter Besonderer Berücksichtigung der Richtlinie zur Festlegung von Mindestnormen für die Aufnahme von Asylbewerbern in den Mitgliedstaaten*, Peter Lang Europäischer Verlag der Wissenschaften, Frankfurt am Main (Schriften zum Staats- und Völkerrecht; Band 110)
- § **Klein, Christiane, 1997**, *Asylrecht in Frankreich und Deutschland- Ein Vergleich*, Die Zentrale Dokumentationsstelle der freien Wohlfahrtspflege für Flüchtlinge e.V. (ZDWF), Siegburg
- § **Lavenex, Sandra, 1999**, *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*, in: <http://books.google.com/books?id=S4YwnhNCQcC&pg=PP11&lpg=PP9&dq=asylum+policy+EU+harmonisation&sig=SSi51v3yjj6InulgbQWraMqggdo> (05.07.06)
- § **Lavenex, Sandra, 2001**, *The Europeanisation of Refugee Policies, Between human rights and internal security*, Ashgate, Burlington
- § **Lavenex, Sandra and Ucarer, Emek M. (eds.), 2002**, *Migration and the externalities of European Integration*, Lexington Books, Maryland
- § **Marinho, Clotilde (ed.), 2000**, *The Dublin Convention on Asylum, Its Essence, Implementation and Prospects*, European Institute of Public Administration, Maastricht
- § **Monar, Joerg and Morgan, Roger (eds.), 1994**, *The Third Pillar of the European Union, Cooperation in the fields of justice and home affairs*, European Interuniversity Press, Brussels
- § **Von Hoffmann, Bernd (ed.), 2003**, *Towards a Common European Immigration Policy*, Europäischer Verlag der Wissenschaften, Frankfurt am Main

**Scientific Papers/ Articles:**

- § **Andalusi, Al-Amin, 2005**, *Spain Reconciles Status of Illegal Migrants*, 31.01.2005, in: <http://www.islam-online.net/English/News/2005-01/31/article03.shtml> (visited at 07 July 2006)
- § **Bank, Roland, 1999**, *The Emergent EU Policy on Asylum and Refugees: The New Framework Set by the Treaty of Amsterdam: Landmark or Standstill?*, in: *Nordic Journal on International Law* 68: 1-29, 1999, in: <http://www.springerlink.com/media/927y4ckvwk3uypewup4u/contributions/j/3/9/a/j39ajw745137v812.pdf> (visited at 10 June 2005)
- § **Barbou des Places, Ségolène & Deffains, Bruno, 2003**, *Cooperation in the shadow of regulatory competition: the case of asylum legislation in Europe*, in: *International Review of Law and Economics* 23 (2004), p.345-364, in: <http://eale2002.phs.uoa.gr/papers/Barbou%20des%20Places%20&%20Deffains.pdf> (visited at 10 June 2005)
- § **Bendel, Petra, 2005**, *Immigration Policy in the European Union: Still bringing up the walls for fortress Europe?*, in: *Migration Letters*, Volume 2, No:1, pp.20-31, April 2005, in: [http://www.migrationletters.com/200501/20050103\\_EU\\_Bendel.pdf](http://www.migrationletters.com/200501/20050103_EU_Bendel.pdf) (visited at 24 July 2005)
- § **Blasberg, Anita and Marian, 2006**, *Gestrandet in Europa*, in: *Die Zeit*, 20.July 2006, page 11-14
- § **Boswell, Christina, 2003**, *Burden-sharing in the New Age of Immigration*, 1.November 2003, in: *Migration Policy Institute*, in: <http://www.migrationinformation.org/Feature/display.cfm?id=173> (visited at 11 August 2006)
- § **De las Cuevas Rodriguez, Maria, 2004**, *Seeking Asylum in the European Union: Is the Spirit of Tampere Present in New Legislation?* in: <http://www.eumap.org/journal/features/2004/movt/asylum/#top> (visited at 22 February 2005)
- § **ECRE, 2004**, *Country Report 2004- Spain*, in: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=43b2a1720> (visited at 11 June 2006)
- § **ECRE, 2004**, *Europe must end asylum lottery- refugee NGOs*, Press Release 04<sup>th</sup> November 2004, in: <http://www.ecre.org/press/asylumlot.pdf> (visited at 7 July 2006)
- § **ECRE, 2005**, *Towards Fair and Efficient Asylum Systems in Europe*, September 2005, in: <http://www.ecre.org/positions/systems.pdf> (visited at 11 August 2006)
- § **ECRE, 2006**, *Report on the application of the Dublin II Regulation in Europe*, March 2006, in: <http://www.ecre.org/positions/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf#search=%22dublin%20II%20regulation%20send%20back%22> (visited at 25 August 2006)
- § **Esser, Ruth, 2005**, *"Floods of migrants" from East to West?*, *Europe Infos* Nr.70 (4/2005), in:

[http://www.comece.org/comece.taf?function=ei\\_new&sub\\_id=4&id=11&language=en](http://www.comece.org/comece.taf?function=ei_new&sub_id=4&id=11&language=en)  
(visited at 5 July 2006)

- § **Ezra, Esther, 2004**, *European Integration and Refugee Protection: the development of asylum policy in the European Union*, [http://deposit.ddb.de/cgi-bin/dokserv?idn=972704957&dok\\_var=d1&dok\\_ext=pdf&filename=972704957.pdf](http://deposit.ddb.de/cgi-bin/dokserv?idn=972704957&dok_var=d1&dok_ext=pdf&filename=972704957.pdf)  
(visited at 15 July 2006)
- § **European Council on Refugees and Exiles (ECRE), 1995**, *Safe Third Countries- myths and realities*, London, in: <http://www.ecre.org/positions/s3c.pdf> (visited at 30 June 2006)
- § **Gibney, Matthew J., 2003**, *Harmonization, Asylum, and Temporary Residence*, <http://www.aucegypt.edu/unescounitwin/paper2.pdf> (visited at 5 July 2006)
- § **Lavenex, Sandra, 2006**, *Shifting Up and Out: The Foreign Policy of European Immigration Control*, in: *West European Politics*, Vol.29, No.2, page 329-350, March 2006, in:  
<http://taylorandfrancis.metapress.com/media/dltehe6vvj1vwjfhugdh/contributions/m/2/2/1/m221637725175154.pdf> (visited at 15 July 2006)
- § **Liebaut, Fabrice, eds., 2000**, *Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries*, Danish Refugee Council & European Commission, in:  
<http://www.flygtning.dk/publikationer/rapporter/legalandsocial/legalsoc.pdf> (visited at 4 April 2005)
- § **Lindstrøm, Channe, 2005**, *European Union Policy on Asylum and Immigration. Addressing the Root Causes of Forced Migration: A Justice and Home Affairs Policy of Freedom, Security and Justice?*, in: <http://www.blackwell-synergy.com/doi/abs/10.1111/j.1467-9515.2005.00458.x> (visited at 15 July 2006)
- § **Maurer, Andreas & Parkes, Roderick, 2006**, *Asylum Policy and Democracy in the European Union from Amsterdam towards the Hague Programme*, [http://www.swp-berlin.org/en/common/get\\_document.php?id=1554](http://www.swp-berlin.org/en/common/get_document.php?id=1554) (visited at 5 July 2006)
- § **Richt, Victoria, 2006**, *A study on the Implementation and Effect of the Common European Asylum System in the European Union*, in:  
<http://dspace.mah.se:8080/dspace/bitstream/2043/2266/1/CEAS.pdf> (visited at 15 July 2006)
- § **Thielemann, Eiko R., 2003**, *Does Policy Harmonisation Work? The EU's Role in Regulating Migration Flows*, Nashville/ Tennessee, in: <http://aei.pitt.edu/424/01/EUSA-APS-Thielemann.html> (visited at 4 July 2006)
- § **Thielemann, Eiko R., 2005**, *Between Interests and Norms: Explaining Burden-Sharing in the European Union*, in: 16(3) *Journal of Refugee Studies* 253-273.  
[http://www.refugeelawreader.org/758/Towards\\_Refugee\\_Burden-Sharing\\_in\\_the\\_European\\_Union\\_State\\_Interests\\_and\\_Policy\\_Options.pdf](http://www.refugeelawreader.org/758/Towards_Refugee_Burden-Sharing_in_the_European_Union_State_Interests_and_Policy_Options.pdf) (visited at 11 June 2006)
- § **Thielemann, Eiko R., 2005**, *Towards Refugee Burden-Sharing in the European Union State Interests and Policy Options*, Ninth Biennial International Conference of the European Union Studies Association Austin, Texas, 31 March - 2 April 2005. Harmonization and Burden Redistribution, in: *The Two Europes* R. Byrne, 16(3) *Journal of Refugee Studies* 336-358.

- § **UNHCR 2003**, *Toolboxes on EU Asylum Matters: Toolbox 2: Instruments*, in: <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?id=41b6cdc94&tbl=PUBL> (visited at 5 July 2006)
- § **UNHCR 2006**, *Fortress Europe: The wall is getting higher*, 26 April 2006, in: In: <http://www.unhcr.org/cgi-bin/texis/vtx/news/openssl.htm?tbl=NEWS&id=444f8e7c1d> (visited at 5 July 2006)
- § **UNHCR 2006(2)**, *The Dublin II Regulation- A UNHCR Discussion Paper*, April 2006, in: <http://unhcr.de/pdf/590.pdf> (visited at 6 November 2006)
- § **UNHCR 2006(3)**, *Asylum Levels and Trends in Industrialized Countries, Second Quarter, 2006*, Overview of Asylum Applications Lodged in 31 European and 5 Non-European Countries, in: <http://www.unhcr.org/statistics/STATISTICS/450fa85d2.pdf> (visited at 17 November 2006)
- § **Villaine, Renaud de, 2005**, *The two sides of the policy to remove irregular migrants*, Europe Infos Nr. 75 (10/2005), in: [http://www.comece.org/comece.taf?function=ei\\_new&sub\\_id=2&id=6&language=en](http://www.comece.org/comece.taf?function=ei_new&sub_id=2&id=6&language=en) (visited at 5 July 2006)
- § **Peers, Steve, 2004**, *Statewatch briefing, Vetoes, Opt-outs and EU Immigration and Asylum law*, in: <http://www.statewatch.org/news/2004/dec/eu-immig-opt-outs3.pdf> (visited at 8 July 2006)
- § **Statewatch 2004**, *EU divided over list "safe countries of origin" – Statewatch calls for the list to be scrapped*, in: <http://www.statewatch.org/news/2004/sep/safe-countries.pdf> (visited at 8 July 2006)
- § **Sitaropoulos, Nicholas, 2000**, *Modern Greek Asylum Policy and Practice in the Context of the Relevant European Developments*, in: Journal of Refugee Studies, Vol.13, No. 1/2000, in: <http://jrs.oxfordjournals.org/cgi/reprint/13/1/105> (visited at 17 August 2006)

### **Webpages:**

- § **European Commission, 2004**, *The European Refugee Fund, Promoting solidarity and burden-sharing in the area of EU asylum policy*, in: [http://ec.europa.eu/justice\\_home/key\\_issues/refugee/refugee\\_1104\\_en.pdf](http://ec.europa.eu/justice_home/key_issues/refugee/refugee_1104_en.pdf) (visited at 21 August 2006)
- § **European Commission, 2005**, *Legislative acts adopted after entry into force of the Amsterdam Treaty (1<sup>st</sup> of May 1999)*, in: [http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/docs/jls\\_acquis\\_asylum\\_october\\_2005\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/docs/jls_acquis_asylum_october_2005_en.pdf) (visited at 11 August 2006)
- § **European Commission, 2006**, *Asylum policy in the EU: Towards a Common European asylum system*, [http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/doc\\_asylum\\_intro\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/asylum/doc_asylum_intro_en.htm) (visited at 6 July 2006)
- § **European Parliament, 2006**: [http://www.europarl.europa.eu/news/public/default\\_en.htm](http://www.europarl.europa.eu/news/public/default_en.htm)
- § **Eur-Lex, 2006**: <http://eur-lex.europa.eu/>

§ EurActiv, 2006 : <http://www.euractiv.com/en/>

**EU-Regulations & Directives :**

(only those which are directly quoted in the paper)

§ **Dublin Convention:**

[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=41997A0819\(01\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=41997A0819(01)&model=guichett) (visited at 17 August 2006)

§ **Council Regulation (EC) No 343/2003** *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* (18 February 2003), in: [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_050/l\\_05020030225en00010010.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_050/l_05020030225en00010010.pdf) (visited at 17 August 2006)

§ **Minimum standards on the reception of applicants for asylum in Member States:**  
Council Directive [2003/9/EC](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_031/l_03120030206en00180025.pdf) of 27 January 2003 [http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_031/l\\_03120030206en00180025.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_031/l_03120030206en00180025.pdf) (visited at 26 June 2006)

## 7. APPENDIX

### (A) DUBLIN CONVENTION

Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention

*Official Journal C 254 , 19/08/1997 P. 0001 - 0012*

CONVENTION determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (97/C 254/01)

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

HAVING REGARD to the objective, fixed by the European Council meeting in Strasbourg on 8 and 9 December 1989, of the harmonization of their asylum policies;

DETERMINED, in keeping with their common humanitarian tradition, to guarantee adequate protection to refugees in accordance with the terms of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967 relating to the Status of Refugees, hereinafter referred to as the 'Geneva Convention' and the 'New York Protocol' respectively;

CONSIDERING the joint objective of an area without internal frontiers in which the free movement of persons shall, in particular, be ensured, in accordance with the provisions of the Treaty establishing the European Economic Community, as amended by the Single European Act:

AWARE of the need, in pursuit of this objective, to take measures to avoid any situations arising, with the result that applicants for asylum are left in doubt for too long as regards the likely outcome of their applications and concerned to provide all applicants for asylum with a guarantee that their applications will be examined by one

of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum;

DESIRING to continue the dialogue with the United Nations High Commissioner for Refugees in order to achieve the above objectives;

DETERMINED to co-operate closely in the application of this Convention through various means, including exchanges of information,

HAVE DECIDED TO CONCLUDE THIS CONVENTION AND TO THIS END HAVE DESIGNATED AS THEIR PLENIPOTENTIARIES:

HIS MAJESTY THE KING OF THE BELGIANS,

Melchior WATHELET

Deputy Prime Minister, Minister for Justice, Small and Medium-sized Businesses and the Self-Employed

HER MAJESTY THE QUEEN OF DENMARK,

Hans ENGELL

Minister for Justice

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

Dr. Helmut RÜCKRIEGEL

Ambassador of the Federal Republic of Germany at Dublin

Wolfgang SCHÄUBLE

Federal Minister for the Interior

THE PRESIDENT OF THE HELLENIC REPUBLIC,

Ioannis VASSILIADES

Minister for Public Order

HIS MAJESTY THE KING OF SPAIN,

José Luis CORCUERA

Minister for the Interior

THE PRESIDENT OF THE FRENCH REPUBLIC,

Pierre JOXE

Minister for the Interior

THE PRESIDENT OF IRELAND,

Ray BURKE

Minister for Justice and Minister for Communications

THE PRESIDENT OF THE ITALIAN REPUBLIC,

Antonio GAVA

Minister for the Interior

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

Marc FISCHBACH

Minister for Education, Minister for Justice, Minister for the Civil Service

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

Ernst Maurits Henricus HIRSCH BALLIN

Minister for Justice

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

Manuel PEREIRA

Minister for the Interior

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND,

David WADDINGTON

Secretary of State for the Home Department (Home Secretary)

Sir Nicholas Maxted FENN, KCMG

Ambassador of the United Kingdom of Great Britain and Northern Ireland at Dublin

WHO, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

1. For the purposes of this Convention:

(a) 'Alien` means: any person other than a national of a Member State;

(b) 'Application for asylum` means: a request whereby an alien seeks from a Member State protection under the Geneva Convention by claiming refugee status within the meaning of Article 1 of the Geneva Convention, as amended by the New York Protocol;

(c) 'Applicant for asylum` means: an alien who has made an application for asylum in respect of which a final decision has not yet been taken;

(d) 'Examination of an application for asylum` means: all the measures for examination, decisions or rulings given by the competent authorities on an application

for asylum, except for procedures to determine the State responsible for examining the application for asylum pursuant to this Convention;

(e) 'Residence permit' means: any authorization issued by the authorities of a Member State authorizing an alien to stay in its territory, with the exception of visas and 'stay permits' issued during examination of an application for a residence permit or for asylum;

(f) 'Entry visa' means: authorization or decision by a Member State to enable an alien to enter its territory, subject to the other entry conditions being fulfilled;

(g) 'Transit visa' means: authorization or decision by a Member State to enable an alien to transit through its territory or pass through the transit zone of a port or airport, subject to the other transit conditions being fulfilled.

2. The nature of the visa shall be assessed in the light of the definitions set out in paragraph 1 (f) and (g).

#### Article 2

The Member States reaffirm their obligations under the Geneva Convention, as amended by the New York Protocol, with no geographic restriction of the scope of these instruments, and their commitment to co-operating with the services of the United Nations High Commissioner for Refugees in applying these instruments.

#### Article 3

1. Member States undertake to examine the application of any alien who applies at the border or in their territory to any one of them for asylum.

2. That application shall be examined by a single Member State, which shall be determined in accordance with the criteria defined in this Convention. The criteria set out in Articles 4 to 8 shall apply in the order in which they appear.

3. That application shall be examined by that State in accordance with its national laws and its international obligations.

4. Each Member State shall have the right to examine an application for asylum submitted to it by an alien, even if such examination is not its responsibility under the criteria defined in this Convention, provided that the applicant for asylum agrees thereto.

The Member State responsible under the above criteria is then relieved of its obligations, which are transferred to the Member State which expressed the wish to examine the application. The latter State shall inform the Member State responsible under the said criteria if the application has been referred to it.

5. Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol.

6. The process of determining the Member State responsible for examining the application for asylum under this Convention shall start as soon as an application for asylum is first lodged with a Member State.

7. An applicant for asylum who is present in another Member State and there lodges an application for asylum after withdrawing his or her application during the process of determining the State responsible shall be taken back, under the conditions laid down in Article 13, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the State responsible for examining the application for asylum.

This obligation shall cease to apply if the applicant for asylum has since left the territory of the Member States for a period of at least three months or has obtained from a Member State a residence permit valid for more than three months.

#### Article 4

Where the applicant for asylum has a member of his family who has been recognized as having refugee status within the meaning of the Geneva Convention, as amended by the New York Protocol, in a Member State and is legally resident there, that State shall be responsible for examining the application, provided that the persons concerned so desire.

The family member in question may not be other than the spouse of the applicant for asylum or his or her unmarried child who is a minor of under eighteen years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under eighteen years.

#### Article 5

1. Where the applicant for asylum is in possession of a valid residence permit, the Member State which issued the permit shall be responsible for examining the application for asylum.

2. Where the applicant for asylum is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, except in the following situations:

(a) if the visa was issued on the written authorization of another Member State, that State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, *inter alia* for security reasons, the agreement of the latter shall not constitute written authorization within the meaning of this provision.

(b) where the applicant for asylum is in possession of a transit visa and lodges his application in another Member State in which he is not subject to a visa requirement, that State shall be responsible for examining the application for asylum.

(c) where the applicant for asylum is in possession of a transit visa and lodges his application in the State which issued him or her with the visa and which has received written confirmation from the diplomatic or consular authorities of the Member State of destination that the alien for whom the visa requirement was waived fulfilled the conditions for entry into that State, the latter shall be responsible for examining the application for asylum.

3. Where the applicant for asylum is in possession of more than one valid residence permit or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:

(a) the State which issued the residence permit conferring the right to the longest period of residency or, where the periods of validity of all the permits are identical, the State which issued the residence permit having the latest expiry date;

(b) the State which issued the visa having the latest expiry date where the various visas are of the same type;

(c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the State which issued the visa having the latest expiry date. This provision shall not apply where the applicant is in possession of one or more transit visas, issued on presentation of an entry visa for another Member State. In that case, that Member State shall be responsible.

4. Where the applicant for asylum is in possession only of one or more residence permits which have expired less than two years previously or one or more visas which have expired less than six months previously and enabled him or her actually to enter the territory of a Member State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply for such time as the alien has not left the territory of the Member States.

Where the applicant for asylum is in possession of one or more residence permits which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her to enter the territory of a Member State and where an alien has not left Community territory, the Member State in which the application is lodged shall be responsible.

#### Article 6

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

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

#### Article 7

1. The responsibility for examining an application for asylum shall be incumbent upon the Member State responsible for controlling the entry of the alien into the territory of the Member States, except where, after legally entering a Member State in which the need for him or her to have a visa is waived, the alien lodges his or her application for asylum in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter State shall be responsible for examining the application for asylum.

2. Pending the entry into force of an agreement between Member States on arrangements for crossing external borders, the Member State which authorizes transit without a visa through the transit zone of its airports shall not be regarded as responsible for control on entry, in respect of travellers who do not leave the transit zone.

3. Where the application for asylum is made in transit in an airport of a Member State, that State shall be responsible for examination.

#### Article 8

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

#### Article 9

Any Member State, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on family or cultural grounds, examine an application for asylum at the request of another Member State, provided that the applicant so desires.

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

## Article 10

1. The Member State responsible for examining an application for asylum according to the criteria set out in this Convention shall be obliged to:

(a) Take charge under the conditions laid down in Article 11 of an applicant who has lodged an application for asylum in a different Member State,

(b) Complete the examination of the application for asylum,

(c) Readmit or take back under the conditions laid down in Article 13 an applicant whose application is under examination and who is irregularly in another Member State,

(d) Take back, under the conditions laid down in Article 13, an applicant who has withdrawn the application under examination and lodged an application in another Member State,

(e) Take back, under the conditions laid down in Article 13, an alien whose application is has rejected and who is illegally in another Member State.

2. If a Member State issues to the applicant a residence permit valid for more than three months, the obligations specified in paragraph 1 (a) to (e) shall be transferred to that Member State.

3. The obligations specified in paragraph 1 (a) to (d) shall cease to apply if the alien concerned has left the territory of the Member States for a period of at least three months.

4. The obligations specified in paragraph 1 (d) and (e) shall cease to apply if the State responsible for examining the application for asylum, following the withdrawal or rejection of the application, takes and enforces the necessary measures for the alien to return to his country of origin or to another country which he may lawfully enter.

## Article 11

1. If a Member State with which an application for asylum 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 the six months following the date on which the application was lodged, call upon the other Member State to take charge of the applicant.

If the request that charge be taken is not made within the six-month time limit, responsibility for examining the application for asylum shall rest with the State in which the application was lodged.

2. The request that charge be taken shall contain indications enabling the authorities of that other State to ascertain whether it is responsible on the basis of the criteria laid down in this Convention.

3. The State responsible in accordance with those criteria shall be determined on the basis of the situation obtaining when the applicant for asylum first lodged his application with a Member State.

4. The Member State shall pronounce judgment on the request within three months of receipt of the claim. Failure to act within that period shall be tantamount to accepting the claim.

5. Transfer of the applicant for asylum from the Member State where the application was lodged to the Member State responsible must take place not later than one month

after acceptance of the request to take charge or one month after the conclusion of any proceedings initiated by the alien challenging the transfer decision if the proceedings are suspensory.

6. Measures taken under Article 18 may subsequently determine the details of the process by which applicants shall be taken in charge.

#### Article 12

Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible for examining the application for asylum shall be made by the Member State on whose territory the applicant is. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purpose of applying this Convention, be regarded as the Member State with which the application for asylum was lodged.

#### Article 13

1. An applicant for asylum shall be taken back in the cases provided for in Article 3 (7) and in Article 10 as follows:

(a) the request for the applicant to be taken back must provide indications enabling the State with which the request is lodged to ascertain that it is responsible in accordance with Article 3 (7) and with Article 10;

(b) the State called upon to take back the applicant shall give an answer to the request within eight days of the matter being referred to it. Should it acknowledge responsibility, it shall then take back the applicant for asylum as quickly as possible and at the latest one month after it agrees to do so.

2. Measures taken under Article 18 may at a later date set out the details of the procedure for taking the applicant back.

#### Article 14

1. Member States shall conduct mutual exchanges with regard to:

- national legislative or regulatory measures or practices applicable in the field of asylum,

- statistical data on monthly arrivals of applicants for asylum, and their breakdown by nationality. Such information shall be forwarded quarterly through the General Secretariat of the Council of the European Communities, which shall see that it is circulated to the Member States and the Commission of the European Communities and to the United Nations High Commissioner for Refugees.

2. The Member States may conduct mutual exchanges with regard to:

- general information on new trends in applications for asylum,

- general information on the situation in the countries of origin or of provenance of applicants for asylum.

3. If the Member State providing the information referred to in paragraph 2 wants it to be kept confidential, the other Member States shall comply with this wish.

#### Article 15

1. Each Member State shall communicate to any Member State that so requests such information on individual cases as is necessary for:

- determining the Member State which is responsible for examining the application for asylum,
- examining the application for asylum,
- implementing any obligation arising under this Convention.

2. This information may only cover:

- 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),
- identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.),
- other information necessary for establishing the identity of the applicant,
- places of residence and routes travelled,
- residence permits or visas issued by a Member State,
- the place where the application was lodged,
- the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, one Member State may request another Member State to let it know on what grounds the applicant for asylum bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. It is for the Member State from which the information is requested to decide whether or not to impart it. In any event, communication of the information requested shall be subject to the approval of the applicant for asylum.

4. This exchange of information shall be effected at the request of a Member State and may only take place between authorities the designation of which by each Member State has been communicated to the Committee provided for under Article 18.

5. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may only be communicated to the authorities and courts and tribunals entrusted with:

- determining the Member State which is responsible for examining the application for asylum,
- examining the application for asylum,
- implementing any obligation arising under this Convention.

6. The Member State that forwards the information shall ensure that it is accurate and up-to-date.

If it appears that this Member State has supplied information which is inaccurate or which should not have been forwarded, the recipient Member State shall be

immediately informed thereof. They shall be obliged to correct such information or to have it erased.

7. An applicant for asylum shall have the right to receive, on request, the information exchanged concerning him or her, for such time as it remains available.

If he or she establishes that such information is inaccurate or should not have been forwarded, he or she shall have the right to have it corrected or erased. This right shall be exercised in accordance with the conditions laid down in paragraph 6.

8. In each Member State concerned, the forwarding and receipt of exchanged information shall be recorded.

9. Such information shall be kept for a period not exceeding that necessary for the ends for which it was exchanged. The need to keep it shall be examined at the appropriate moment by the Member State concerned.

10. In any event, the information thus communicated shall enjoy at least the same protection as is given to similar information in the Member State which receives it.

11. If data are not processed automatically but are handled in some other form, every Member State shall take the appropriate measures to ensure compliance with this Article by means of effective controls. If a Member State has a monitoring body of the type mentioned in paragraph 12, it may assign the control task to it.

12. If one or more Member States wish to computerize all or part of the information mentioned in paragraphs 2 and 3, such computerization is only possible if the countries concerned have adopted laws applicable to such processing which implement the principles of the Strasbourg Convention of 28 January 1981 for the Protection of Individuals, with regard to automatic processing of personal data and if they have entrusted an appropriate national body with the independent monitoring of the processing and use of data forwarded pursuant to this Convention.

#### Article 16

1. Any Member State may submit to the Committee referred to in Article 18 proposals for revision of this Convention in order to eliminate difficulties in the application thereof.

2. If it proves necessary to revise or amend this Convention pursuant to the achievement of the objectives set out in Article 8a of the Treaty establishing the European Economic Community, such achievement being linked in particular to the establishment of a harmonized asylum and a common visa policy, the Member State holding the Presidency of the Council of the European Communities shall organize a meeting of the Committee referred to in Article 18.

3. Any revision of this Convention or amendment hereto shall be adopted by the Committee referred to in Article 18. It shall enter into force in accordance with the provisions of Article 22.

#### Article 17

1. If a Member State experiences major difficulties as a result of a substantial change in the circumstances obtaining on conclusion of this Convention, the State in question may bring the matter before the Committee referred to in Article 18 so that the latter may put to the Member States measures to deal with the situation or adopt such revisions or amendments to this Convention as appear necessary, which shall enter into force as provided for in Article 16 (3).

2. If, after six months, the situation mentioned in paragraph 1 still obtains, the Committee, acting in accordance with Article 18 (2), may authorize the Member State

affected by that change to suspend temporarily the application of the provisions of this Convention, without such suspension being allowed to impede the achievement of the objectives mentioned in Article 8a of the Treaty establishing the European Economic Community or contravene other international obligations of the Member States.

3. During the period of suspension, the Committee shall continue its discussions with a view to revising the provisions of this Convention, unless it has already reached an agreement.

#### Article 18

1. A Committee shall be set up comprising one representative of the Government of each Member State.

The Committee shall be chaired by the Member State holding the Presidency of the Council of the European Communities.

The Commission of the European Communities may participate in the discussions of the Committee and the working parties referred to in paragraph 4.

2. The Committee shall examine, at the request of one or more Member States, any question of a general nature concerning the application or interpretation of this Convention.

The Committee shall determine the measures referred to in Article 11 (6) and Article 13 (2) and shall give the authorization referred to in Article 17 (2).

The Committee shall adopt decisions revising or amending the Convention pursuant to Articles 16 and 17.

3. The Committee shall take its decisions unanimously, except where it is acting pursuant to Article 17 (2), in which case it shall take its decisions by a majority of two-thirds of the votes of its members.

4. The Committee shall determine its rules of procedure and may set up working parties.

The Secretariat of the Committee and of the working parties shall be provided by the General Secretariat of the Council of the European Communities.

#### Article 19

As regards the Kingdom of Denmark, the provisions of this Convention shall not apply to the Faroe Islands nor to Greenland unless a declaration to the contrary is made by the Kingdom of Denmark. Such a declaration may be made at any time by a communication to the Government of Ireland which shall inform the Governments of the other Member States thereof.

As regards the French Republic, the provisions of this Convention shall apply only to the European territory of the French Republic.

As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to the territory of the Kingdom of the Netherlands in Europe.

As regards the United Kingdom the provisions of this Convention shall apply only to the United Kingdom of Great Britain and Northern Ireland. They shall not apply to the European territories for whose external relations the United Kingdom is responsible unless a declaration to the contrary is made by the United Kingdom. Such a declaration may be made at any time by a communication to the Government of Ireland, which shall inform the Governments of the other Member States thereof.

## Article 20

This Convention shall not be the subject of any reservations.

## Article 21

1. This Convention shall be open for the accession of any State which becomes a member of the European Communities. The instruments of accession will be deposited with the Government of Ireland.

2. It shall enter into force in respect of any State which accedes thereto on the first day of the third month following the deposit of its instrument of accession.

## Article 22

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Ireland.

2. The Government of Ireland shall notify the Governments of the other Member States of the deposit of the instruments of ratification, acceptance or approval.

3. This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification, acceptance or approval by the last signatory State to take this step.

The State with which the instruments of ratification, acceptance or approval are deposited shall notify the Member States of the date of entry into force of this Convention.

En fe de lo cual, los plenipotenciarios abajo firmantes suscriben el presente Convenio.

Til bekræftelse heraf har undertegnede befuldmægtigede underskrevet denne konvention.

Zu Urkund dessen haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Übereinkommen gesetzt.

Ὁὰ ὁβόουός οὐί αίυόŷñù, ιέ εŰόυέέ ὁέçñáŷŷóéíé ὁŰŷañáøáí ὀçí ὁñŷŷóá ὀŷŷááόç.

In witness whereof, the undersigned plenipotentiaries have hereunto set their hands.

En foi de quoi, les plénipotentiaires soussignés ont apposé leurs signatures au bas de la présente convention.

Dá fhianú sin, chuir na Lánchumhachtaigh thíos-sínithe a lámh leis an gCoinbhinsiún seo.

In fede di che, i plenipotenziari sottoscritti hanno apposto le loro firme in calce alla presente convenzione.

Ten blijke waarvan de ondergetekende gevolmachtigden deze overeenkomst hebben ondertekend.

Em fé do que os plenipotenciários abaixo assinados apuseram as suas assinaturas no final da presente convenção.

Hecho en Dublín el quince de junio de mil novecientos noventa, en un ejemplar único, en lenguas alemana, inglesa, danesa, española, francesa, griega, irlandesa, italiana,

neerlandesa y portuguesa, dando fe asimismo los textos redactados en cada una de dichas lenguas depositados en los archivos del Gobierno de Irlanda que transmitirá una copia certificada conforme a cada uno de los Estados miembros.

Udfærdiget i Dublin, den femtende juni nitten hundrede og halvfems i ét eksemplar på dansk, engelsk, fransk, græsk, irsk, italiensk, nederlandsk, portugisisk, spansk og tysk, hvilke tekster har samme gyldighed og deponeres i arkiverne hos Irlands regering, som sender en bekræftet kopi til hver af de andre medlemsstater.

Geschehen zu Dublin am fünfzehnten Juni neunzehnhundertneunzig, in einer Urschrift in dänischer, deutscher, englischer, französischer, griechischer, irischer, italienischer, niederländischer, portugiesischer und spanischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; sie wird im Archiv der Regierung von Irland hinterlegt, die den übrigen Mitgliedstaaten jeweils eine beglaubigte Abschrift übermittelt.

„Aşa doi Aioaebri odoe aYeaDYioa EriBri -Beea aIaeaeuoea aIaIPIoa, oa Yia iuri  
aioBoodi ooc aaeeeb, aaeeeb, aaiaieeb, aieeb, aeecieeb, eneaiaeb, eodaieeb,  
eaaeeeb, ieeaaieeb eae iioiaaeeeeb aepoa. Oa eaaIaia ooeo aepoaa aooYo aIae  
aIbri aoeaieeU eae aIae eoaooaeaiYia oaa an-aBa oco eoaYieco oco aIaeiaBao  
c iIba eae aaeaeUoaee aeoeonYii aIaIaaoi oa eAba enUoio Yieco.

Done at Dublin this fifteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, the texts drawn up in each of these languages being equally authentic and being deposited in the archives of the Government of Ireland which shall transmit a certified copy to each of the other Member States.

Fait à Dublin, le quinze juin mil neuf cent quatre-vingt-dix, en un exemplaire unique, en langues allemande, anglaise, danoise, espagnole, française, grecque, irlandaise, italienne, néerlandaise et portugaise, les textes établis dans chacune de ces langues faisant également foi et étant déposés dans les archives du gouvernement d'Irlande qui transmettra une copie certifiée conforme à chacun des autres États membres.

Arna dhéanamh i mBaile Átha Cliath ar an gcúigiú lá déag de Mheitheamh sa bhliain míle naoi gcéad nócha, i scribhinn bhunaidh amháin sa Bhéarla, sa Danmhairgis, sa Fhraincis, sa Ghaeilge, sa Ghearmáinis, sa Ghréigis, san Iodáilis, san Ollainnis, sa Phortaingéilis agus sa Spáinnis agus comhúdarás ag na téacsanna i ngach ceann de na teangacha sin; déanfar iad a thaisceadh i gcartlann Rialtas na hÉireann agus cuirfidh an Rialtas sin cóip dheimhnithe chuig gach ceann de na Ballstáit eile.

Fatto a Dublino, addì quindici giugno millenovecentonovanta, in esemplare unico, nelle lingue danese, francese, greca, inglese, irlandese, italiana, olandese, portoghese, spagnola e tedesca, il cui testo in ciascuna di queste lingue fa ugualmente fede ed è depositato negli archivi del governo d'Irlanda che provvederà a rimetterne copia certificata conforme a ciascuno degli altri Stati membri.

Gedaan te Dublin, de vijftiende juni negentienhonderd negentig, in één exemplaar in de Deense, de Duitse, de Engelse, de Spaanse, de Franse, de Griekse, de Ierse, de Italiaanse, de Nederlandse en de Portugese taal, zijnde de teksten in elk van deze talen gelijkelijk authentiek en nedergelegd in het archief van de regering van Ierland, die een voor eensluidend gewaarmerkt afschrift daarvan toezendt aan alle overige lidstaten.

Feito em Dublin, em quinze de Junho de mil novecentos e noventa, num único exemplar, nas línguas alemã, dinamarquesa, espanhola, francesa, grega, inglesa, irlandesa, italiana, neerlandesa e portuguesa, fazendo fé qualquer dos textos, que serão depositados nos arquivos do Governo da Irlanda, que enviará uma cópia autenticada a cada um dos outros Estados-membros.

Pour Sa Majesté le Roi des Belges

Voor Zijne Majesteit de Koning der Belgen

>REFERENCE TO A GRAPHIC<

For Hendes Majestæt Danmarks Dronning

>REFERENCE TO A GRAPHIC<

Für den Präsidenten der Bundesrepublik Deutschland

>REFERENCE TO A GRAPHIC<

Ἀέά οἱ Ἐθνῶν ὁπὸ Ἀέεçíεεῖο Ἀçíēñáoßáo

>REFERENCE TO A GRAPHIC<

Por Su Majestad el Rey de España

>REFERENCE TO A GRAPHIC<

Pour le Président de la République française

>REFERENCE TO A GRAPHIC<

Thar ceann Uachtarán na hÉireann

For the President of Ireland

>REFERENCE TO A GRAPHIC<

Per il presidente della Repubblica italiana

>REFERENCE TO A GRAPHIC<

Pour Son Altesse Royale le Grand-Duc de Luxembourg

>REFERENCE TO A GRAPHIC<

Voor Hare Majesteit de Koningin der Nederlanden

>REFERENCE TO A GRAPHIC<

Pelo Presidente da República Portuguesa

>REFERENCE TO A GRAPHIC<

For Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland

>REFERENCE TO A GRAPHIC<

**(B) DUBLIN II REGULATION**

25.2.2003

EN

Official Journal of the European Union

L 50/1

**I***(Acts whose publication is obligatory)***COUNCIL REGULATION (EC) No 343/2003****of 18 February 2003****establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,Having regard to the opinion of the European Parliament <sup>(2)</sup>,Having regard to the opinion of the European Economic and Social Committee <sup>(3)</sup>,

Whereas:

- (1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. In this respect, and without affecting the responsibility criteria laid down in this Regulation, Member States, all respecting the principle of non-refoulement, are considered as safe countries for third-country nationals.
- (3) The Tampere conclusions also stated that this system should include, in the short term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.
- (4) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly 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.

- (5) As regards the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities <sup>(4)</sup>, signed in Dublin on 15 June 1990 (hereinafter referred to as the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.
- (6) Family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application.
- (7) The processing together of the asylum applications of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent. Member States should be able to derogate from the responsibility criteria, so as to make it possible to bring family members together where this is necessary on humanitarian grounds.
- (8) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community policies regarding the conditions of entry and stay of third country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

<sup>(1)</sup> OJ C 304 E, 30.10.2001, p. 192.<sup>(2)</sup> Opinion of 9 April 2002 (not yet published in the Official Journal).<sup>(3)</sup> OJ C 125, 27.5.2002, p. 28.<sup>(4)</sup> OJ C 254, 19.8.1997, p. 1.

- (9) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communications between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.
- (10) Continuity between the system for determining the Member State responsible established by the Dublin Convention and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention <sup>(1)</sup>.
- (11) The operation of the Eurodac system, as established by Regulation (EC) No 2725/2000 and in particular the implementation of Articles 4 and 8 contained therein should facilitate the implementation of this Regulation.
- (12) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.
- (13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(2)</sup>.
- (14) The application of the Regulation should be evaluated at regular intervals.
- (15) The Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union <sup>(3)</sup>. In particular, it seeks to ensure full observance of the right to asylum guaranteed by Article 18.
- (16) Since the objective of the proposed measure, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, cannot be sufficiently achieved by the Member States and, given the scale and effects, can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (17) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation.
- (18) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.
- (19) The Dublin Convention remains in force and continues to apply between Denmark and the Member States that are bound by this Regulation until such time an agreement allowing Denmark's participation in the Regulation has been concluded.

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

#### SUBJECT-MATTER AND DEFINITIONS

##### Article 1

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

##### Article 2

For the purposes of this Regulation:

- (a) 'third-country national' means anyone who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;
- (b) 'Geneva Convention' means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;
- (c) 'application for asylum' means the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately;
- (d) 'applicant' or 'asylum seeker' means a third country national who has made an application for asylum in respect of which a final decision has not yet been taken;

<sup>(1)</sup> OJ L 316, 15.12.2000, p. 1.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(3)</sup> OJ C 364, 18.12.2000, p. 1.

25.2.2003

EN

Official Journal of the European Union

L 50/3

- (e) 'examination of an asylum application' means any examination of, or decision or ruling concerning, an application for asylum by the competent authorities in accordance with national law except for procedures for determining the Member State responsible in accordance with this Regulation;
- (f) 'withdrawal of the asylum application' means the actions by which the applicant for asylum terminates the procedures initiated by the submission of his application for asylum, in accordance with national law, either explicitly or tacitly;
- (g) 'refugee' means any third-country national qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;
- (h) 'unaccompanied minor' means unmarried persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;
- (i) 'family members' means insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States:
- (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;
  - (ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;
  - (iii) the father, mother or guardian when the applicant or refugee is a minor and unmarried;
- (j) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national to stay in its territory, including the documents substantiating the authorisation to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the responsible Member State as established in this Regulation or during examination of an application for asylum or an application for a residence permit;
- (k) 'visa' means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:
- (i) 'long-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;
  - (ii) 'short-stay visa' means the authorisation or decision of a Member State required for entry for an intended stay in that State or in several Member States for a period whose total duration does not exceed three months;
  - (iii) 'transit visa' means the authorisation or decision of a Member State for entry for transit through the territory of that Member State or several Member States, except for transit at an airport;
  - (iv) 'airport transit visa' means the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight.

## CHAPTER II

## GENERAL PRINCIPLES

## Article 3

1. Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant.

3. Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention.

4. The asylum seeker shall be informed in writing in a language that he or she may reasonably be expected to understand regarding the application of this Regulation, its time limits and its effects.

## Article 4

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.

2. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point (i), shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for asylum of that parent or guardian, even if the minor is not individually an asylum seeker. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for asylum was lodged.

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

5. An asylum seeker who is present in another Member State and there lodges an application for asylum after withdrawing his application during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Article 20, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum.

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

### CHAPTER III

#### HIERARCHY OF CRITERIA

##### Article 5

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State.

##### Article 6

Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor.

In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.

##### Article 7

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

##### Article 8

If the asylum seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.

##### Article 9

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum.

2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, unless the visa was issued when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision.

3. Where the asylum seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:

- (a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;
- (b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;
- (c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

25.2.2003

EN

Official Journal of the European Union

L 50/5

4. Where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

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

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

#### Article 10

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), including the data referred to in Chapter III of Regulation (EC) No 2725/2000, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum. This responsibility shall cease 12 months after the date on which the irregular border crossing took place.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), that the asylum seeker — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — at the time of lodging the application has been previously living for a continuous period of at least five months in a Member State, that Member State shall be responsible for examining the application for asylum.

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application.

#### Article 11

1. If a third-country national enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for asylum.

2. The principle set out in paragraph 1 does not apply, if the third-country national lodges his or her application for asylum in another Member State, in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter Member State shall be responsible for examining the application for asylum.

#### Article 12

Where the application for asylum is made in an international transit area of an airport of a Member State by a third-country national, that Member State shall be responsible for examining the application.

#### Article 13

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

#### Article 14

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

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

### CHAPTER IV

#### HUMANITARIAN CLAUSE

#### Article 15

1. Any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case that Member State shall, at the request of another Member State, examine the application for asylum of the person concerned. The persons concerned must consent.

2. In cases in which the person concerned is dependent on the assistance of the other on account of pregnancy or a newborn child, serious illness, severe handicap or old age, Member States shall normally keep or bring together the asylum seeker with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin.

3. If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor.

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

5. 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 27(2).

#### CHAPTER V

#### TAKING CHARGE AND TAKING BACK

##### Article 16

1. The Member State responsible for examining an application for asylum under this Regulation shall be obliged to:

- (a) take charge, under the conditions laid down in Articles 17 to 19, of an asylum seeker who has lodged an application in a different Member State;
- (b) complete the examination of the application for asylum;
- (c) take back, under the conditions laid down in Article 20, an applicant whose application is under examination and who is in the territory of another Member State without permission;
- (d) take back, under the conditions laid down in Article 20, an applicant who has withdrawn the application under examination and made an application in another Member State;
- (e) take back, under the conditions laid down in Article 20, a third-country national whose application it has rejected and who is in the territory of another Member State without permission.

2. Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.

3. The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.

4. The obligations specified in paragraph 1(d) and (e) shall likewise cease once the Member State responsible for examining the application has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.

##### Article 17

1. Where a Member State with which an application for asylum 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 three months 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 of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. This period shall be at least one week.

3. In both cases, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 18(3) and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 27(2).

##### Article 18

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.

2. In the procedure for determining the Member State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence shall be used.

25.2.2003

EN

Official Journal of the European Union

L 50/7

3. In accordance with the procedure referred to in Article 27(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

(a) Proof:

- (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.
- (ii) The Member States shall provide the Committee provided for in Article 27 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.

(b) Circumstantial evidence:

- (i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them.
- (ii) Their evidentiary value, in relation to the responsibility for examining the application for asylum shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article 17(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time limit requested, but in any case within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the provisions for proper arrangements for arrival.

#### Article 19

1. Where the requested Member State accepts that it should take charge of an applicant, the Member State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit for carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this deci-

sion shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.

3. The transfer of the applicant from the Member State in which the application for asylum was lodged to the Member State responsible shall be carried out in accordance with the national law of the first Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken or of the decision on an appeal or review where there is a suspensive effect.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 27(2).

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

4. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).

#### Article 20

1. An asylum seeker shall be taken back in accordance with Article 4(5) and Article 16(1)(c), (d) and (e) as follows:

- (a) the request for the applicant to be taken back must contain information enabling the requested Member State to check that it is responsible;
- (b) the Member State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it as quickly as possible and under no circumstances exceeding a period of one month from the referral. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks;
- (c) where the requested Member State does not communicate its decision within the one month period or the two weeks period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;
- (d) a Member State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;

(e) the requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a laissez passer of the design adopted in accordance with the procedure referred to in Article 27(2).

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

2. Where the transfer does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 27(2).

4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).

#### CHAPTER VI

#### ADMINISTRATIVE COOPERATION

##### Article 21

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:

- (a) the determination of the Member State responsible for examining the application for asylum;
- (b) examining the application for asylum;
- (c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

- (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

(b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

(c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000;

(d) places of residence and routes travelled;

(e) residence documents or visas issued by a Member State;

(f) the place where the application was lodged;

(g) the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for asylum, the Member State responsible may request another Member State to let it know on what grounds the asylum seeker bases his application and, where applicable, the grounds for any decisions taken concerning the applicant. The Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm the essential interests of the Member State or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for asylum.

4. Any request for information shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means asylum seekers enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.

5. The requested Member State shall be obliged to reply within six weeks.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission, which shall inform the other Member States thereof.

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

- (a) the determination of the Member State responsible for examining the application for asylum;
- (b) examining the application for asylum;
- (c) implementing any obligation arising under this Regulation.

25.2.2003

EN

Official Journal of the European Union

L 50/9

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that that Member State has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

9. The asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him.

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(1)</sup>, in particular because it is incomplete or inaccurate, he is entitled to have it corrected, erased or blocked.

The authority correcting, erasing or blocking the data shall inform, as appropriate, the Member State transmitting or receiving the information.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which it is exchanged.

12. Where the data is not processed automatically or is not contained, or intended to be entered, in a file, each Member State should take appropriate measures to ensure compliance with this Article through effective checks.

#### Article 22

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

2. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 27(2).

#### Article 23

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

(a) exchanges of liaison officers;

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

(b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back asylum seekers;

2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall verify that the arrangements referred to in paragraph 1(b) do not infringe this Regulation.

### CHAPTER VII

#### TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

##### Article 24

1. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (Dublin Convention).

2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, where an application has been lodged after the date mentioned in the second paragraph of Article 29, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article 10(2).

3. Where, in Regulation (EC) No 2725/2000 reference is made to the Dublin Convention, such reference shall be taken to be a reference made to this Regulation.

##### Article 25

1. Any period of time prescribed in this Regulation shall be calculated as follows:

(a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

(b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

(c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

2. Requests and replies shall be sent using any method that provides proof of receipt.

*Article 26*

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

*Article 27*

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall draw up its rules of procedure.

*Article 28*

At the latest three years after the date mentioned in the first paragraph of Article 29, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary

amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report at the latest six months before that time limit expires.

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

*Article 29*

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply to asylum applications lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the application was made. The Member State responsible for the examination of an asylum application submitted before that date shall be determined in accordance with the criteria set out in the Dublin Convention.

This Regulation shall be binding in its entirety and directly applicable in the Member States in conformity with the Treaty establishing the European Community.

Done at Brussels, 18 February 2003.

*For the Council*

*The President*

N. CHRISTODOULAKIS