EUROPEAN UNION
THE COUNCIL

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**N O T E**

from: General Secretariat of the Council

to : Asylum Working Party

Subject: Compilation of texts on European practice with respect to asylum
(March 1996 update)

Please note that henceforth this compilation will be updated annually, as a rule at the beginning of the year, depending on the availability of the texts approved by the latest JHA Council and finalized by the Legal/Linguistic Experts.

In future the updated version will contain only new texts, which will, however, be accompanied by a full summary of all the texts adopted.

# *COMPILATION OF TEXTS ON EUROPEAN PRACTICE*

# *WITH RESPECT TO ASYLUM*

**– March 1996 –**

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# PART I

## Dublin Convention

## and measures for its implementation

# CONVENTION

## DETERMINING THE STATE RESPONSIBLE FOR EXAMINING APPLICATIONS FOR ASYLUM LODGED IN ONE OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

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 cooperate 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 and Minister for matters
concerning the Netherlands Antilles and Aruba

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)

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, points (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 lodges an application for asylum there 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 a 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) Re-admit 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 it 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, points (a) to (e) shall be transferred to that Member State.

3. The obligations specified in paragraph 1, points (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, points (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 in 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 in 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 - 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 States 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 February 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. They 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.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ, οι κάτωθι πληρεξούσιοι υπέγραψαν την παρούσα σύμβαση.

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 VAARVAN 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.

ΕΓΙΝΕ στο Δουβλίνο στις δέκα πέντε Ιουνίου χίλια εννιακόσια ενενήντα, σε ένα μόνο αντίτυπο στην αγγλική, γαλλική, γερμανική, δανική, ελληνική, ιρλανδική, ισπανική, ιταλική, ολλανδική και πορτογαλική γλώσσα. Τα κείμενα στις γλώσσες αυτές είναι εξίσου αυθεντικά και είναι κατατεθειμένα στα αρχεία της κυβέρνησης της Ιρλανδίας η οποία θα διαβιβάσει επικυρωμένο αντίγραφο σε κάθε κράτος μέλος.

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 Etats membres.

ARNA DHEANAMH i mBaile Átha Cliath ar an gcúigiú lá déag de Mheitheamh sa bhliain míle naoi gcéad nócha, i scríbhinn 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 Lid-Staten.

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.

## B. DECLARATIONS IN THE MINUTES OF THE CONFERENCE OF IMMIGRATION MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

**(Dublin, 15 June 1990)**

The Ministers took note of the text in the Draft Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities.

The Ministers noted:

- that eleven Member States were in a position to sign the Convention;

- a statement by the Danish Minister to the effect that his country was unable to sign the Convention for the time being, and that he intended to continue in his attempts to ensure that Denmark would also be in a position to sign the Convention.

The Ministers of the eleven other Member States decided, therefore, to proceed with the signing of the Convention, on the understanding that if Denmark had not signed the Convention by 7 December 1990 the majority would then sign a convention to which the countries concerned would be the contracting parties.

The Ministers agreed to enter the following declarations in the Conference minutes:

1. The parties hereby declare that in order to ensure that applicants for asylum are given adequate guarantees they will keep open the option of extending the cooperation provided for in this Convention to other States by allowing them to subscribe, by means of appropriate instruments, to commitments identical to those laid down in this Convention.

2. The Member States take the view that it is not necessary to supplement Article 15(6) of the Convention by providing that only data which have been applied for in a permitted manner and in good faith may be communicated because they consider this goes without saying and that therefore no provisions to cover the point are needed.

3. The Member States agree to submit an annual report to the Committee on the checks they carry out on the appropriate use of the information referred to in Article 15.

4. The Member States note that other possibilities provided for under international law are not excluded should it prove impossible to reach an agreement with regard to the revision of the Convention pursuant to the provisions of Article 17(2).

5. The Member States consider that where this Convention is suspended at the initiative of one of them, in accordance with Article 17, the Convention shall continue to apply as between the other Member States.

6. The Member States consider that the draft Convention on the crossing of the external borders of the Member States of the European Communities is closely linked to other instruments necessary for the realization of Article 8a of the Treaty establishing the European Economic Community, and, in particular, to the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities. The Member States underline the need to intensify the work on the abovementioned draft with a view to finishing work before the end of 1990. The entry into force of the Convention on the crossing of the external borders of Member States should be brought about as soon as possible after the Convention on asylum comes into force.

7. The Federal Republic of Germany declares that the German Democratic Republic is not a foreign country in relation to the Federal Republic of Germany.

   With reference to the Declaration by the Government of the Federal Republic of Germany on the definition of the expression "German national" annexed to the Treaty establishing the European Economic Community of 25 March 1957, the Federal Republic of Germany would point out that this Convention is not applicable to Germans within the meaning of the abovementioned Declaration.

8. The Netherlands is acting on the principle that, as this is a matter concerning all twelve countries, the approval procedure will not commence in the capitals until Denmark has also signed the Convention. In any event, the Netherlands will not start this procedure until Denmark has signed.

9. The Netherlands declares that, as regards the definition of the concept of "application for asylum", the use of the term "seeks from a Member State protection" means that the person involved is an alien who, when submitting an application for asylum, claims refugee status and in that capacity requests permission to stay in the Member State in question.

10. The Kingdom of Spain declares that if, in accordance with the provisions of Article 19 of the Convention, the United Kingdom should decide to extend the applicability of the Convention to Gibraltar, such application will be without prejudice to the position of Spain in the dispute with the United Kingdom concerning sovereignty over the isthmus.

The original of these minutes, as signed by the Conference President and Secretary, will be deposited, along with the Convention, with the Irish Government.

A copy of these minutes will be sent to the signatory States.

## C. STANDARD FORM FOR DETERMINING THE STATE RESPONSIBLE FOR EXAMINING AN APPLICATION FOR ASYLUM

Photo

File number

Personal particulars of applicant

1. Surname (*)
   Maiden name ..... .....
2. Forename(s) .....
3. Does the applicant use/has he/she used other names? ☐ Yes ☐ No

   What are/were they? .....
4. Date of birth .....
5. Place of birth ..... .....
   District/region .....
   Country .....
6. Nationality (-ies) ..... .....
   (indicate all) .....
   (a) current .....
   (b) previous .....
   (c) none/stateless .....
7. Sex ☐ Male ☐ Female
8. Name of father .....
9. Name of mother .....
10. Marital status ☐ Single ☐ Married ☐ Widowed ☐ Divorced
11. Address
    - current ..... .....
    - in country of origin .....
12. Language(s) of origin .....

(*) In block capitals

Personal particulars of family members

13. Spouse : Surname (*), maiden name, forename(s), sex, date of birth, place of birth, place of residence (If the spouse is seeking asylum, a separate form should be completed)
. . . . . .
. . . . . .

14. Children: Surname (*), forename(s), sex, date of birth, place of birth, place of residence (indicate all children; a separate form should be completed for children over 16 years of age if asylum is sought)
(a) . . . . . .
(b) . . . . . .
(c) . . . . . .
(d) . . . . . .
(e) . . . . . .

15. Place and date of the application for asylum in the country of residence
. . . . . .

Previous asylum procedures

16. Has the asylum applicant ever previously applied for asylum or recognition of refugee status in the country of residence or in another country? ☐ Yes ☐ No

When and where? . . . . . .
. . . . . .

Was any decision taken on the application? ☐ No ☐ Not known ☐ Yes, refused

When was the decision taken? . . . . . .

Identity papers

17. National passport ☐ Yes ☐ No
Number . . . . . .
Issued on . . . . . .
By . . . . . .
Valid until . . . . . .

18. Document replacing passport ☐ Yes ☐ No
Number . . . . . .
Issued on . . . . . .
By . . . . . .
Valid until . . . . . .

19. Other document ☐ Yes ☐ No
Number . . . . . .
Issued on . . . . . .
By . . . . . .
Valid until . . . . . .

20. In the absence of documents: (specify whether they may have contained a valid visa or residence permit and, if so, indicate the issuing authority and date of issue as well as the period of validity) ☐ Departed without documents (When, where? . . . . . ) ☐ Lost ☐ Stolen
☐ Other reasons (Which? . . . . . )

Residence documents/visas

21. Does the asylum applicant possess a residence document/visa for the country of residence?

☐ Yes ☐ No
☐ Residence permit ☐ Entry visa
☐ Transit visa

Type .....
Issued on .....
By .....
Valid until .....

22. Does the asylum applicant possess a residence document/visa for another EU Member State?

☐ Yes ☐ No

Which State? .....

Type

☐ Residence permit ☐ Entry visa
☐ Transit visa

Issued on .....
By .....
Valid until .....

23. Does the asylum applicant possess a residence document/visa for a non-member country?

☐ Yes ☐ No

Which country? .....

Type

☐ Residence permit ☐ Entry visa
☐ Transit visa

Issued on .....
By .....
Valid until .....

Travel route

24. Country in which the journey was begun (country of origin or of provenance) .....

- Route followed from country where journey was begun to point of entry into country in which asylum is requested .....

- Dates and times of travel .....

- Crossed border on .....

  = At the authorized crossing point, or .....

  = Avoided border controls (entered illegally) at .....

  = Means of transport used

☐ Public transport (what form? .....)
☐ Own vehicle
☐ Other means (how? .....)

25. Did the asylum applicant enter via another European Union Member State?
    - Which was the first EU Member State entered?
    - Crossed border at authorized crossing point, or
    - Avoided border controls at
    - When?

☐ No
☐ Yes

. . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .
. . . . . .

Residence in another EU Member State

26. Residence in another EU Member State or States after leaving country in which journey was begun (country of origin/provenance)
    - In which State or States?
    - From - to
    - Place/exact address
    - Residence was
    - Period of validity of residence permit
    - Purpose of residence

☐ No
☐ Yes

. . . . . .
. . . . . .
. . . . . .
. . . . . .
☐ Authorized ☐ Unauthorized
. . . . . .
. . . . . .
. . . . . .
. . . . . .

Residence in third countries (non-members of EU)

27. Residence in third country or countries after leaving country in which journey was begun (country of origin/provenance)
    - In which third country or countries?
    - From - to
    - Place/exact address
    - Residence was
    - Period of validity of residence permit
    - Purpose of residence

☐ No
☐ Yes

. . . . . .
. . . . . .
. . . . . .
. . . . . .
☐ Hotel/boarding house ☐ Private accommodation
☐ Camp ☐ Other

(Where? . . . . . .)

☐ Authorized ☐ Unauthorized

. . . . . .
. . . . . .
. . . . . .
. . . . . .

- Was the asylum applicant in danger of being expelled/removed? ☐ Yes ☐ No
- To which country? .....
- Why? .....
- Reasons for continuing journey .....

Particulars of family members living in EU Member States or in third countries

28. (a) Is any member of the family recognized in a Member State or in a third country as having refugee status and as being legally resident there? ☐ Yes ☐ No

- Name of family member .....
- State .....
- Address in that State .....

(b) Do any of those concerned object to the examination of the application for asylum in that Member State or third country? ☐ Yes ☐ No

## D. GENERAL GUIDELINES FOR IMPLEMENTATION OF THE CONVENTION DETERMINING THE STATE RESPONSIBLE FOR EXAMINING APPLICATIONS FOR ASYLUM LODGED IN ONE OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

**(Lisbon, 11 and 12 June 1992)**

### (a) Lodging an application for asylum

An application for asylum is regarded as having been lodged from the moment the authorities of the Member State concerned have something in writing to that effect: either a form submitted by the applicant or an official statement drawn up by the authorities.

In the event of a non-written application, the period between the statement of intent and the drawing up of the official statement must be as short as possible.

### (b) Reaction to a request that charge be taken of an applicant (Article 11(4))

Any response to a request that charge be taken of an applicant with a view to staying the effect of the provision concerning the three-month deadline laid down in Article 11(4) must take the form of a written communication.

### (c) Exceeding the eight-day period (Article 13(1)(b))

1. Article 13(1)(b) of the Convention makes it very clear that Member States are obliged to respond to the application to take back the applicant within eight days of its submission.

2. In exceptional cases Member States may, within this eight-day period, give a provisional reply indicating the period within which they will give their final reply. The latter period must be as short as possible and may not in any circumstances exceed a period of one month from the date on which the provisional reply was sent.

3. If the Member State fails to react:

   - within the eight-day period mentioned in paragraph 1,

   - within the one-month period mentioned in paragraph 2,

   it will be considered to have agreed to take back the applicant for asylum.

(d) Measures to expel an alien **(Article 10(4))**

The Member State responsible for examining the application must provide proof that the alien has actually been expelled from the territory of the Twelve. These are therefore concrete acts of expulsion, involving an obligation relating to the result rather than the intention, which in effect means that in such cases the Member State must provide written proof.

(e) Departure from the territory of the Member States **(second subparagraph of Article 3(7))**

Where the applicant for asylum himself produces proof that he has left the territory of the Member States for more than three months, the second Member State may examine the veracity of that information, if necessary by contacting the third country in which the applicant claims to have been living during that time.

In other cases the Member State in which the initial application was lodged has to provide proof, in particular of the date of departure and the destination of the applicant for asylum. In the context of co-operation between Member States, the Member State in which the second application was lodged is best able to give the date on which the applicant for asylum returned to that State.

(f) Exceptions where the applicant for asylum is in possession of a visa (Article 5(2))

Article 5(2) provides for three separate cases where the responsibility of a Member State for examining the application for asylum ceases even if the applicant for asylum is in possession of a valid visa issued by that State.

The first exception (subparagraph (a)) concerns a visa issued on the authorization of another Member State; as a general rule, exceptional cases should be proved by the Member States which invoked them.

The second exception (subparagraph (b)) arises from a situation in which an application is lodged in a State in which the applicant is not subject to a visa requirement; there will be no need to seek proof since the problem is not relevant.

The third exception (subparagraph (c)) refers to the case of an applicant for asylum who is in possession of a transit visa issued on the written authorization of the diplomatic or consular authorities of the Member State of final destination; the question of burden of proof is irrelevant here since there is prior written confirmation that the transit visa was issued.

(g) Determination of Member State responsibility in the event of an applicant possessing several residence permits or visas (Article 5(3)(c))

In the event of an applicant possessing several residence permits or visas issued by different Member States (in particular in the case of Article 5(3)(c)), proof for the purposes of determining the Member State responsible does not arise in that the relevant information appears in the entry document produced by the applicant for asylum.

(h) Determining the periods of time and actual entry into a State (first and second subparagraphs of Article 5(4))

As regards the determination of the periods of time, the date of expiry of residence permits or visas is calculated from the date on which the application for asylum is lodged.

In addition, checking the expiry date of residence permits and visas is not necessary if such information appears on the applicant for asylum's papers.

As regards proof that the individual has actually entered a Member State, the following situations should be distinguished:

- if an applicant for asylum has actually entered a Member State, proof can be provided through information supplied by the Member State in which the application for asylum was lodged;

- if an applicant for asylum has not left the territory of the Member States, the Member State which issued the expired residence permit or visa has to provide the information required;

- if an applicant for asylum himself supplies the information that he has left the territory of the Member States, the second Member State in which an application was lodged will check the truth of the statements.

These rules apply in respect of actual entry in both subparagraphs of paragraph 4.

(i) Irregular crossing of the border into a Member State (Article 6)

Proof that an applicant for asylum has irregularly crossed the border into a Member State (Article 6(1)) must be examined after the list of means of proof has been drawn up.

Proof of a Member State ceasing to be responsible when the applicant for asylum lodges his application in the Member State where he has lived for six months (second paragraph of Article 6) must be supplied in the first instance by the Member State invoking this exception in a spirit of collaboration between the two Member States concerned.

If the applicant for asylum claims that he has lived in a Member State for more than six months, it is for that Member State to check the truth of those statements. The initial information to the other Member State concerned will in any case have to include statements made by the applicant for asylum which may be used subsequently as counter-indications.

(j) Formal rules for approval by the applicant for asylum

Approval must be given in writing.

As a general rule an applicant must give his approval when the Member State claiming responsibility for examining the application submitted a request for exchange of information.

The applicant for asylum must in any case know to what information he is giving his agreement.

The approval concerns the reasons given by the applicant for asylum and, where applicable, the reasons for the decision taken with regard to the applicant.

(k) Notification procedures

The system of exchange of information must also include data on notification procedures. Accordingly, notification must be given:

- as quickly as possible in writing;

- using the technical means available;

- to the Member States claiming responsibility for examining an application for asylum.

Such notification, which will avoid the possibility of two procedures being initiated simultaneously in two Member States, applies in respect of Article 3(4) and Article 12.

Where implementation of a decision determining responsibility is suspended, such suspension is notified so that the Member States are kept fully informed. It is very useful for the Member State where the application was lodged to be informed that an applicant for asylum is not being transferred pending a decision in his case by the second Member State.

## E. MEANS OF PROOF IN THE FRAMEWORK OF THE DUBLIN CONVENTION

### I. Principles regarding the collection of evidence

The way in which examples of proof are used to determine the State responsible for examining an asylum application is fundamental to the implementation of the Dublin Convention.

Responsibility for processing an asylum application should in principle be determined on the basis of as few requirements of proof as possible.

If establishment of proof carried excessive requirements, the procedure for determining responsibility would ultimately take longer than examination of the actual application for asylum. In that case, the Convention would fail totally to have the desired effect and would even contradict one of its objectives since the delays would create a new category of "refugees in orbit", asylum-seekers whose applications would not be examined until the procedure laid down under the Dublin Convention had been completed.

Under too rigid a system of proof the Member States would not accept responsibility and the Convention would be applied only in rare instances, while those Member States with more extensive national registers would be penalized since their responsibility could be proved more easily.

A Member State should also be prepared to assume responsibility on the basis of indicative evidence for examining an asylum application once it emerges from an overall examination of the asylum applicant's situation that, in all probability, responsibility lies with the Member State in question.

The Member States should jointly consider in a spirit of genuine co-operation on the basis of all the evidence available to them, including statements made by the asylum-seeker, whether the responsibility of one Member State can be consistently established.

Lists A and B are drawn up on the basis of those considerations.

II. General considerations regarding lists A and B

It was considered necessary to draw up two lists of means of proof: probative evidence as in list A and indicative evidence as in list B (see Annex).

The first (list A) sets out the means of probative evidence. These as in list A conclusively prove responsibility under the Dublin Convention, save where rebutted by evidence to the contrary (e.g. showing documents not to be genuine).

The second (list B) is not exhaustive and contains means of proof consisting of indicative elements to be used within the framework of the Dublin Convention. These are means of proof having indicative value. Indicative evidence as in list B may be sufficient to determine responsibility, depending on the weighing-up of evidence in a particular case. It is by nature rebuttable.

These lists may be revised in the light of experience.

It seems useful to indicate that the weight of proof of these elements may vary according to the circumstances of each individual case. Items will be classified as probative evidence or indicative evidence according to the point to be proved. For instance, a fingerprint may provide probative evidence of an asylum-seeker's presence in a Member State, yet form only indicative evidence as to whether the asylum-seeker entered the Community at a particular external frontier.

This distinction made it necessary to draw up two separate lists of probative evidence (list A) and indicative evidence (list B) for each point to be proved under the Dublin Convention; thus, annexed hereto is a breakdown of means of proof according to the point to be proved.

By the same token, the degree of probative force of official documents is not always the same from one Member State to another. The same document can be drawn up for different purposes or by different authorities, depending on the Member State concerned.

(a) **List A**

The probative evidence in list A provides conclusive proof of a Member State's responsibility for examining an asylum application, save where rebutted by evidence to the contrary (e.g. showing a document to be forged).

For this purpose, Member States will provide examples of the various types of administrative documents, on the basis of a version of list A. Specimens of the various documents will be reproduced in the joint handbook for the application of the Dublin Convention. This will make for greater efficiency and help the authorities to identify any false documents produced by asylum-seekers. Some of the items of proof in list A constitute the best possible instruments to be used for the application of Articles 4, 5(1), 5(2), 5(3) and 5(4) of the Dublin Convention.

(b) **List B**

List B contains indicative evidence the probative value of which in determining responsibility for examining an asylum application will be weighed up on a case-by-case basis.

These indications could be very useful in practice. They could not, however, irrespective of their number, constitute items of proof of the kind laid down in list A, in order to determine the responsibility of a Member State.

While not proof, such items could nonetheless determine towards which Member State the search for the State responsible within the meaning of the Convention might justifiably be directed.

The Member State in question would consult its various records to determine whether its responsibility was involved.

Where more than one Member State is responsible, the Member State which first received an application for asylum will ascertain which had the greater responsibility under the Dublin Convention, in accordance with the principle laid down in Article 3(2) whereby criteria for responsibility apply in the order in which they appear.

This approach would prevent asylum-seekers being passed successively from one State to another, complicating procedures and creating delay.

In particular, where an asylum-seeker passes through several Member States before submitting an application in the last one, the State applied to must not simply assume that responsibility lies with the State through which the applicant last passed.

Where there are specific reasons to believe that more than one State may be responsible, it is for the State in which the application was submitted to attempt to ascertain which of the States in question is required to examine the asylum application, having regard to the order of criteria for determining responsibility laid down in the Dublin Convention.

**ANNEX to the Annex**

**LIST A**

## A. MEANS OF PROOF

I. Process of determining the State responsible for examining an application for asylum

1. Legal residence in a Member State of a family member recognized as having refugee status (Article 4)

Probative evidence

- written confirmation of the information by the other Member State;
- extracts from registers;
- residence permits issued to the individual with refugee status;
- evidence that the persons are related, if available;
- consent of the persons concerned.

2. Valid residence permits (Article 5(1) and (3)) or residence permits which expired less than 2 years previously [and date of entry into force] (Article 5(4))

Probative evidence

- residence permit;
- extracts from the register of aliens or similar registers;
- reports/confirmation of information by the Member State which issued the residence permit.

3. Valid visas (Article 5(2) and (3)) and visas which expired less than 6 months previously [and date of entry into force] (Article 5(4))

Probative evidence

- visa issued (valid or expired, as appropriate);
- extracts from the register of aliens or similar registers;
- reports/confirmation by the Member State which issued the visa.

4. Illegal entry (first paragraph of Article 6) and legal entry at an external frontier (Article 7(1))

Probative evidence

- entry stamp in a forged or falsified passport;
- exit stamp from a country bordering on a Member State, bearing in mind the itinerary taken by the asylum-seeker and the date the frontier was crossed;
- tickets conclusively establishing entry at an external frontier;
- entry stamp or similar endorsement in passport.

5. Departure from the territory of the Member States (Article 3(7))

Probative evidence

- exit stamp;
- extracts from third-country registers (substantiating residence);
- tickets conclusively establishing entry at an external frontier;
- report/confirmation by the Member State from which the asylum-seeker left the territory of the Member States;
- stamp of third country bordering on a Member State, bearing in mind the itinerary taken by the asylum-seeker and the date the frontier was crossed.

6. Residence in the Member State of application for at least six months prior to application (Article 6(2))

Probative evidence

Official evidence showing, in accordance with national rules, that the alien was resident in the Member State for at least six months before submitting an application.

7. Time of application for asylum (Article 8)

Probative evidence

- form submitted by the asylum-seeker;
- official report drawn up by the authorities;

- fingerprints taken in connection with an asylum application;
- extracts from relevant registers and files;
- written report by the authorities attesting that an application has been made.

II. Obligation on the Member State responsible for examining the application for asylum to re-admit or take back the asylum seeker

1. Procedure where an application for asylum is under examination or was lodged previously (Article 10(1)(c), (d) and (e))

Probative evidence

- form completed by the asylum-seeker;
- official report drawn up by the authorities;
- fingerprints taken in connection with an asylum application;
- extracts from relevant registers and files;
- written report by the authorities attesting that an application has been made.

2. Departure from the territory of the Member States (Article 10(3))

Probative evidence

- exit stamp;
- extracts from third-country registers (substantiating residence);
- exit stamp from a third country bordering on a Member State, bearing in mind the itinerary taken by the asylum-seeker and the date on which the frontier was crossed;
- written proof from the authorities that the alien has actually been expelled.

3. Expulsion from the territory of the Member States (Article 10(4))

Probative evidence

- written proof from the authorities that the alien has actually been expelled;
- exit stamp;
- confirmation of the information regarding expulsion by the third country.

LIST B

B. INDICATIVE EVIDENCE

I. Process of determining the State responsible for examining an application for asylum

1. Legal residence in a Member State of a family member recognized as having refugee status (Article 4)

Indicative evidence [1]

- information from the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR.

2. Valid residence permits (Article 5(1) and (3)) or residence permits which expired less than 2 years previously [and date of entry into force] (Article 5(4))

Indicative evidence

- declaration by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by the Member State which did not issue the residence permit;
- reports/confirmation of information by family members, travelling companions, etc.

3. Valid visas (Article 5(2) and (3)) and visas which expired less than 6 months previously [and date of entry into force] (Article 5(4))

Indicative evidence

- declaration by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by the Member State which did not issue the residence permit;
- reports/confirmation of information by family members, travelling companions, etc.

(1) This indicative evidence must always be followed by an item of probative evidence as defined in list A.

4. Illegal entry (first paragraph of Article 6) and legal entry at an external frontier (Article 7(1))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by another Member State or a third country;
- reports/confirmation of information by family members, travelling companions, etc.;
- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;
- tickets;
- hotel bills;
- entry cards for public or private institutions in the Member States;
- appointment cards for doctors, dentists, etc.;
- information showing that the asylum applicant has used the services of a courier or a travel agency;
- etc.

5. Departure from the territory of the Member States (Article 3(7))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by another Member State;
- re Article 3(7) and Article 10(3): exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least 3 months;

- reports/confirmation of information by family members, travelling companions, etc.;
- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;
- tickets;
- hotel bills;
- appointment cards for doctors, dentists, etc.;
- information showing that the asylum applicant has used the services of a courier or a travel agency;
- etc.

6. Residence in the Member State of application for at least 6 months prior to application (second paragraph of Article 6)

   Indicative evidence

   - declarations by the asylum applicant;
   - reports/confirmation of information by international organizations, such as UNHCR;
   - reports/confirmation of information by family members, travelling companions, etc.;
   - declaration issued to permitted aliens;
   - fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
     In such cases, they constitute probative evidence as defined in list A;
   - tickets;
   - hotel bills;
   - appointment cards for doctors, dentists, etc.;
   - information showing that the asylum applicant has used the services of a courier or a travel agency;
   - etc.

7. Time of application for asylum (Article 8)

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by family members, travelling companions, etc.;
- reports/confirmation by another Member State.

II. Obligation on the Member State responsible for examining the application for asylum to re-admit or take back the asylum seeker

1. Procedure where an application for asylum is under examination or was lodged previously (Article 10(1)(c), (d) and (e))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by another Member State.

2. Departure from the territory of the Member States (Article 10(3))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by another Member State;
- exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least three months;
- reports/confirmation of information by family members, travelling companions, etc.;
- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;

- tickets;
- hotel bills;
- appointment cards for doctors, dentists, etc.;
- information showing that the asylum applicant has used the services of a courier or a travel agency;
- etc.

3. Expulsion from the territory of the Member States (Article 10(4))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least three months;
- reports/confirmation of information by family members, travelling companions, etc.;
- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;
- tickets;
- hotel bills;
- appointment cards for doctors, dentists, etc.;
- information showing that the asylum applicant has used the services of a courier or a travel agency;
- etc.

## F. CALCULATION OF PERIODS OF TIME IN THE FRAMEWORK OF THE DUBLIN CONVENTION

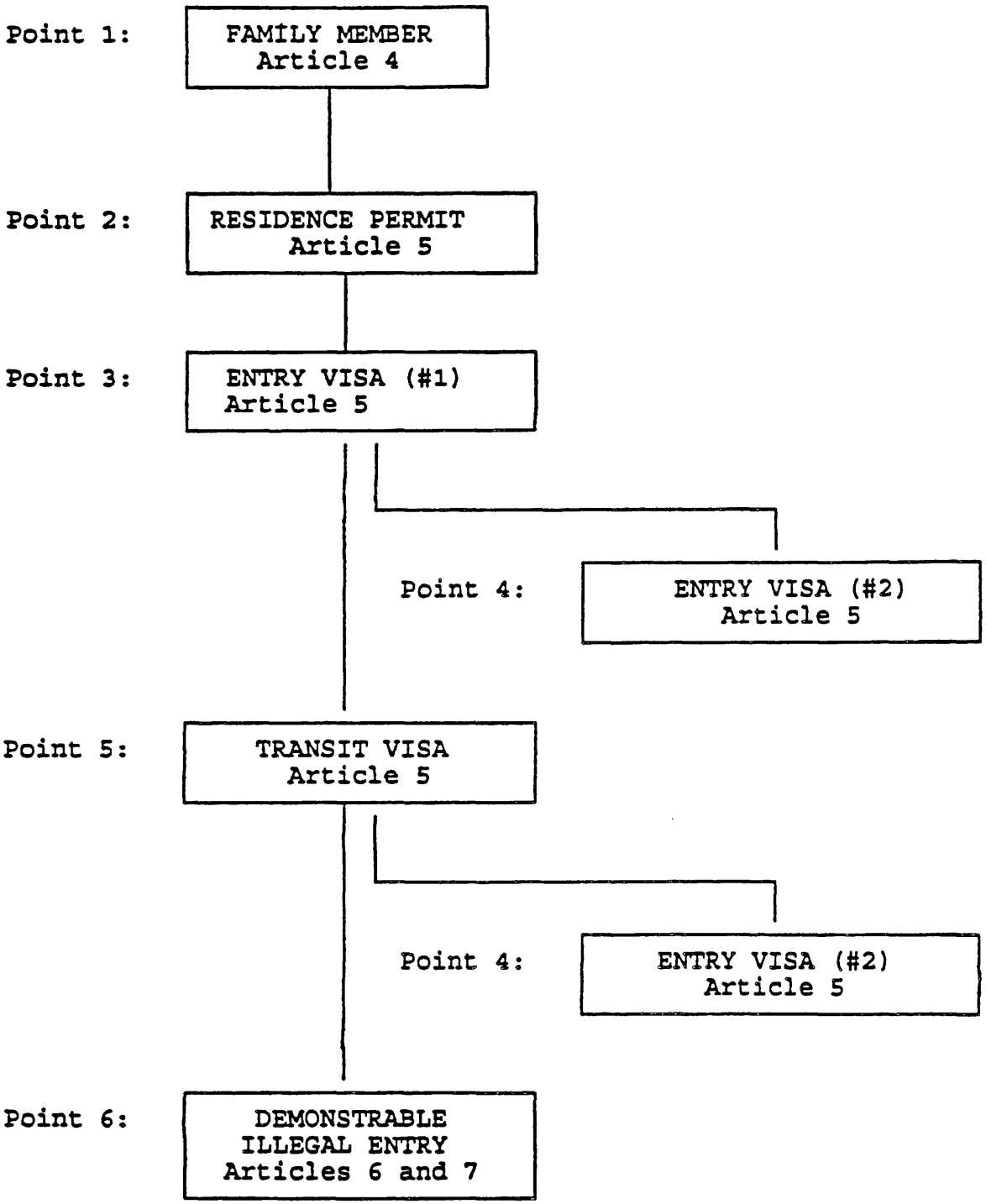
When determining the periods referred to in the Convention, Saturdays, Sundays and public holidays should be included in the calculations.

With particular reference to the periods mentioned in Article 11(4) and Article 13(1)(b):

- the period is to begin on the day following receipt of the application;

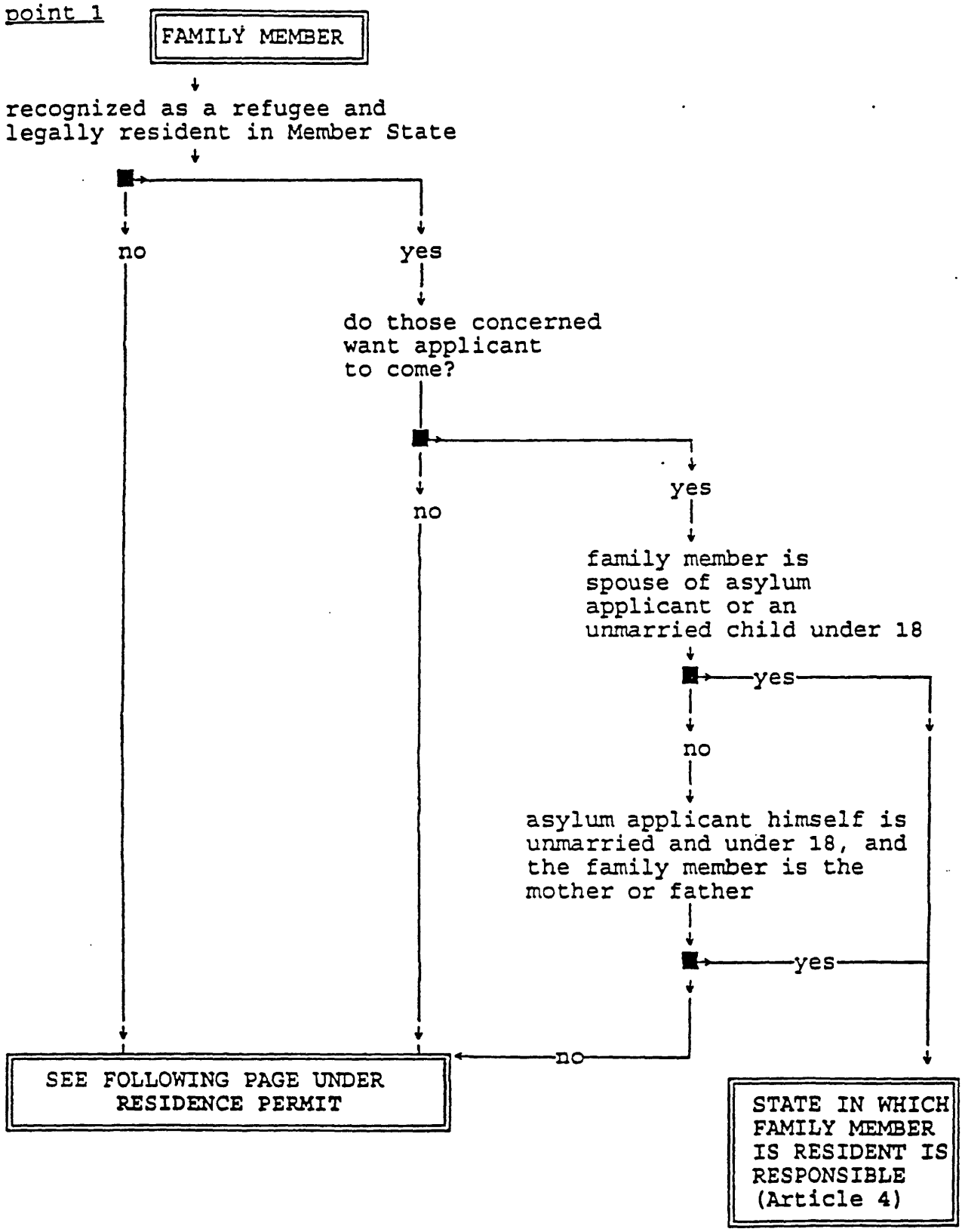
- the final day of the period is the deadline for sending the reply.

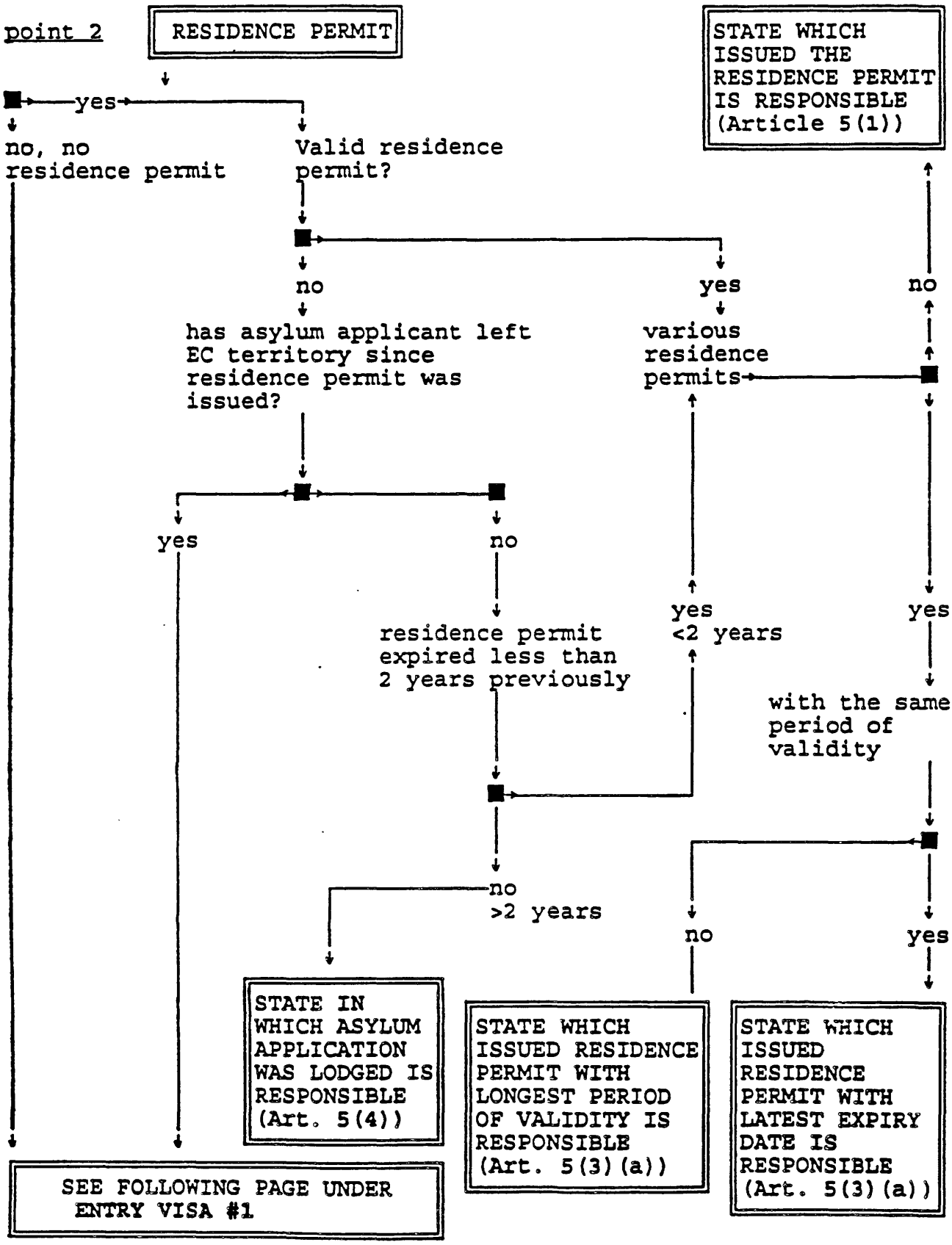
## G. Flow chart on distribution of responsibility under Articles 4,5, 6 and 7 of the Dublin Convention (1)



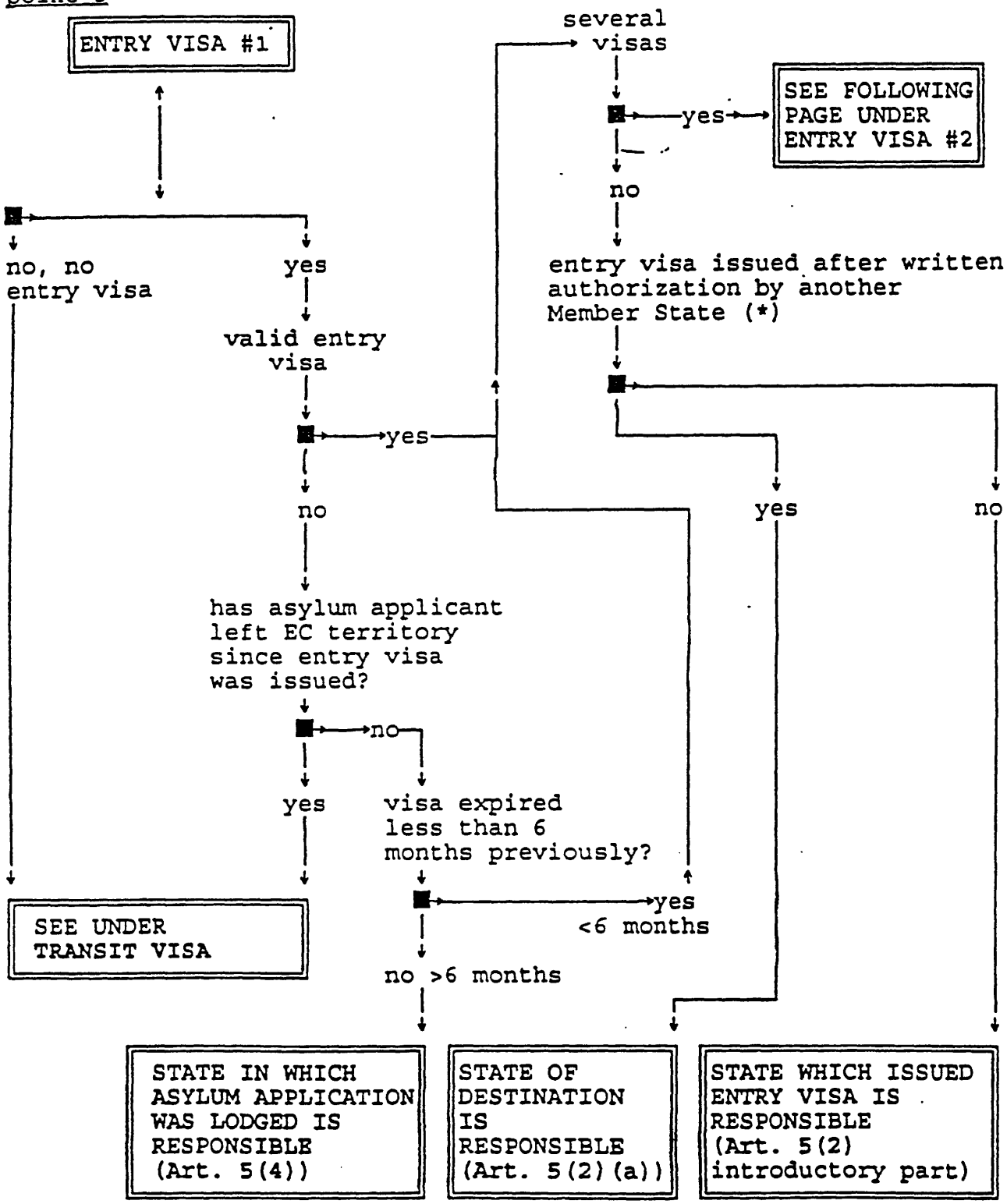

■ = Reply either "yes" or "no";
▣ = Cross-reference to another page of flow chart;

(1) Flow chart given purely for indicative purposes.


point 1
FAMILY MEMBER
recognized as a refugee and legally resident in Member State
no
yes
do those concerned want applicant to come?
no
yes
family member is spouse of asylum applicant or an unmarried child under 18
yes
no
asylum applicant himself is unmarried and under 18, and the family member is the mother or father
yes
no
SEE FOLLOWING PAGE UNDER RESIDENCE PERMIT
STATE IN WHICH FAMILY MEMBER IS RESIDENT IS RESPONSIBLE (Article 4)

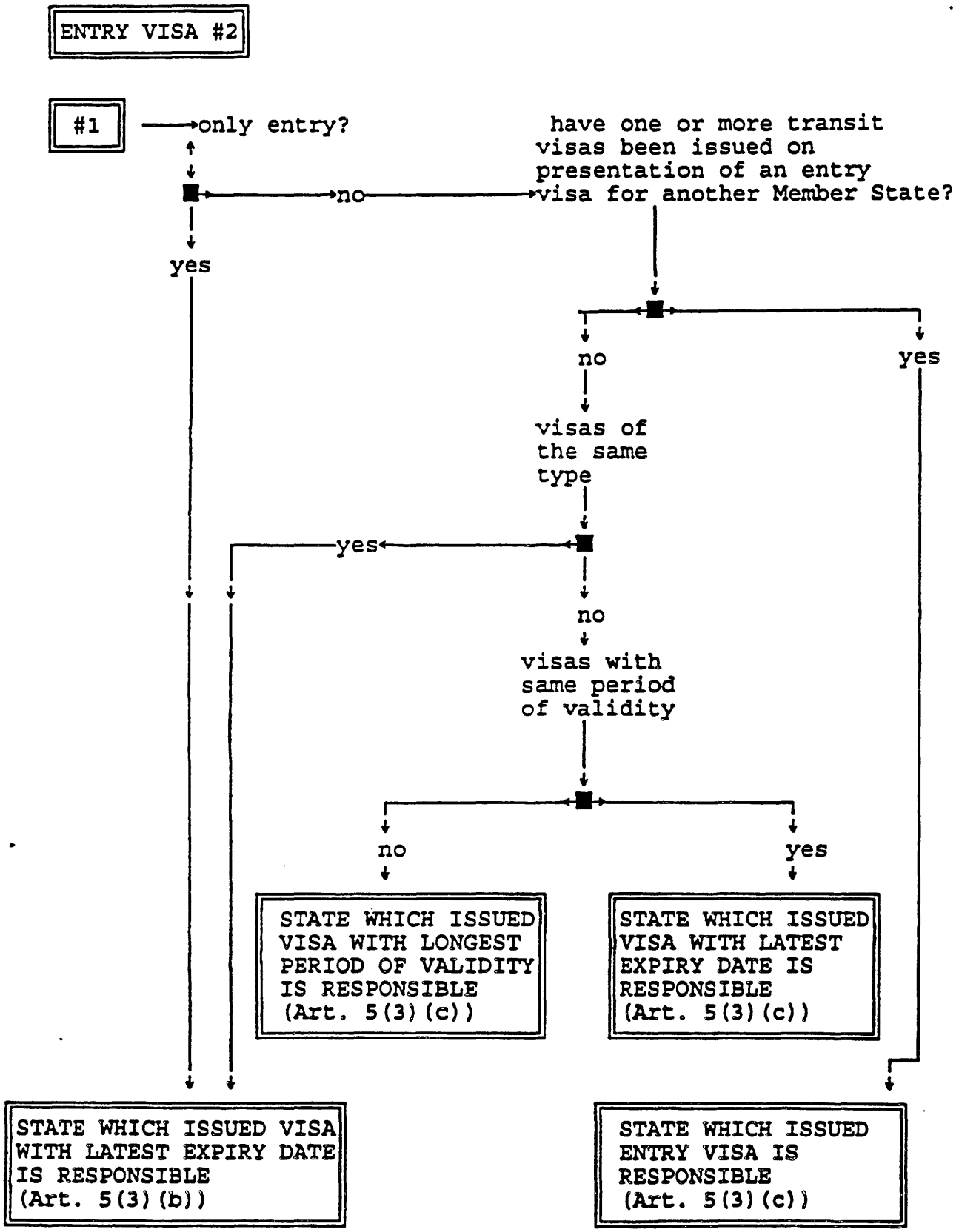

point 2
RESIDENCE PERMIT
STATE WHICH ISSUED THE RESIDENCE PERMIT IS RESPONSIBLE (Article 5(1))
yes
no, no residence permit
Valid residence permit?
no
yes
no
has asylum applicant left EC territory since residence permit was issued?
various residence permits
yes
no
yes
<2 years
yes
residence permit expired less than 2 years previously
with the same period of validity
no
>2 years
no
yes
STATE IN WHICH ASYLUM APPLICATION WAS LODGED IS RESPONSIBLE (Art. 5(4))
STATE WHICH ISSUED RESIDENCE PERMIT WITH LONGEST PERIOD OF VALIDITY IS RESPONSIBLE (Art. 5(3)(a))
STATE WHICH ISSUED RESIDENCE PERMIT WITH LATEST EXPIRY DATE IS RESPONSIBLE (Art. 5(3)(a))
SEE FOLLOWING PAGE UNDER ENTRY VISA #1

point 3

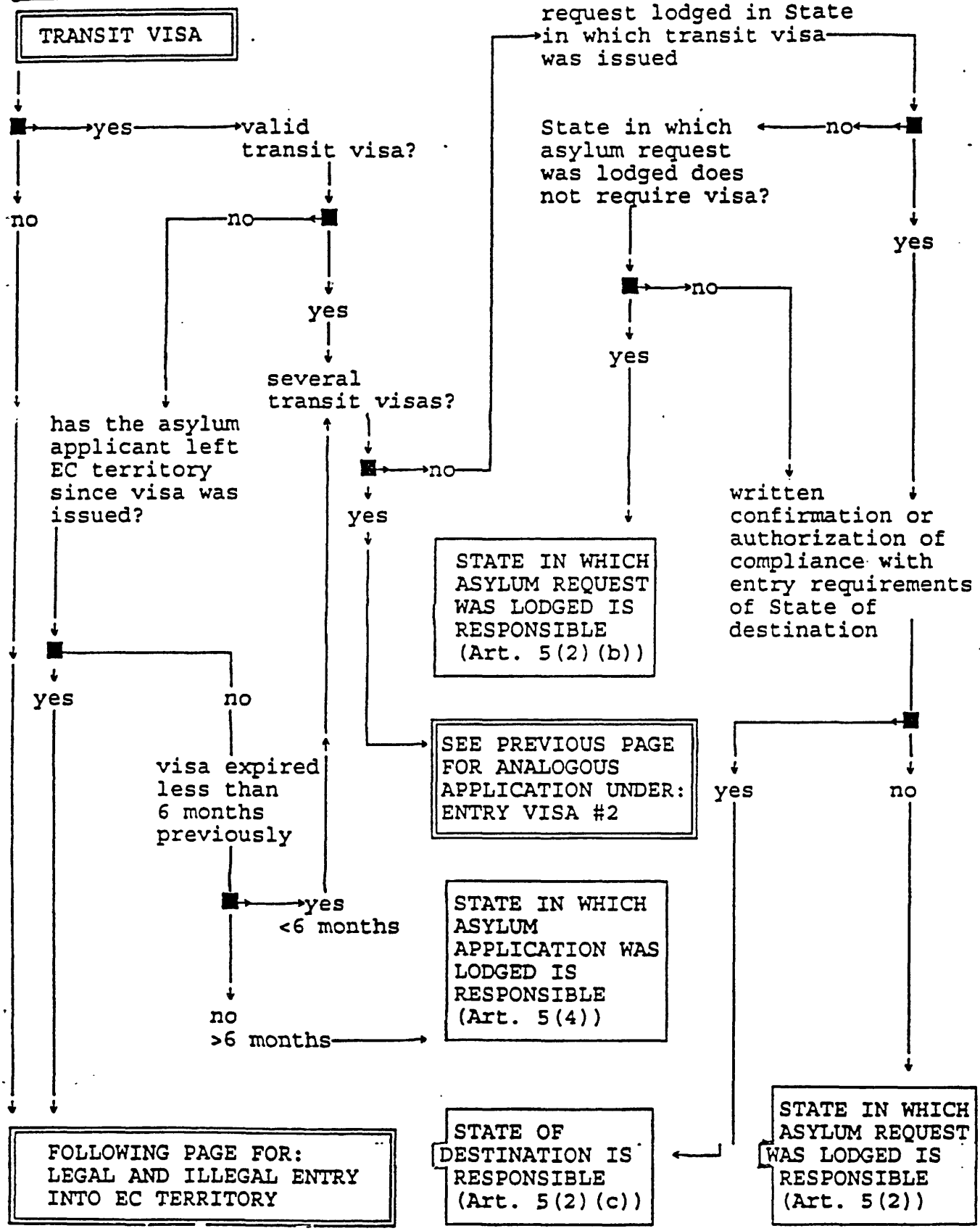



(*) Where a Member State first consults the central authority of another Member State, inter alia for security reasons, the agreement of the latter shall not constitute written authorization within the meaning of this provision (second sentence of Article 5(2)(a)).

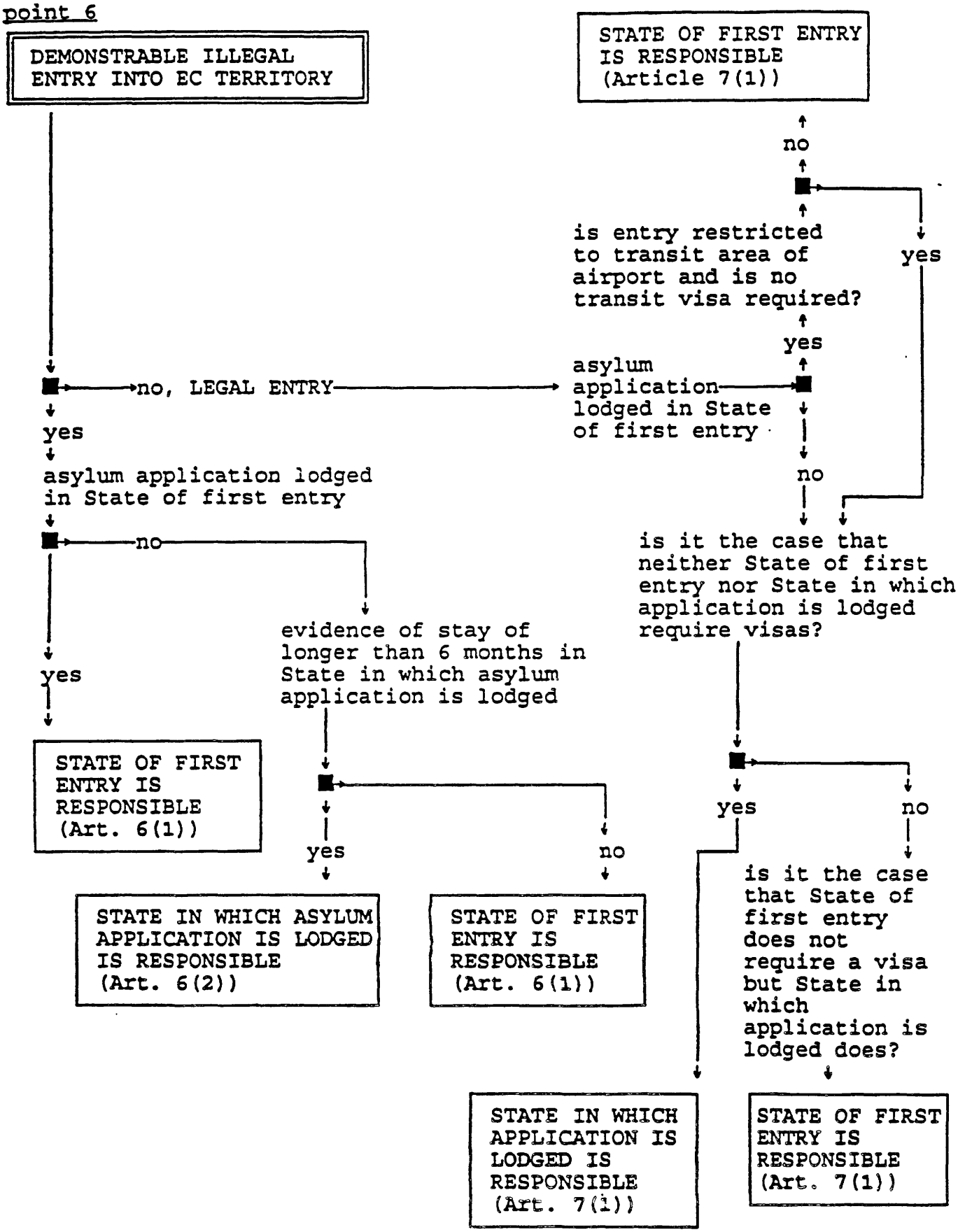
point 4


ENTRY VISA #2
#1
only entry?
no
yes
have one or more transit visas been issued on presentation of an entry visa for another Member State?
no
yes
visas of the same type
yes
no
visas with same period of validity
no
yes
STATE WHICH ISSUED VISA WITH LONGEST PERIOD OF VALIDITY IS RESPONSIBLE (Art. 5(3)(c))
STATE WHICH ISSUED VISA WITH LATEST EXPIRY DATE IS RESPONSIBLE (Art. 5(3)(c))
STATE WHICH ISSUED VISA WITH LATEST EXPIRY DATE IS RESPONSIBLE (Art. 5(3)(b))
STATE WHICH ISSUED ENTRY VISA IS RESPONSIBLE (Art. 5(3)(c))

point 5


TRANSIT VISA
yes
valid transit visa?
no
no
yes
several transit visas?
has the asylum applicant left EC territory since visa was issued?
no
yes
request lodged in State in which transit visa was issued
State in which asylum request was lodged does not require visa?
no
yes
no
yes
STATE IN WHICH ASYLUM REQUEST WAS LODGED IS RESPONSIBLE (Art. 5(2)(b))
written confirmation or authorization of compliance with entry requirements of State of destination
yes
no
yes
no
SEE PREVIOUS PAGE FOR ANALOGOUS APPLICATION UNDER: ENTRY VISA #2
visa expired less than 6 months previously
yes <6 months
no >6 months
STATE IN WHICH ASYLUM APPLICATION WAS LODGED IS RESPONSIBLE (Art. 5(4))
FOLLOWING PAGE FOR: LEGAL AND ILLEGAL ENTRY INTO EC TERRITORY
STATE OF DESTINATION IS RESPONSIBLE (Art. 5(2)(c))
STATE IN WHICH ASYLUM REQUEST WAS LODGED IS RESPONSIBLE (Art. 5(2))

point 6


DEMONSTRABLE ILLEGAL ENTRY INTO EC TERRITORY
STATE OF FIRST ENTRY IS RESPONSIBLE (Article 7(1))
no
is entry restricted to transit area of airport and is no transit visa required?
yes
yes
asylum application lodged in State of first entry
no, LEGAL ENTRY
yes
no
asylum application lodged in State of first entry
no
is it the case that neither State of first entry nor State in which application is lodged require visas?
yes
STATE OF FIRST ENTRY IS RESPONSIBLE (Art. 6(1))
evidence of stay of longer than 6 months in State in which asylum application is lodged
yes
no
yes
no
STATE IN WHICH ASYLUM APPLICATION IS LODGED IS RESPONSIBLE (Art. 6(2))
STATE OF FIRST ENTRY IS RESPONSIBLE (Art. 6(1))
is it the case that State of first entry does not require a visa but State in which application is lodged does?
STATE IN WHICH APPLICATION IS LODGED IS RESPONSIBLE (Art. 7(1))
STATE OF FIRST ENTRY IS RESPONSIBLE (Art. 7(1))

## H. CONCLUSIONS ON THE TRANSFER OF ASYLUM APPLICANTS UNDER THE PROVISIONS OF THE DUBLIN CONVENTION
**(London, 30 November and 1 December 1992) [1]**

### Introduction

1. Articles 3(7), 4, 5, 6, 7 and 8 set down the circumstances in which responsibility for examining an asylum application made in one Member State (hereinafter described as the "first" Member State) shall be assumed by another Member State (hereinafter described as the "second" Member State).

2. Article 10(1)(a), (c), (d) and (e), Article 11(5) and Article 13(1)(b) set down obligations and timescales regarding the transfer or taking back of the applicant from the first to the second Member State. The term "transfer" is used below both for the case of taking charge and taking back.

3. The arrangements for transfer of the applicant are set out below.

### Notification of the applicant

4. The first Member State will inform the applicant as soon as possible when a request is made under the provisions of Articles 11 and 13 to another Member State to take charge of or to take back an applicant and of the outcome of this request. Where responsibility is transferred to the second Member State, this notification shall inform the applicant of his liability for transfer to the second Member State under the provisions of Article 11(5) and Article 13(1)(b) and subject to any relevant national laws and procedures. Where the transfer is to be made as described in 5(a) and (b) below, this notification will include information about the time and place to which the applicant should report on arrival in the second Member State.

(1) Reservations by the Danish and Netherlands delegations.

Transfer of the applicant

5. When it is agreed that the applicant should be transferred to the second Member State, the first Member State will be under an obligation to ensure as far as possible that the applicant does not evade the transfer. To this effect, the first Member State will determine, in the light of the circumstances of each case and in accordance with national laws and procedures, how transfer of the applicant should take place. This may be either:

   (a) on his own initiative, with a deadline being set;

   (b) under escort, the applicant to be accompanied by an official of the first Member State.

6. Transfer of the applicant will be considered completed when either the applicant has reported to the authorities of the second Member State specified in the notification given to him, when the transfer is under 5(a) above; or when he has been received by the competent authorities of the second Member State, when transfer is under 5(b) above.

7. When transfer is under 5(a) above, the second Member State will inform the first as soon as possible after the transfer is completed, or where the applicant has failed to report within the specified deadline.

Deadlines for transfer

8. Articles 11(5) and 13(1)(b) provide that transfer and taking back must be concluded within one month of the second Member State accepting responsibility for examining the asylum application. Member States will make every effort to conform with these deadlines where transfer is made under 5(b) above.

9. If a transfer has been arranged under 5(a) above but is not completed because of the failure of the applicant to cooperate, the second Member State may begin examination of the application on the information available to it on the expiry of the deadlines specified in Articles 11(5) and 13(1)(b).

If the application is refused, the second Member State will remain liable for taking back the applicant under the provisions of Article 10(1)(e) unless the provisions of Article 10(2), (3) or (4) apply.

I. LAISSEZ-PASSER FOR TRANSFER OF APPLICANTS

KINGDOM OF BELGIUM
MINISTRY OF THE INTERIOR

DIRECTORATE-GENERAL
FOR PUBLIC SECURITY

ALIENS OFFICE

## LAISSEZ-PASSER

Reference No (*)

Issued pursuant to Articles 11 and 13 of the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities.

Valid only for transfer from ... [1] to ... [2], with the asylum applicant required to present him/herself at ... [3] by ... [4].

Issued at

NAME:

FORENAMES:

PLACE AND DATE OF BIRTH:

NATIONALITY:

Date of issue:

PHOTO

SEAL

For the Ministry for the Interior:

---

The bearer of this laissez-passer has been identified by the authorities ... [5] [6]

This document is issued pursuant to Articles 11 and 13 of the Dublin Convention only and cannot under any circumstances be regarded as equivalent to a travel document permitting the external frontier to be crossed or to a document proving the individual's identity.

---

(1) Member State from which transferred.
(2) Member State to which transferred.
(3) Place at which the asylum applicant has to present him/herself upon arrival in the second Member State.
(4) Deadline by which the asylum applicant has to present him/herself upon arrival in the second Member State.
(5) On the basis of the following travel or identity documents presented to the authorities.
(6) On the basis of a statement by the asylum applicant or of documents other than a travel or identity document.
(*) Reference number to be given by the country from which the transfer takes place.

## J. DATES OF DEPOSIT OF THE INSTRUMENTS OF RATIFICATION OF THE DUBLIN CONVENTION [1]

| | |
|---|---|
| Belgium | 10 August 1995 |
| Germany | 21 September 1994 |
| Denmark | 13 June 1991 |
| Greece | 3 February 1992 |
| Spain | 10 April 1995 |
| France | 10 May 1994 |
| Italy | 26 February 1993 |
| Luxembourg | 22 July 1993 |
| Portugal | 19 February 1993 |
| United Kingdom | 1 July 1992 |

(1) The Dublin Convention will be formally ratified by the Member States once the instruments of ratification have been deposited with Ireland.

## K. DRAFT REPLY TO QUESTIONS PUT BY THE AUSTRIAN DELEGATION

The Austrian delegation has put several questions on the manner in which the Dublin Convention should be interpreted. These questions appear in 5118/95 ASIM 52.

At its meeting on 14 and 15 March 1995, the Asylum Working Party examined these issues for the first time. At the end of an initial exchange of views, the Working Party asked the Council General Secretariat to prepare a reply for the Austrian delegation.

The comments of the Council General Secretariat are given in the Annex.

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1. **Does the Dublin Convention create binding responsibilities or does it simply authorize the transfer of responsibility for conducting asylum proceedings to another Member State in certain circumstances?**

The Member States of the European Union concluded the Dublin Convention on 15 June 1990. The Convention sets up a mechanism for determining the State responsible for examining an application for asylum lodged in one of the Member States by means of the application of certain criteria.

As specified in the preamble, the aim of establishing such a mechanism is the need, in pursuit of the objective of a more open area within Europe, to take measures to avoid any situations arising in which applicants for asylum are left in doubt for too long as regards the likely outcome of their applications, to guarantee all asylum-seekers 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.

With this in view, Article 3(1) of the Convention states that "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" and paragraph 2 of that Article states that "That application shall be examined by a single Member State ... in accordance with the criteria defined in this Convention".

In this context, the Dublin Convention requires the Member State designated as responsible under the criteria listed in Article 4 et seq. to take or retake charge of the asylum-seeker and to examine his application, at the request of the Member State with which that application has been lodged.

On the other hand, the Dublin Convention does not require a Member State with which an asylum application has been lodged but for which it is not responsible to apply the provisions of the Convention and to request the Member State responsible to take or retake charge of the applicant.

This is made clear by Article 3(4), which stipulates that "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". In that case "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 (...)".

In addition, one of the criteria for determining responsibility is that referred to in Article 9 of the Convention, which supplements the other criteria laid down in Articles 4 to 8. In this case, even where it is not responsible for examining an asylum application, any Member State may examine it for humanitarian reasons, at the request of another Member State, provided that the applicant so desires.

Moreover, Articles 10 et seq. establish quite specifically the mechanism for implementing the criteria provided for in the Convention. Article 11 must be put in this context, insofar as it lays down provisions which, because they deal with the transfer of the asylum applicant, implement the criteria defined in Article 4 et seq. of the Convention.

Because of this, the second paragraph of Article 11(1) cannot by itself create a new criterion or exception as regards responsibility for examining the application, but enables the provisions laid down in Article 9(1) and Article 3(4) to be applied.

In conclusion, the Dublin Convention establishes criteria for allocating responsibility for an asylum application, which become compulsory between the Member States, after the entry into force of the Convention, within the framework and under the conditions defined therein. The transfer provided for in Article 11 takes place on the basis of criteria defined in Article 4 et seq. and the specific situation provided for in Article 3(4). Article 11 cannot on its own establish a new criterion for determining responsibility.

2. **Is the asylum-seeker legally entitled under the Dublin Convention to have his asylum application dealt with by a particular Member State?**

It is clear from its principles, structure and rules that the Dublin Convention is addressed to the Member States.

However, imposing certain obligations on the Member States, such as some criteria defined in the Convention, may conversely create advantages from which each asylum-seeker may benefit.

The question raised by the Austrian delegation refers to the operation of Article 3(4), Article 9 and Article 11(1) of the Dublin Convention. It is therefore only in this context that the question will be examined.

As already stated in the initial reply, Articles 9 and 3(4) lay down the factors determining the Member State responsible for examining an asylum application. In both these cases, Member States are required to obtain the applicant's agreement as one of the conditions for the application of those criteria determining responsibility. In the absence of such agreement those criteria do not apply. However, those provisions do not establish a right for the asylum applicant entitling him to have his application examined by a given Member State. On the other hand, they enable him to prevent Articles 9 and 3(4) from being applied and thus indirectly to restrict the number of criteria applicable, which will be limited to those referred to in Articles 4 to 8.

In addition, no provision of the Convention entitles the asylum applicant to have his application dealt with by a particular Member State.

Moreover, Article 11(1), as already stated, is part of the mechanism for implementing the criteria under which the Convention applies. It does not therefore create a right for the asylum applicant, but lays down guidelines on the action to be taken by Member States.

In conclusion, an asylum-seeker is not entitled under the Dublin Convention to have his asylum application dealt with by a particular Member State. His participation in the procedure is restricted to the cases and by the conditions laid down in the Dublin Convention.

3. **Which Member State is responsible for conducting the procedure to determine responsibility under the Dublin Convention?**

Article 3(6) of the Dublin Convention states that the process of determining the Member State responsible starts as soon as an application for asylum is first lodged with a Member State. Furthermore, Article 3(7) provides that "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 (...) by the Member State with which that application for asylum was lodged". In full conformity with that Article, Article 11(1) stipulates that the Member State with which an application for asylum has been lodged is to start the examination procedure.

The only exception to this principle provided for by the Convention is that laid down in Article 12 whereby "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" when he lodges his application with another Member State.

However, these rules cannot be understood as meaning that it is only for the Member State where the application is lodged to decide which Member State is responsible for examining an application for asylum.

As was made clear during preparatory discussions and when measures for applying the Convention were adopted, Member States are to examine together, in a spirit of loyal cooperation with the help of all the resources at their disposal, including statements by the asylum-seeker, whether there are logical grounds for allocating responsibility to a particular Member State.

In the absence of such cooperation, based on principles of mutual trust between the Member States and on reducing requirements on the part of administrations as much as possible, the procedure for determining responsibility might last longer than the examination of the asylum application itself. In that case, the Convention would fail to achieve the effect sought and would even compromise one of these objectives because delays would give rise to a new category of "refugees in orbit", i.e. applicants for asylum whose applications would not be examined as long as the procedure provided for by the Dublin Convention remained in being.

This cooperation between the Member States, which is of prime importance for the smooth operation of the Convention, is referred to at several points in the Convention and, firstly, in the preamble, where it is laid down that the Member States are "determined to cooperate closely ... through various means, including exchanges of information".

It is at the end of this procedure, during which other Member States which may be considered responsible for examining the application, that the Member State responsible will be determined (see Article 11(1)).

With this in mind, there would not be any reason for laying down a provision on recognition of the decision determining responsibility by the Member State declared responsible.

In the event of a general question arising with regard to the application or interpretation of the Convention, any Member State may refer such a question to the Committee provided for in Article 18, whose task it will be to examine it.

In conclusion, the process of determining the Member State begins as soon as an application for asylum is lodged for the first time with a Member State. Responsibility is determined following a procedure of close cooperation between the Member States which may be considered responsible.

4. **Is the asylum-seeker a party to the procedure to determine the State responsible under the Dublin Convention or is this exclusively a procedure between States?**

On the basis of Article 3(1), every asylum-seeker is assured that his application will be examined by one of the Member States. Refugee status is determined on the basis of the criteria under which the national bodies responsible must grant the protection provided for by the 1951 Geneva Convention.

As already stated above, the mechanism of the Dublin Convention states only which Member State will be responsible for examining the application. This is therefore a procedure which precedes that of the examination of the actual application.

The Dublin Convention establishes a procedure between Member States to which the asylum-seeker cannot be party, in the legal sense of the term, since there does not exist any dispute between two separate persons.

However, the asylum-seeker's point of view is taken into due account during the procedure. The Convention provides for the application of criteria which take broad account of the higher interests of the asylum-seeker or of any special links he has with a particular Member State. That is the case, for example, of Article 4, where the Member State concerned looks at the family circumstances of the individual as the first criterion for examination.

In addition, in the application of criteria, it is provided that the asylum-seeker may or must, according to circumstances, be involved in the application of certain criteria. That is the case of Articles 9 and 3(4).

Finally, Article 11(5) states that an asylum-seeker is entitled to challenge the transfer decision on the basis of rules laid down by national law. It is emphasized that this possibility for the applicant to be a party to the autonomous procedure between him and a particular Member State can only be made use of after completion of the procedure for determining the State responsible.

In conclusion, the asylum-seeker is not a party to the procedure to determine the State responsible under the Dublin Convention. He nonetheless has the possibility of being involved in the procedure, in the cases referred to in the Convention. Conversely, he may be given an opportunity to appeal against a transfer decision, in the framework of the rules laid down by the legal system of that Member State.

# PART II

## Texts adopted
## at European Union level

# A. REPORT FROM THE MINISTERS RESPONSIBLE FOR IMMIGRATION TO THE EUROPEAN COUNCIL MEETING IN MAASTRICHT ON IMMIGRATION AND ASYLUM POLICY - EXTRACTS

## A. SUMMARY, WORK PROGRAMMES AND CONCLUSION

### I. INTRODUCTION

The Luxembourg European Council, having received proposals from the German delegation, requested the Ministers responsible for immigration to submit proposals on the harmonization of immigration and asylum policies at its meeting in Maastricht.

This report is in response to those instructions.

The report addresses the various issues without stating an opinion on the institutional framework within which they should be dealt with in the future, as these problems will be examined at the Intergovernmental Conference on Political Union.

This issue was nevertheless the subject of an exchange of views during the ministerial meeting. Ministers attached great importance to a decision on this matter being taken at the European Council in Maastricht.

In accordance with these instructions, the attention of the Ministers responsible for immigration focused on the work to be carried out immediately by way of transitional measures and preparation of the policy which will be set in place progressively as from the entry into force of the Treaty on Political Union.

This report contains a brief outline of the various problems examined and a priority work programme for migration policy and asylum policy respectively, followed by a more detailed and more comprehensive analytical document (see B, p. 11).

## II. TOWARDS THE HARMONIZATION OF MIGRATION AND ASYLUM POLICIES

Over recent years Member States have increasingly felt the need to harmonize their migration and asylum policies with regard to third-country nationals.

The prospect of attaining the objective of Article 8a, in particular in respect of freedom of movement for persons, will have consequences for the way in which Member States implement their national policies and will make cooperation between them even more necessary.

The initial results of co-operation between Member States - the Dublin Convention determining the State responsible for examining applications for asylum and the draft Convention between the Member States on the crossing of their external frontiers - in themselves call for more thorough harmonization.

Other phenomena indicate the same path, in particular the substantial intensification of migratory pressure now exerted on almost all Member States, which they obviously cannot contemplate resolving individually to the detriment of their Community partners, and the massive increase in the number of unjustified applications for asylum, a method which is used - in most cases in vain - as a means of immigration by persons who do not meet the conditions of the Geneva Convention.

The work programmes annexed to this report have been drawn up pragmatically: harmonization has not been regarded as an end in itself but as a means of re-orienting policies where such action makes for efficiency and speed of intervention.

As regards immigration, the main topics which would appear to require priority treatment are harmonization of admission policies, the development of a common approach to the problem of illegal immigration, labour migration policies and the situation of third-country nationals residing legally in the Community.

As regards asylum, in the first place the protection of persons who are victims of persecution should be reaffirmed and the Geneva Convention applied. As for the tasks to be performed, priority would appear to go to preparing implementation of the Dublin Convention and harmonizing the substantive rules of asylum law in order to ensure uniform interpretation of the Geneva Convention. Harmonization of procedural aspects, on the other hand, seemed less urgent, apart from the fact that every effort must be made to shorten asylum application procedures, particularly in the case of clearly unjustified applications. Harmonization of expulsion policy would also appear to be necessary, as would examination of reception conditions for asylum-seekers and permanent updating of knowledge regarding the various aspects of this question.

## III. WORK PROGRAMME CONCERNING MIGRATION POLICY

On the basis of the above considerations, it is possible to establish a concrete work programme, the broad lines of which are set out below. In general, the Ministers responsible for immigration could perform a sort of management and monitoring function in respect of the implementation of this entire programme, on the understanding that preparation of certain measures may fall within the competence of other Ministers.

It is important that existing structures should assist Ministers in coordinating programme implementation.

Between now and entry into force of the Treaty on Political Union, the following subjects should be dealt with. They are listed in order of priority under each heading. If necessary, this work must be continued after that date.

**A. Harmonization of admission policies**

- harmonization of policies on admission for purposes such as family reunion and formation and admission of students;
- harmonization of policies on admission for other purposes such as humanitarian aims and work as an employed or self-employed person;
- harmonization of legal provisions governing persons authorized to reside.

**B. Common approach to the question of illegal immigration**

- cooperation on border controls within the framework of the Convention on the crossing of external frontiers;
- harmonization of conditions for combating unlawful immigration and illegal employment and checks for that purpose both within the territory and at borders;
- harmonization of principles on expulsion, including the rights to be guaranteed to expelled persons;
- definition of guiding principles on the question of policy regarding third-country nationals residing unlawfully in Member States;
- cooperation with countries of departure and transit in combating unlawful immigration, in particular as regards re-admission.

**C. Policy on the migration of labour**

- harmonization of national policies on admission to employment for third-country nationals taking account of possible labour requirements in Member States over the years to come;
- increased mobility of Community nationals, in particular by improving the functioning of the SEDOC system.

**D. Situation of third-country nationals**

- examination, within the appropriate fora, of the possibility of granting third-country nationals who are long-term residents in a Member State certain rights or possibilities, for example concerning access to the labour market, held by Member State nationals once nationals of the twelve Member States enjoy the same conditions of freedom of movement and access to the labour market.

**E. Migration policy in the broad meaning of the term**

- preparation of agreements on re-admission with countries of origin and transit of unlawful immigration;

- establishment of an information programme and preparation of training and apprenticeship contracts for East European and North African countries in particular;

- strengthening of the rapid consultation centre.

The subjects under A, B and D could be dealt with by the Ministers responsible for immigration.

Suitable coordination with other Ministers, such as the Social Affairs, Employment and Foreign Affairs Ministers, will be necessary in the case of points C and E.

In addition to the priority subjects referred to earlier, a number of more general measures need to be taken, for which action by the Ministers with responsibility for immigration would depend on the proceedings of other bodies, including European Political Cooperation and Community action properly speaking:

- analysis of the causes of immigration pressure;

- removal of the causes of migratory movements by an adjusted policy in the field of development aid, trade policy, human rights, food, environment and demographics;

- strengthening of support for accommodating refugees in their countries of origin;

- incorporation of the migration aspect into economic, financial and social cooperation.

## IV. WORK PROGRAMME CONCERNING ASYLUM POLICY

This work programme for harmonization of asylum policies has been drawn up on the basis of the objectives laid down by the Luxembourg European Council. The subjects mentioned below should be dealt with between now and the entry into force of the Treaty on Political Union. If necessary this work must be continued after that date. Moreover, the work programme may be supplemented subsequently in the light of discussions, with the result that the list is not exhaustive.

### A. Application and implementation of the Dublin Convention

1. Determining a common interpretation of the concepts used in the Convention;

2. Exchanges of information;

3. Implementing mechanisms;

4. Drawing up a practical manual for application of the criteria in the Convention;

5. Combating asylum applications submitted under a false identity.

### B. Harmonization of substantive asylum law

1. Unambiguous conditions for determining that applications for asylum are clearly unjustified;

2. Definition and harmonized application of the principle of first host country;

3. Common assessment of the situation in countries of origin with a view both to admission and expulsion;

4. Harmonized application of the definition of a refugee as given in Article 1A of the Geneva Convention.

**C. Harmonization of expulsion policy**

1. Common assessment of the situation in the country of origin;

2. Determination of various aspects of an expulsion policy.

**D. Setting up a clearing house**

Setting up such a centre at the General Secretariat of the Council:

1. Written exchanges of information on legislation, policy, case law and information concerning countries of origin, together with statistical information;

2. Oral exchanges of information through informal meetings of officials responsible for implementing asylum policy.

**E. Legal examination**

Examination of the problem of guaranteeing harmonized application of asylum policy.

**F. Conditions for receiving applicants for asylum**

1. Collection of data on current conditions for receiving applicants;

2. On the basis of that collection of data, study of possible ways of approximating these points.

## V. CONCLUSION

The Ministers responsible for immigration invite the European Council to signify its agreement to the above work programmes. If implemented, they could considerably increase the effectiveness of Member States' policies in these fields in the new and gradually developing context and will constitute a stage - an ambitious but realistic stage - along the path to harmonization.

ANNEX

## B. DETAILED NOTE

### I. GENERAL INTRODUCTION

The European Council in Luxembourg asked Ministers responsible for immigration to submit proposals on immigration and asylum.

This note defines a general framework for immigration and asylum policies, as set out in sections II and III respectively. The two sections provide a concrete work programme and establish priorities.

#### 1. Why harmonization?

It is specifically when setting priorities regarding the topics to be harmonized in the framework of immigration and asylum policy that it is important to formulate a number of basic principles for the harmonization process. Harmonization is not an end in itself, but stems from a need felt by Member States for a common policy in this area.

The need for harmonization of immigration policy has grown increasingly in recent years. Until the mid-'80s, European cooperation in this field had been very limited: admittedly, Member States had been cooperating for many years with regard to freedom of movement for EC nationals and a coherent system of European law had been established. However, policy regarding third-country nationals was still essentially the subject of national measures.

Cooperation in other areas became more intensive only after discussions had started in an intergovernmental framework (ad hoc Group on Immigration, Ministers responsible for immigration), spurred on by the determination to achieve the Internal Market by 1 January 1993. In this regard, considerable attention was paid to drafting Conventions on the responsibility for examining applications for asylum (Dublin Convention) and on the crossing of the Community's external frontiers.

Although apparently of only limited scope, the ultimate effect of these Conventions is much greater than was perhaps originally expected. For example, the establishment of responsibility for examining applications for asylum implicitly presupposes that Member States have confidence in each other's asylum policies, as one Member State consents to an application for asylum lodged with it being processed by another Member State in accordance with the latter's national legislation. Harmonization of basic asylum policy is therefore merely a logical step towards giving this confidence more substance.

The Convention on the crossing of external frontiers is also an inducement, in many respects, to carrying harmonization further. Firstly, it stipulates that foreigners in possession of a residence permit for one of the Member States are exempt from visa obligations for movement through other Member States. This makes it easier for this category of foreigners to stay in other Member States for short periods. By the same token, there is an increased danger of such foreigners taking up residence in another Member State as employees or self-employed persons. This process may result in a certain tension and pressure on national immigration policies.

In addition, the Convention provides for cooperation on expulsion policy: the Member States generally assume responsibility for escorting illegal foreigners to EC frontiers. However, if one of the Member States subsequently re-admitted the foreigner in question on the grounds that it was permissible under its national immigration policy, the expulsion would immediately lose its effect and co-operation between Member States would be impaired.

A similar phenomenon occurs when a foreigner is entered on the common list of inadmissible persons: if the foreigner is already entitled to reside legally in one of the Member States but poses a threat to public order or national security for one or more other Member States, he can be entered on the common list only if the Member State concerned is prepared to withdraw his residence permit. Thus, here again there is a certain discrepancy which can be solved only through harmonization.

The reverse may also occur: if national immigration policy results in the admission of a foreigner notified as an undesirable person, he must consequently be removed from the common list.

The above examples show that the Convention on the crossing of external frontiers starts from a situation in which immigration policies have not yet been harmonized, but that its effect would be considerably improved if these policies were in fact harmonized. The two Conventions are therefore an inducement to harmonize policy.

Beyond that, deeper causes calling for a harmonized immigration policy may be instanced. The pressure of immigration on most Member States has increased significantly in recent years. The conviction that, confronted with these developments, a strictly national policy could not provide an adequate response has been consistently gaining ground: although differences still exist between Member States with regard to the nature and size of migratory movements, major similarities may also be observed.

On that basis, it would appear advisable to define a common answer to the question of how this immigration pressure can be accommodated. It is neither judicious nor politically desirable to shift migratory movements from one Member State to another: the aim is to make the problems manageable for the entire Community. This will require instruments which are based on an extended form of cooperation among Member States while ensuring that the policy of one Member State does not have negative effects on other Member States' policies.

## 2. A pragmatic approach to the harmonization process

In general, the harmonization process will need to be pragmatic in character: re-orienting policies where such action improves efficiency and speed of intervention.

In some areas, this may lead to the conclusion that harmonization should be rapid and deep-going. This is true in the case of material asylum law, for example. In recent years, submitting an application for asylum has increasingly become the alternative route for migrants who do not meet the requirements of (restrictive) immigration policies. The immigration pressure referred to above applies by definition to policy aspects that are still flexible to some degree. If admission to the status of employee or equivalent becomes in practice extremely limited, foreigners will look for other ways. Since submitting an application for asylum indicates that a foreigner considers that he has a well-founded fear of persecution in his country of origin within the meaning of Article 1A of the Geneva Convention, Member States must consider such a request carefully. This justified meticulousness in turn results in lengthy processing periods and, in conjunction with the growth in the number of asylum-seekers, increasingly strong pressure on asylum policy as such.

The asylum problem has become a matter of urgency for virtually all Member States and is a perfect area in which common answers can be found to common challenges. While recognizing the need for a procedure based on essential guarantees, Member States will have to attempt to reduce procedural abuses in this area. A first requirement would be that in all cases the same interpretation is given to the Geneva Convention, so that the conditions for recognition of refugee status are the same in all Member States. In addition, expulsion policies for rejected asylum-seekers will have to be implemented in accordance with the same procedures in all Member States. Only with regard to the procedural aspect of asylum policy may it be held that harmonization is of a less urgent nature, due in particular to the situation of the administrative and legal system in the Member States.

Immigration policies are a more complicated issue as not all areas lend themselves to immediate harmonization. Section B will return to this point in greater detail, but it will be seen that, even in this area, some policy elements lend themselves very readily to harmonization and that this too is a necessity for a dynamic policy. In the area of family reunion and formation, for example, Member States' policies can and will have

to be harmonized within a relatively short period. The same also holds true for policies to combat illegal immigration: by definition, immigration has little concern for national borders and will have even less once checks are relaxed and/or abolished. A common response to these problems is therefore considered generally desirable.

## 3. Basic principles for the level of harmonization

If the harmonization process were initiated without defining basic principles, harmonization might be carried out at the lowest level. Assuming that immigration into Member States must remain limited, it is above all the restrictive opinions which could dominate. It is clearly true that a European immigration policy is of necessity restrictive, with the exception of refugee policy and family reunion and formation policies, as well as policies providing for admission on humanitarian grounds. It must, however, be borne in mind that the European tradition is based on principles of social justice and respect for human rights, as defined in the European Convention on Human Rights.

The social justice aspect is particularly evident in the ways Member States deal with foreigners entitled to lawful residence. The basis for this policy is that these persons integrate into the society of the particular Member State. This integration process can be promoted by a policy regarding legal status which is strongly based on form and substance. This issue is all the more topical as a number of Member States are experiencing growing tensions between foreign and native populations. Recent xenophobic developments call for vigorous counteraction. On the one hand, this means that anti-discrimination policies in Member States must be expanded and consolidated. On the other hand, this will intensify the need for thorough integration policies and legal-status policies which would remove legal obstacles to integration as far as possible where the nationality of a Member State is not required for the pursuit of certain activities.

Once nationals of the twelve Member States enjoy the same conditions of movement and access to employment, the question will arise as to whether the difference made between EC nationals and non-EC nationals takes sufficient account of the position of this group of foreigners who, at national level, have often acquired a legal status comparable to that of a Member State's own nationals. As endeavours are made to give greater substance to a Citizen's Europe for EC nationals, these foreigners will also have to be able to associate with this process: they too will have to be able to identify themselves increasingly with Europe. Section II will therefore specifically examine the position of foreigners legally resident in Member States of the Community.

The European Convention on Human Rights has for many years provided a legal framework which also sets guidelines for certain components of immigration policy. This is particularly true of Article 8 thereof, which deals with the protection of family life and which the European Commission on Human Rights and the European Court of Human Rights interpret as also being decisive for policies on admission for purposes of family reunion.

Article 3 of the Convention sets limits on the possibilities for expelling foreigners. If they can expect inhumane or humiliating treatment in their country of origin, according to the case law of the Commission and Court in Strasbourg they cannot be expelled.

Other Articles of the Convention (5, 13) can also influence immigration policy in that they establish in particular guarantees for the procedures and administrative measures to be applied. Finally, Article 14 (non-discrimination) could play an important role here, at any rate in relation with other rights listed in the Convention.

The harmonization process must therefore of necessity fulfil two criteria: first, it must promote a dynamic migration policy and, second, it must be strictly in keeping with the European traditions of social justice and human rights. This implies the definition of a just and balanced immigration policy. That will be no mean task and will certainly require much more time and energy. Section B of this memorandum attempts to indicate how this process can be started in practice.

## 4. Presentation of the harmonization policy

The discussions by the Twelve on the free movement of persons attract considerable public attention, sometimes of a critical nature. Such criticism is particularly aimed at the fact that deliberations are not public. Despite informal contacts made by different Presidencies with the European Parliament, the various non-governmental organizations and each government's contacts with its national parliament, the impression remains that there is insufficient transparency in this area. That view ignores the fact that, while at international level negotiations are exclusively between governments, the results of negotiations are submitted to national parliaments so that there can be public and parliamentary discussion. Furthermore, contacts with the press are invariably organized whenever a ministerial meeting is held.

It may be advisable to step up the briefing of the European Parliament, the Twelve's national parliaments and those of non-member countries insofar as the measures adopted concern them. Consideration should also be given to the manner in which contacts with external organizations could be formed in the framework of discussions on a uniform European immigration policy and how the results could be presented.

It is impossible to over-rate the importance which political circles must attach to the question of immigration policy in a period of great tension; the more the activities undertaken in the harmonization process are favourably perceived by society and the political world, the greater will be the chances of success.

## III. ASYLUM POLICY

### A. Outline of a harmonized European asylum policy

In line with their common humanitarian tradition, the Member States, all of which are signatories to the Geneva Convention, have offered and continue to offer a refuge and protection to those who have reason to fear persecution for the reasons cited in that Convention.

It is on those humanitarian principles that any action to harmonize asylum law, as regards both form and substance, must be based.

Harmonization of asylum policy is a logical component of the increasing cooperation amongst the Twelve on immigration.

The Member States' signing of the Dublin Convention means that a common asylum policy must be defined.

At the same time, almost all the Member States are confronted with sharp increases in applications for asylum.

By way of illustration: in 1988, 1989 and 1990 the number of applications for asylum lodged in the twelve Member States of the European Community was respectively 156 000, 214 000 and 321 500.

International cooperation, and in particular harmonization of asylum law, are increasingly being regarded as a means of dealing concertedly and effectively with the asylum issue.

## 1. Harmonization of formal asylum law v. harmonization of substantive asylum law

Harmonization of asylum law can be split up into harmonization of the procedures involved in examining applications and harmonization of fundamental policy rules. Certain matters, such as the principle of "first host country" and the treatment of "clearly unjustified applications", involve both procedural and substantive aspects.

Asylum procedures are strongly influenced by national tradition. It may be noted that, beyond the differences in these procedures, there exists an overall equivalence. In most Member States the initial decision on an application for asylum is taken by an administrative authority. After that stage, however, procedures differ strongly, depending on both the type of application for asylum and the system opted for by the Member State concerned. In some cases, an initial rejection can be appealed against in court, while in others the administrative authority itself can be requested to review the earlier decision; a number of Member States rely on independent bodies for part of the decision-making process.

If, in harmonizing asylum law, too much emphasis were put on uniform procedures in the Twelve, the harmonization process could become bogged down quite simply through the complexity of the issue. This is because the status of administrative bodies of varying degrees of independence and the role of national courts in asylum procedures are matters which concern fundamental aspects of a State's organization.

Yet this by no means implies that no attempt should be made to harmonize formal asylum law. Agreements would certainly be desirable on a time limit for examining applications, on the introduction of a uniform priority procedure for clearly unjustified applications, etc.

In the short term, priority should, however, be given to harmonizing substantive rules. Tangible results in this area will in any event guarantee that, irrespective of how the procedure is organized in each Member State, the outcome will be the same everywhere.

**(b) Harmonization of substantive asylum law: the context**

Harmonization of substantive asylum law in the Twelve centres on a uniform interpretation of the Geneva Convention and the New York Protocol. Here Member States' replies to the questionnaire issued by the ad hoc Group on Immigration are highly relevant.

However, before discussing major principles in this area, the Twelve should consider what direction to take and what is feasible and what is not.

On the one hand, substantive asylum law is the subject of many textbooks, which deal with it on the basis of theoretical principles. Most States also have substantial national case law on the matter. On the other hand, asylum law is a daily reality for officials facing a host of individual applications for asylum. Each application is different and has to be judged carefully on its own merits. Special considerations intervene in each case. The officials concerned build up personal experience, judging cases on the basis not only of textbook instructions but also and especially of their knowledge of many individual cases.

Against this background the concept of the harmonization of substantive asylum law becomes much more complicated. It is wrong to assume that a set of legal rules can be introduced at European level alone so as to form a system capable of guiding the whole process of examining applications for asylum. A more or less abstract legal framework for assessing applications for asylum is quite conceivable, but dealing with them in practice requires more than that.

It must be realized that the abstract legal concepts present in asylum law usually become practicable only after having been amplified by data on the countries of origin. If one wishes, in general, to introduce the idea of indicators, i.e. data showing whether an application for asylum is justified, it should be possible for general indicators to be provided by the general legal framework; however, these indicators would still leave the responsible official with too little to go on. In order to be relevant in examining applications for asylum, such indicators need to be supplemented with information on countries of origin.

It must therefore be realized that harmonizing substantive asylum law is not to be equated with reaching agreement on a legal structure. Much more important in practice appears to be the existence of a consensus on appraisal of the situation in the country of origin wherever it is relevant to consideration of the asylum application. Over the next few months an inventory could be drawn up of precise information requirements in this area. After that, the means best suited to meeting these information requirements could be considered.

However, the fact that uniform rules have been drawn up does not mean they will be applied in the same way. In each individual case, further factors are important for the actual assessment. Examples of such factors are the manner in which an application for asylum is lodged, how particulars of the escape are recorded and the extent to which the asylum-seeker is given an opportunity to supply new or adjust previous data. Consequently, uniformity is not effectively achieved even where both the legal framework and the country data are streamlined.

More is needed to attain this goal. In that connection the Ministers of the Member States of the European Community responsible for immigration have decided to set up a clearing house, whereby in addition to a written form of information exchange, provision is made for periodic informal meetings of representatives from the executive authorities responsible for dealing with individual asylum applications.

Where certain parts of asylum law have been harmonized, the guarantee that asylum policy will be uniformly applied must be examined. In that context the question of judicial control will be taken into consideration during the discussions.

The adoption of a harmonized asylum policy should influence the flow of asylum-seekers in that the chances of being granted refugee status or admission will be the same everywhere. In that situation, other factors will influence foreigners to a greater extent than at present in choosing a particular country in which to apply for asylum. One such factor is the treatment given to asylum-seekers during the asylum procedure. If the allowances granted in the twelve Member States differ widely, certain countries will be more attractive than others. Should there be

large differences between the Twelve in the treatment of asylum-seekers, in the context of a uniform asylum law asylum flows could easily shift towards those countries where the arrangements are relatively more favourable, i.e. not only in terms of material conditions but also as regards the degree of freedom of movement accorded, for example.

Accordingly, it will be necessary in the longer term to consider aligning reception policies as well. As a first step, a questionnaire could be issued in order to collect information on current policy; subsequently, more precise decisions could be taken on what the reception arrangements should be.

Asylum-seekers will also let themselves be guided by many other factors: the possibility of being admitted other than as refugees or at any rate of not being expelled - i.e. of being able to remain in the country de facto - is an important factor. Consequently, these aspects too will need to be inventoried and discussed in greater detail if a harmonized European asylum policy is to be brought about.

A questionnaire has been drawn up on expulsion policy even though in the main this concerns matters that can be addressed only in the longer term. An inventory should also be made of the information on the country of origin needed for the actual expulsion of an asylum-seeker who has exhausted all remedies, and proposals should be formulated for closer cooperation at European level in collecting such information. A clear analogy exists with the abovementioned country data.

## 3. Harmonization of substantive asylum law: determining priorities

The first step to be taken in discussing the harmonization of substantive asylum law is to draw up an inventory of specific topics. The replies to the questionnaire provide a sound basis for such an inventory. The UNHCR Handbook and the use made of it, as well as the reservations expressed by the States involved, could also be taken into account.

A survey of the most striking similarities and differences in the substantive asylum law of the Twelve has been established. This survey has led to a concrete work programme being prepared (see A). On the basis of the replies to the questionnaire and earlier discussions in the ad hoc Group, the Presidency has already given priority to two topics, viz. the principle of first host country and interpretation of the concept of "clearly unjustified applications for asylum". These two subjects are set out below.

Special attention must also be given to maintaining the exchange of information. The replies to the questionnaire are in fact a mere snapshot. Examining individual applications for asylum is a continuous process that constantly poses new questions. Developments in national case law are of major importance in this connection. From time to time, courts deliver judgments that affect policy in this area. In that connection use could also be made of a clearing house, to be set up as indicated above.

**4. Clearly unjustified applications for asylum**

A distinctive feature of the current asylum issue is the fact that applications for asylum are submitted by many foreigners who are not refugees as defined by the Geneva Convention. Their real aim is to migrate for other (mostly economic) reasons. Because of the necessarily restrictive nature of the immigration policy pursued by the Twelve, other legal immigration possibilities are thwarted, forcing those concerned to fall back on submission of an application for asylum. In this connection, being able to stay on during the examination of the application for asylum and the hope of not being expelled in any case, even if refugee status or admission on humanitarian grounds is not granted, are strong incentives for lodging an application for asylum. In practice, many asylum-seekers also achieve their aim: although few seem to qualify for admission, most have a chance of remaining in the country concerned nevertheless, either lawfully as "tolerated" persons or unlawfully. Expulsion difficulties that arise are greater the longer the foreigner has stayed in the country.

These and other considerations have prompted a number of States to make a distinction between clearly justified applications for asylum, clearly unjustified applications and those requiring further examination. The first two categories should be dealt with as quickly as possible. Clearly unjustified applications for asylum reflect the above trend on the part of many to consider the asylum procedure as a last resort for what amounts to deliberate migration for what are in fact economic reasons. However, these applications encumber the procedures for other categories of applications. Particularly sad is the case of clearly justified applications for asylum made by refugees who sometimes have to wait for a long time before being granted that status. It is equally important for this category that a decision on the application should be taken as quickly as possible.

Definition of the concept of a "clearly unjustified application for asylum" should result in rules on the minimum conditions to be fulfilled by any simplified or priority examination of such applications in the Twelve. The Ministers of the Twelve responsible for immigration concluded at their meeting in Brussels on 28 April 1987 that in certain cases applications for asylum could be examined using a simplified or priority procedure (in accordance with national legislation). In this context those Member States which have such a simplified or priority procedure, or are planning to introduce one, could envisage agreements on the duration of the procedure and on the rights to be accorded such applicants for asylum, while ensuring that the desire for more efficient processing of this category of application does not stand in the way of proper legal protection and legal assistance.

The UNHCR Executive Committee also recognizes in Conclusions Nos 28 and 30 that it is important to introduce a special accelerated procedure for clearly unjustified applications for asylum, provided that a number of minimum conditions are satisfied regarding procedure and legal protection. Conclusion No 30 refers in this connection to applications for asylum which are clearly unjustified because they involve misuse or improper use of the asylum procedure. These Conclusions were further confirmed by the UNHCR's 42nd EXCOM of October 1991. Recommendation No R(81) 16 of the Committee of Ministers of the Council of Europe is based on more or less similar principles and guarantees.

The first thing to be done now is to define better this concept of clearly unjustified applications for asylum. Various criteria are important in deciding whether an application for asylum can be accepted. They are of a formal/procedural, or a substantive, nature in that the credibility and relevance of the account of the flight may be decisive. The following survey includes criteria of both sorts. Moreover, assessment of the justification for an application for asylum is indissolubly linked to an (as) clear (as possible) interpretation of the Geneva Convention and the New York Protocol.

An application may be regarded as clearly unjustified if:

(a) the applicant for asylum comes from a "safe" country, i.e. a country which can be clearly shown, in an objective and verifiable way, not to generate refugees or where it can be clearly shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist.

An application for asylum by a foreigner who comes from a "safe" country is deemed clearly unjustified out of hand unless sufficiently convincing evidence shows that there might be a justified claim under Article 1A of the Geneva Convention. It is for the foreigner to prove that he has good grounds for fearing persecution even though he comes from a country regarded as "safe". This means that individual examination of applications for asylum, which may be of varying intensity, should also be the basic approach in cases involving the safe-country principle. Application of the safe-country principle as outlined here can speed up the procedure. Applying the principle that certain countries generally do not produce refugees may be a major deterrent to potential applicants for asylum.

The safe-country principle also appeared on the agenda for the UNHCR's 42nd EXCOM. It is important to note in this connection that there was also discussion of use of the cessation clause and that in her intervention at the EXCOM meeting the High Commissioner explicitly stated that consideration could be given to whether it was possible to apply the cessation clause to the countries of Eastern Europe. The EXCOM decided that it would continue

discussion of the concept of a safe country with a view to reaching a conclusion. The draft conclusion is therefore in abeyance. However, many delegations subscribe to the tenor of a conclusion containing the concept set out here.

The simultaneous application of the aforementioned principle to a number of countries will have to be clarified by the Twelve as soon as possible. If the safe-country principle can be applied in cooperation with the UNHCR, it will enhance the authoritativeness of such a policy.

(b) certain grounds adduced are clearly in no way related to the principles set out in Article 1A of the Geneva Convention. An example could be where the asylum-seeker himself adduces economic reasons;

(c) the asylum-seeker has voluntarily re-availed himself of the protection of the country of his nationality;

(d) having lost his nationality, the asylum-seeker has voluntarily regained it;

(e) the asylum-seeker has acquired a new nationality and enjoys the protection of the country of his new nationality;

(f) the asylum-seeker has voluntarily established himself in the country which he left or outside which he remained owing to fear of persecution;

(g) the asylum-seeker receives protection or assistance from United Nations bodies or agencies other than the UNHCR;

(h) the asylum-seeker is recognized by the competent authorities of the country in which he has taken up residence as having the rights and obligations attaching to the possession of the nationality of that country.

Grounds (c) to (h) have been taken directly from Articles 1C to E of the Geneva Convention. They are cited in it as grounds for cessation and exclusion in respect of recognized refugees. However, the situation referred to is where one of these aspects obtains in the actual course of the procedure concerning persons whose application for asylum has not yet been the subject of a definitive decision.

There are also a number of criteria which may establish clear lack of justification for the application for asylum although not necessarily in each individual case. This occurs where:

(a) the application for asylum is based on false identity, where the foreigner concerned has also submitted an application for asylum under his correct identity.

In this case it will have to be established which identity is the correct one. Applications for asylum submitted under a false identity can therefore be regarded as clearly unjustified. An application submitted under the correct identity recognized as such will be examined, although stricter conditions may be imposed on the foreigner with regard to the acceptability of his application for asylum as his credibility will have been damaged as a result of the submission of false information on his identity.

(b) the applicant has attempted wilfully to deceive the authorities of the country in which he submitted his application for asylum by:

(i) submitting false or forged documents or information which he knowingly presents as authentic;

(ii) knowingly submitting travel or identity papers or information which bear no relation to him;

(iii) systematically submitting inconsistent and/or inaccurate information on essential parts of the asylum file (as compared with available information), unless the applicant for asylum can make an acceptable case that this cannot reasonably be held against him.

These criteria presuppose that the applicant for asylum has already left the country in which he considers that there is justification for fearing persecution, and that there is no longer any reason for knowingly continuing to maintain the authenticity of false or forged identity papers, documents or information. The possession of false or forged documents of any kind may but need not by definition mean that the applicant for asylum is acting in bad faith, but in such cases it is for the applicant for asylum to provide evidence in support of the credibility of his motives for fleeing the country.

It is possible to apply one or more of these criteria in order to establish that an application for asylum is clearly unjustified, irrespective of the stage reached in the asylum application procedure at that time (examination as to admissibility, substantive decision, review or appeal). If a simplified or priority procedure already exists in certain Member States, that procedure may be applied on the basis of the above criteria to requests for asylum which can be regarded as clearly unjustified.

**5. "First host country"**

The Twelve generally apply the "first host country" rule. This rule provides that where a foreigner can obtain adequate protection against expulsion in the State where he had been staying before his arrival in the State where he lodged an application for asylum, the latter State may send him back to the "first host country". The Twelve have already developed the first host country principle in their mutual relations and given it partial substance by adopting the Dublin Convention. The logical consequence would be to work out a common attitude to third countries. This would enable the Twelve to project a uniform image to the outside world, whilst creating possibilities for exerting joint pressure on first host countries reluctant to assume their responsibilities. This pre-supposes, however, uniform application of the first host country principle.

For practical application of this rule there are three options (which occur in practice within the Twelve):

**(a) Application to refugees**

Return to the first host country is carried out where the procedure concerning the application for asylum is under way and the justification for the application has been investigated. If the application is refused, it is then in principle possible to remove the applicant either to the first host country or to the country of origin. If the person concerned proves to be a genuine refugee, then he can in principle be removed only to the first host country and in any case not to his country of origin.

The advantage of this practice is that the person concerned is granted refugee status as quickly as possible and as such will be able to enjoy rights under the Geneva Convention. From the point of view of efficiency, however, there are also clear disadvantages. This practice entails higher costs and a longer procedure.

**(b) Application to all applicants for asylum, irrespective of whether they can be regarded as refugees**

Examination of an application for asylum is excluded in any event where a first host country exists. Under this practice it is assumed that the first host country, if it is a party to the Geneva Convention, assumes responsibility for examining the application for asylum.

In any case, the first host country must protect the applicant for asylum sufficiently against expulsion. The advantage of this practice is that it places as small a burden as possible on the asylum procedure. The disadvantage is that a refugee is not at first recognized as such and is not therefore guaranteed in advance the rights arising from the Geneva Convention.

(c) Mixed practices

In certain Member States there exists between these two extremes a mixed practice whereby a distinction is made between applicants for asylum who are already in the territory of the Member State and those who are still at the border of the State and submit an application for asylum at the border post. In the first case, all applications for asylum are examined and the justification for them investigated (a) before determining whether a first host country exists. In the second case, the justification for the application for asylum is not investigated if a first host country exists (b).

The Twelve generally apply the "first host country" principle as described in (a) and (b), although a number of Member States use both options in parallel as described in (c).

There are, moreover, two opposite tendencies. All Member States of the European Community recognize that from the point of view of expediency option (b) is preferable. At the same time a number of Member States are building up case law which on the contrary favours option (a). As part of harmonization of asylum policy, efforts should be made to achieve a uniform approach in this area. The ad hoc Group on Immigration should be invited to examine this question.

In order to determine whether a first host country exists, it is important to decide on the criteria which a country must fulfil.

It is proposed taking as a general principle that the foreigner must in any case have had the opportunity of contacting the authorities of the third country designated as the first host country in order to inform them that he is applying for acceptance as a refugee.

Certain Member States require other guarantees. The ad hoc Group on Immigration is invited to consider this question.

Another general assumption is that the first host country must in practice comply with the principle of non-expulsion.

In the case of an applicant for asylum not yet demonstrated to be a refugee (option (b)), the Member States consider that the question of his recognition as a refugee is in the first instance a matter for the sovereign responsibility of the third country, with the UNHCR monitoring compliance with the Geneva Convention under Article 35 thereof. As for foreigners whose applications for asylum have not yet been refused by the State concerned, and foreigners who have been recognized as refugees by that State, it must be ensured that they will not be sent back by the State to the country in which they claim they have justification for fearing persecution (non-expulsion).

In the case of a refugee who has already been recognized as such by a Member State of the European Communities (option (a)), it must also be ensured that the third country to which the foreigner is being removed complies with the principle of non-expulsion.

In general, the Twelve will require more specific (minimum) guarantees regarding treatment of refugees where the country involved has not ratified the Geneva Convention or has ratified it subject to a reservation, e.g. with reference to the way in which the country in question complies with obligations resulting from international agreements on human rights.

In certain Member States additional guarantees are required regarding the processing of asylum applications and the existence of minimum living conditions. This matter must be studied in greater depth by the ad hoc Group on Immigration.

The principle of first host country as described above is in any case not applied where the foreigner has been able to prove that he rightly feared persecution by the State in question or that he would face inhuman or humiliating treatment in that country.

The principle of first host country may also not be applied where the foreigner has been able to prove that he has clear ties with the Member State of the European Communities to which he has submitted his application for asylum and where that Member State takes account of such ties for humanitarian reasons.

B. Implementation of the Dublin Convention

The Dublin Convention may be regarded as a first major step in cooperation on asylum policy between the Twelve.

The Convention provides that every application for asylum lodged in the territory of the Twelve is in every case to be examined by one of them. Moreover, the Convention regulates the allocation of responsibilities amongst Member States. Each Member State remains free, however, to consider an application even if it is not bound to do so by the criteria of the Convention.

For the Dublin Convention to be effectively implemented following ratification by the Twelve, a number of implementing measures will still have to be adopted.

As a general rule for implementation of the Convention, Member States have agreed that action should be pragmatic and taken on the basis of the principle of good will. For the purpose of determining responsibility, information will be provided by all Member States which are assumed in the best position to do so. Any Member State which requests another Member State to take back or take charge of a refugee must attach to its request the information on which it is based. A standard document is planned for this purpose, the content of which will largely be based on the standardized application form already approved by the Member States (WGI 262), with the difference that it will now gather data authorized by the Member State involved. The Member State to which the request is addressed will co-operate to the best of its ability in order to assume responsibility as quickly as possible. In general, a Member State which claims an exception will make known the facts and circumstances justifying derogation from the principal rule regarding the attribution of responsibility.

In addition, a network of contacts needs to be built up. These can speed up the allocation of responsibility. Once responsibility for examining an application has been established, such contacts will make it possible to continue practical cooperation, should the Member State responsible ask for data on the asylum dossier

of the foreigner concerned, and the latter agrees to such data being given. The asylum-seeker himself will have to be handed over to the competent authorities of the State responsible. Questions arising in this connection are: for example, is the asylum-seeker allowed to travel to that State by himself or is he literally handed over? Does such hand-over take place at the border and do any special arrangements have to be made, given that border controls at internal borders are to be abolished?

Finally, it will have to be determined how the whole system could be implemented as effectively as possible. A practice already very common among asylum-seekers is to lodge several applications in a single State under different names. Once it is known that the Dublin Convention provides for a single responsible State and the system works, asylum-seekers will be very tempted to submit another application for asylum in another State under a (slightly) different name. Account should be taken here of the fact that, in the case of certain nationalities, the names of asylum-seekers are very similar and sometimes do not constitute a criterion for identification. As such, finger-printing should prove an effective means of combating such a practice.

The Twelve have now agreed to examine this matter in greater detail and to consider in particular the advisability of carrying out a feasibility study on a common system for exchanging and comparing the fingerprints of applicants for asylum.

The Dublin Convention incorporates a system of responsibility criteria. It is necessary to ensure that the determination of the State responsible, the furnishing of evidence and the actual transfer of the examination do not take longer than, for instance, the rejection of an application for asylum as clearly unjustified. Consultations could be held on the drawing-up of clear and uniform instructions concerning this point.

C. External contacts and presentation of the asylum policy

General points on the presentation of immigration and asylum policies have already been made in the general introduction to this memorandum (see page 17).

As regards asylum policy proper, the importance of contacts with the United Nations High Commissioner for Refugees should be underlined.

UNHCR representatives have already signalled their organization's desire to express its views in one way or another in the course of the Twelve's harmonization process. Contacts with the UNHCR have in the meantime been cemented by regular discussions between the Troika of the ad hoc Group on Immigration and representatives of the UNHCR.

D. Work programme concerning asylum policy

See A,IV.

## II.B REPORT ON THE COMPLETION OF THE MAASTRICHT PROGRAMME ON ASYLUM ADOPTED IN 1991

### I. INTRODUCTION

When it met in Maastricht on 9 and 10 December 1991, the European Council recorded its agreement on the report on immigration and asylum policy (WGI 930) submitted by the Ministers with responsibility for immigration.

The programme provides for action to be taken to harmonize asylum policy.

It was agreed that before the Treaty on European Union came into force it would be necessary to examine certain subjects concerning inter alia:

- application and implementation of the Dublin Convention;
- harmonization of the substantive legal rules on asylum;
- harmonization of expulsion policy;
- creation of a clearing-house for information, discussion and exchange on asylum (CIREA);
- examination of judicial aspects;
- reception arrangements for asylum-seekers.

It was agreed that where necessary these questions, which do not constitute an exhaustive list, would continue to be examined after the Treaty on European Union came into force.

The Declaration on asylum annexed to the Treaty reads as follows:

*"1. The Conference agrees that, in the context of the proceedings provided for in Articles K.1 and K.3 of the provisions on co-operation in the fields of justice and home affairs, the Council will consider as a matter of priority questions concerning Member States' asylum policies, with the aim of adopting, by the beginning of 1993, common action to harmonize aspects of them, in the light of the work programme and timetable contained in the report on asylum drawn up at the request of the European Council meeting in Luxembourg on 28 and 29 June 1991.*

*2. In this connection, the Council will also consider, by the end of 1993, on the basis of a report, the possibility of applying Article K.9 to such matters." ([1])*

It should also be noted that, with a view to harmonization of certain aspects of asylum policy, Ministers, in two Resolutions adopted in London (manifestly unfounded applications for asylum and host third countries), expressed the wish that consideration should be given to putting the principles agreed in those Resolutions into effect in a binding convention (WGI 1284 REV 2, page 3).

In the work programme for the second half of 1993, which was the subject of an exchange of views within the ad hoc Group on Immigration on 12 and 13 July 1993, the Presidency proposed to draw up a report on progress achieved on asylum in the light of the guidelines laid down in the Maastricht report of 1991.

The purpose of this document is to attain that objective. It is aligned on the structure of the work programme adopted in Maastricht. It gives an account of implementation of each of the chapters and sections to date and describes anticipated future work.

## II. DESCRIPTION OF WORK COMPLETED

### A. Application and implementation of the Dublin Convention

The Dublin Convention was signed by the Member States of the Community in June 1990 and 1991.

([1]) The German delegation proposed that, pursuant to this paragraph, suggestions for common action should be included in the report.

At present [six] Member States have ratified the Convention. When they met in Copenhagen on 1 and 2 June 1993, those States which were in the process of ratifying said that they would do all they could to ensure that the Convention came into force as soon as possible.

1. Definition of a common interpretation of the concepts used in the Convention

(a) Implementation

Article 1 of the Dublin Convention defines the meaning to be attached to certain concepts. An interpretation of certain other concepts provided for in the Convention was arrived at in the light of the guidelines laid down in Maastricht.

In this context the following work has been completed:

- conclusions on the interpretation of certain Articles of the Convention (WGI 1028);
- calculation of periods of time (WGI 1039 REV 1);
- transfer of applicants for asylum (WGI 1269).

Regarding the transfer of applicants for asylum, most of the necessary conclusions have been adopted (WGI 1269) and additional decisions are being studied (WGI 1470).

(b) Future work

This item of the programme has practically reached completion. [The aspects relating to the transfer of asylum applicants could be completed by the end of 1993.]

The possibility cannot be ruled out that certain concepts might be amenable to more precise definition. But that would have to be done in the light of a specific need once the Dublin Convention has come into force. In this respect, it would be for the Article 18 Committee to examine any general question on the Convention's application and interpretation.

2. Exchange of information

(a) Implementation

The objective is:

- to work out a standardized form for exchanging information on the initial indications concerning the Member State responsible for examining the application. With this in mind, the Member States have drafted a standard form (WGI 1011) [which is currently being tested and may have to be adjusted in the light of the experience and comments of the Netherlands delegation (WGI 1220)];

- to establish rules on the forwarding of information in the context of the Dublin Convention. For this purpose, Ministers approved the drafting of a joint handbook, the aim of which would be to provide Member States with details of the authorities in the other Member States to which specific questions and requests are to be addressed (WGI 1495);

- to draw up a non-restrictive list of means of proof and recognized indications to help establish the Member State responsible for examining an application. There have been a number of preparatory discussions on the subject. Member States were sent a questionnaire which was used as a basis for drawing up an inventory (WGI 1415 REV 1) and a compilation (WGI 1441 REV 2). [At present discussions are under way on a proposal concerning the implementation of means of proof in the framework of the Convention (WGI 1490).]

(b) Future work

Work on the following subjects should be finalized by the end of 1993:

- the actual drafting of the Dublin Convention joint handbook;

- the standard form for determining the Member State responsible for examining an asylum application;

- the aspects relating to means of proof.

3. Implementation mechanisms

(a) Implementation

The objective is:

- to indicate the central contacts in each Member State. Ministers decided to draft a joint handbook for the application of the Dublin Convention (WGI 1495). All that remains to be done is to put together the names and addresses of the authority in each Member State designated to deal with specific questions and requests in the framework of the Dublin Convention;

- to draft a list of documents on implementation mechanisms. That document is included in the compilation of practice with respect to asylum (WGI 1505) and is regularly updated;

- to make an inventory of residence permits. An inventory (WGI 1415 REV 3) and a summary (WGI 1441 REV 2) have been drawn up on the subject. Those same documents also cover existing and future national registration systems for visas, central registers of persons authorized to enter Member States' territory and any other registers on asylum or immigration questions which might exist.

(b) Future work

By the end of 1993, Member States envisage finalizing the actual drafting of the joint handbook on the Dublin Convention.

4. Drafting of a practical handbook for the implementation of the criteria in the Convention

(a) Implementation

The aim is to produce a flow chart for determining the State responsible for examining asylum applications. Such a chart appears in WGI 1193 REV 1.

To make the flow chart easier to consult a computer program on the application of the Dublin Convention has been disseminated on disk. The program has been produced on an experimental basis.

Other aspects relating to the drafting of a practical handbook are already covered in section 3 above.

(b) Future work

The computer program on the application of the Dublin Convention is due to be finalized by the end of 1993.

5. Measures to combat asylum applications lodged under an assumed identity and multiple applications

(a) Implementation

The aim is to:

- exchange fingerprints. An inventory (WGI 1315) and survey (WGI 1317) have been made in order to give a clear idea of fingerprinting practice in each Member State;

- study the feasibility of a system for exchanging and comparing fingerprints (Eurodac). A number of measures have been taken in this regard: the call for tenders procedure, the remit of the study and its financing. Rules have been established on the choice of consultants eligible to carry out the study of users' requirements. The call for tenders was made on 15 July 1993. Several discussions have already been held on the legal problems raised by the creation of Eurodac. (1)

(b) Future work

Work on Eurodac will continue along the following lines:

- after the study of users' requirements (expected to be completed in the first half of 1994), it will be necessary to study the technical specifications aspects. This will take six months' study.
The best that can be expected is that the second study might be completed by the end of 1994.

(1) The Council's Legal Service has drafted an opinion on this subject (5546/93 JUR 25).

Subject to a decision to be taken by Ministers, it will not be possible for the Eurodac system to be up and running until the beginning of 1995;

- progress on questions relating to the technical aspects of Eurodac will take account of the other work referred to above;

- consideration will have to be given to the appropriate legal framework for Eurodac; in the view of several delegations it should take the form of a convention to be concluded between Member States.

6. Convention parallel to the Dublin Convention

The Dublin Convention is not open to accession by countries which are not members of the European Communities.

Given the interest which certain third countries have expressed in taking part in the rules and mechanisms laid down in the Dublin Convention, a preliminary draft Convention parallel to the Dublin Convention has been prepared (WGI 1105).

It was agreed that negotiations on the Convention could begin only once the Dublin Convention had been ratified by the twelve Member States of the European Communities, with third States having entered into identical international commitments.

The Presidencies have already pursued contacts with certain third countries which had been sent the draft Convention (Norway, Sweden, Finland, Switzerland, Austria, Poland, the Czech Republic and Slovakia). Canada has said that it is very interested in the parallel Convention.

It should be pointed out that at their meeting in Copenhagen on 1 and 2 June 1993 Ministers noted that the Dublin Convention formed part of the "acquis" resulting from intergovernmental cooperation between the twelve Member States in the field of Justice and Home Affairs which acceding States were required to accept. Such States would not therefore have to accede to the Convention parallel to the Dublin Convention.

Although not provided for in the Maastricht programme, the Convention parallel to the Dublin Convention constitutes an important step in terms of establishing an asylum policy in a European context.

## B. Harmonization of the substantive rules of asylum law

Progress has been made in harmonizing some of the substantive rules of asylum law. The following points were provided for in the Maastricht programme:

### 1. Obvious conditions making it possible to establish that asylum applications are manifestly unfounded [1] [2]

(a) Implementation

Ministers adopted a Resolution on manifestly unfounded applications for asylum in London on 30 November and 1 December 1992 (WGI 1282 REV 1).

Ministers agreed to seek to ensure that their national laws are adapted, if need be, and to incorporate the principles of this Resolution as soon as possible, at the latest by 1 January 1995.

(b) Future work

Completed, subject to adoption of the necessary measures by Member States.

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[1] Scrutiny reservation by the Netherlands delegation.
[2] Reservation by the German delegation.

2. Definition and harmonized implementation of the principle of first host country [1] [2]

(a) Implementation

Ministers adopted a Resolution on the first host third country in London on 30 November and 1 December 1992 (WGI 1282 REV 1). Based on the spirit of the Maastricht report, this measure goes beyond the provisions of that report in that it takes account of the situation in the first non-Community host country and in the other non-Community countries.

Ministers agreed to seek to ensure that their national laws are adapted, if need be, and to incorporate the principles of this Resolution as soon as possible, at the latest by the time of the entry into force of the Dublin Convention.

(b) Future work

Completed, subject to adoption of the necessary measures by Member States.

3. Joint assessment of the situation in countries of origin with a view both to admission and expulsion

(a) Implementation

The objective is:

- to facilitate joint assessment of the situation in third countries by drawing up joint reports. At present, three joint reports have already been drawn up by embassies on the spot (Sri Lanka, Romania and Ethiopia/Eritrea).

  Two reports are expected shortly (Albania, Angola). Political Cooperation has already been asked for a second list of reports (Bulgaria, China, Iraq, Vietnam and Zaire). Two further reports will be requested subsequently (Turkey and Nigeria). Ministers recorded their agreement on the factors to be considered in selecting third countries on which joint reports might be requested (WGI 1500). Certain ad hoc rules were established with a view to defining the structure of joint reports as well as with regard to the procedures for forwarding them;

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(1) Scrutiny reservation by the Netherlands delegation.
(2) German reservation.

- to use a clearing house for information, discussion and exchange for the collection, analysis and dissemination of information on countries of origin (see below under D), thus developing more informal consultations, themselves intended to facilitate co-ordination and harmonization of asylum practices and policies.

(b) Future work

The implementing rules in this area are largely completed. Details of certain aspects, such as the dissemination [and confidentiality] (1) of the joint reports, have yet to be spelled out.

4. Harmonized application of the definition of a refugee, as contained in Article 1A of the Geneva Convention

(a) Implementation

An initial inventory was drawn up on the subject (WGI 833) along with several summary documents (WGI 845 and WGI 872 REV 2). Other contributions have been produced in order to make progress with discussions.

In response to the need for more detailed examination of various aspects of the question, a second inventory was drawn up (WGI 1577).

It was agreed that the discussions would be held in parallel within the Subgroup on Asylum and CIREA.

(b) Future work

This is a very important subject, requiring long and complex work, since it involves one of the fundamental aspects of asylum policy. Member States have reaffirmed their will to continue discussions on the matter as a priority. Although, given the scope of the subject and its sensitive nature, it is difficult to specify any precise time-frame, it should be possible to achieve substantial results by January 1995.

(1) The Group thought it best to await the outcome of the work to be done by CIREA on this matter.

5. Countries in which there is generally no serious risk of persecution (1)

(a) Implementation

When they met in London on 30 November and 1 December 1992, Ministers adopted conclusions on countries in which there is generally no serious risk of persecution (WGI 1281).

(b) Future work

Ministers asked the ad hoc Group on Immigration to study the possibility of drawing up a joint list of those countries (WGI 1284 REV 2).

C. Harmonization of expulsion policy

1. Joint assessment of the situation in the countries of origin

(a) Implementation

See B.3(a).

(b) Future work

This point has been completed in principle. As the discussions go into greater detail, new joint reports will be drawn up.

2. Finalization of various aspects of an expulsion policy

(a) Implementation

A questionnaire has been drawn up on the subject. Inventory and summary documents will be drafted in the light of Member States' replies. It will then be necessary to put in place the various points which have a bearing on the harmonization of expulsion policy.

(1) Scrutiny reservation by the Netherlands delegation.

(b) Future work

Discussions must continue in this area. It is possible that some work will be completed early in 1994.

## D. Setting up of a clearing house for information, discussion and exchange on asylum (CIREA)

Ministers established the clearing house at their meeting in Lisbon on 11 and 12 June 1992 (WGI 1107).

CIREA is a place where the authorities of the Member States can exchange information and operates within the framework of the General Secretariat of the Council. Member States are represented by the authorities responsible for examining asylum applications or by those dealing with asylum matters in the relevant Working Party of the Twelve.

Subsequently, the clearing house will operate within the framework of the provisions of the act to be adopted as soon as possible after the entry into force of the Treaty on European Union, on the basis of that Treaty.

### 1. Exchange of statistics and of written information on legislation, policy, case law and information on countries of origin

(a) Implementation

Member States have already submitted the legislative, regulatory or other changes relating to asylum approved in 1991, 1992 and 1993.
In addition, information will be exchanged regarding:

- general aspects relating to asylum policy in the Member States;
- important case law;

- statistics. In this respect the clearing house is preparing a revised statistical system in order to respond effectively to the provisions of the Dublin Convention.

Within the clearing house information is exchanged on the country of origin on the basis of the factors referred to in the joint reports and of information available in the Member States. There have been several exchanges of information between national experts.

(b) Future work

The Maastricht programme has been adhered to on this point. Other discussions will be held in the light of the work already completed.

2. Oral exchange of information at informal meetings of officials responsible for implementing asylum policy

(a) Implementation

Oral information is exchanged informally at each clearing house meeting. The agenda always includes an item for this purpose. A chart has been drawn up to enhance these exchanges of information. The clearing house makes a synthesis of the information.

(b) Future work

The Maastricht programme has been completed as far as this point is concerned.

3. Cooperation with the UNHCR's Centre for Documentation on Refugees

At their meeting in Copenhagen on 1 and 2 June 1993, Ministers recorded their agreement on establishing cooperation between the clearing house and the UNHCR's Centre for Documentation on Refugees according to the detailed conditions laid down under 2 in WGI 1501. That cooperation is currently being put into practice.

Such cooperation will give the clearing house fast access to a large quantity of asylum data.

This measure was not provided for in the Maastricht programme.

E. Judicial examination

(a) Implementation

An exchange of views was held on the examination of the guarantee on the harmonized application of asylum policy when drafting the Maastricht report.

(b) Future work

It would seem more appropriate to continue working in the other areas relating to asylum policy before dealing with the aspects relating to judicial examination.

F. Reception arrangements for asylum-seekers

1. Gathering of data on current reception arrangements (subsistence benefit, accommodation, access to educational facilities, possible access to employment, possible restrictions on movement, etc.)

(a) Implementation

Member States have been sent a questionnaire on reception arrangements for asylum-seekers. The information received will be embodied in an inventory and summary document in the near future.

(b) Future work

This point could be finalized by the end of 1993.

2. Study of conditions for the possible approximation of these factors on the basis of this data-gathering exercise

(a) Implementation

This measure will be implemented only once the data referred to under 1 have been collected. Analysis of the summary made on the subject should make it possible to study the possibility of approximating the rules applied in the Member States.

(b) Future work

Work on this point will begin only once collection of the data referred to under 1 has been completed.

G. People displaced from former Yugoslavia [1]

Ministers recorded their agreement on the conclusions concerning people displaced from former Yugoslavia at their meeting in London on 30 November and 1 December 1992 (WGI 1280), noting in particular that:

- in most Member States special arrangements had been put in place to meet the special circumstances of those displaced by the conflict in former Yugoslavia;

- Member States were in principle willing to admit certain groups of persons temporarily on the basis of the proposal made by the HCR and the ICRC and in accordance with national possibilities and in the context of a coordinated action by all Member States.

The following action was taken in the context of the Subgroup set up by the Ministers:

[1] Parliamentary scrutiny reservation by the Netherlands delegation.

- gathering of information on statistics and other aspects relating to admission policy towards persons from former Yugoslavia (inventory, WGI 1514; summary WGI 1475 REV 1);

- drafting of the list of important documents (WGI 1508);

- table of visa requirements (WGI 1333 REV 2);

- definition of possibilities for cooperation within the Member States (WGI 1401 REV 1);

- drafting by Member States of a supplementary questionnaire on the reunification of families of nationals of former Yugoslavia and their movement from one Member State to another (WGI 1476 REV 1).

In addition, at the meeting in Copenhagen on 1 and 2 June 1993, Ministers approved a Resolution on certain common guidelines as regards the admission of particularly vulnerable groups of distressed persons from former Yugoslavia (WGI 1499).

This section, which has been developed in an effort to address the situation existing in former Yugoslavia, was not provided for in the Maastricht programme.

## III. CONCLUSIONS

This report is an interim evaluation of the work programme laid down in Maastricht.

Any outline conclusion on progress to date must take account of the fact that:

- devising an asylum policy involves questions which are highly sensitive for Member States and which have only recently become the subject of work at the level of the Twelve;

- detailed, and sometimes long and demanding, preparatory work is required before reaching conclusions at the level of the Twelve;

- the time-frame given was short since the Maastricht programme was approved less than 2 years ago.

Bearing that in mind, the outcome of the work on asylum may be summarized as follows:

- ratification of the Dublin Convention and all acts necessary for its implementation will be finalized in the near future and will very probably come into force during the first half of 1994 (point A). Work on Eurodac, which must proceed in phases, is well under way;

- all the measures drawn up so far for the harmonization of substantive rules of asylum law have been approved (point B), with the exception of the harmonization of the definition of a refugee within the meaning of Article 1A of the Geneva Convention (see comments below);

- the clearing house is fully operational (point C).

Discussions have also begun on the reception of asylum-seekers (point F) and on expulsion (point C) and progress is expected between now and when the Maastricht Treaty comes into force or very shortly afterwards.

As regards the judicial question (point E), it would appear more appropriate to undertake further work in other areas relating to asylum policy before addressing aspects relating to judicial examination.

The work involved in harmonizing the application of the definition of a refugee as contained in Article 1A of the Geneva Convention will take time because of the very nature of the problems which the issue raises. When the Maastricht programme was drawn up, Ministers realized the magnitude of the task since they specified that where necessary work on some issues would continue even after the Treaty had come into force.

Also, it should be emphasized that some of the work undertaken by the Twelve Member States is on a scale which was not foreseen in the Maastricht programme. This is true of the discussions on displaced persons from former Yugoslavia, the Convention parallel to the Dublin Convention and the conclusion concerning countries in which there is generally no risk of persecution, to mention only the most striking examples.

Finally, Chapter VI of the Palma Report (CIRC 3624/89) concerning action in connection with grant of asylum and refugee status has been substantially implemented, or will be shortly.

## II.C CONCLUSIONS ON COUNTRIES IN WHICH THERE IS GENERALLY NO SERIOUS RISK OF PERSECUTION [1]

(London, 30 November and 1 December 1992)

1. The Resolution on manifestly unfounded applications for asylum (WGI 1282) includes at paragraph 1(a) a reference to the concept of countries in which there is in general terms no serious risk of persecution.

   – This concept means that it is a country which can be clearly shown, in an objective and verifiable way, normally not to generate refugees or where it can be clearly shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist [2].

**Purpose**

2. The aim of developing this concept is to assist in establishing a harmonized approach to applications from countries which give rise to a high proportion of manifestly unfounded applications and to reduce pressure on asylum determination systems that are at present excessively burdened with such applications. This will help to ensure that refugees in genuine need of protection are not kept waiting unnecessarily long for their status to be recognized and to discourage misuse of asylum procedures. Member States have the goal of reaching common assessment of certain countries that are of particular interest in this context. To this end, Member States will exchange information within an appropriate framework on any national decisions to consider particular countries as ones in which there is generally no serious risk of persecution. In making such assessments, they will use, as a minimum, the elements of assessment laid down in this document.

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[1] Scrutiny reservations by the Danish and Netherlands delegations.
[2] Report from Immigration Ministers to the European Council meeting in Maastricht (WGI 930, page 38).

3. An assessment by an individual Member State of a country as one in which there is generally no serious risk of persecution should not automatically result in the refusal of all asylum applications from its nationals or their exclusion from individualized determination procedures. A Member State may choose to use such an assessment in channelling cases into accelerated procedures as described in paragraph 2 of the Resolution on manifestly unfounded applications, agreed by Immigration Ministers at their meeting on 30 November and 1 December 1992. The Member State will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption.

Elements in the assessment

4. The following elements should be taken into consideration in any assessment of the general risk of persecution in a particular country:

   (a) Previous numbers of refugees and recognition rates. It is necessary to look at the recognition rates for asylum applicants from the country in question who have come to Member States in recent years. Obviously, a situation may change and historically low recognition rates need not continue following (for example) a violent coup. But in the absence of any significant change in the country it is reasonable to assume that low recognition rates will continue and that the country tends not to produce refugees.

   (b) Observance of human rights. It is necessary to consider the formal obligations undertaken by a country in acceding to international human rights instruments and in its domestic law and how in practice it meets those obligations. The latter aspect is clearly more important: accession or non-accession to a particular instrument cannot in itself result in a country being considered as one in which there is generally no serious risk of persecution. It should be

borne in mind that violations of human rights in a given country may be exclusively linked to a particular population group or to a particular area. The readiness of the country concerned to allow monitoring by NGOs of its observance of human rights is also relevant in judging how seriously a country takes its human rights obligations.

(c) Democratic institutions. The existence of one or more specific institutions cannot be a sine qua non but consideration should be given to elements such as democratic processes, elections, political pluralism and freedom of expression and opinion. Particular attention should be paid to the availability and effectiveness of legal means of protection and redress.

(d) Stability. Taking into account the abovementioned elements, an assessment must be made of the prospect for dramatic change in the immediate future. Any view formed must be reviewed over time in the light of events.

5. Assessments of the risk of persecution in individual countries should be based upon as wide a range of sources of information as possible, including advice and reports from diplomatic missions, international and non-governmental organizations and press reports.

Information from UNHCR has a specific place in this framework. UNHCR forms views of the relative safety of countries of origin both for its own operational purposes and in responding to requests for advice. It has access to sources of information within the UN system and non-governmental organizations.

6. Member States may take into consideration elements of assessment other than those previously mentioned, which will be reviewed from time to time.

## II.D RESOLUTION ON MANIFESTLY UNFOUNDED APPLICATIONS FOR ASYLUM (1)

**(London, 30 November and 1 December 1992)**

MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES responsible for Immigration, meeting in London on 30 November and 1 December 1992,

HAVING REGARD to the objective, fixed by the European Council meeting in Strasbourg in December 1989, of the harmonization of their asylum policies and the work programme agreed at the meeting at Maastricht in December 1991;

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;

NOTING that Member States may, in accordance with national legislation, allow the exceptional stay of aliens for other compelling reasons outside the terms of the 1951 Geneva Convention;

REAFFIRMING their commitment to the Dublin Convention of 15 June 1990, which guarantees that all asylum applicants at the border or in the territory of a Member State will have their claim for asylum examined and sets out rules for determining which Member State will be responsible for that examination;

AWARE that a rising number of applicants for asylum in the Member States are not in genuine need of protection within the Member States within the terms of the Geneva Convention, and concerned that such manifestly unfounded applications overload asylum determination procedures, delay the recognition of refugees in genuine need of protection and jeopardize the integrity of the institution of asylum;

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(1) Scrutiny reservations by the Danish and Netherlands delegations.
German reservation linked to the constitutional provisions of the FRG.

INSPIRED by Conclusion No 30 of the Executive Committee of the United Nations High Commissioner for Refugees;

CONVINCED that their asylum policies should give no encouragement to the misuse of asylum procedures,

HAVE ADOPTED THE FOLLOWING RESOLUTION:

Manifestly unfounded applications

1. (a) An application for asylum shall be regarded as manifestly unfounded if it is clear that it meets none of the substantive criteria under the Geneva Convention and New York Protocol for one of the following reasons:

   - there is clearly no substance to the applicant's claim to fear persecution in his own country (paragraphs 6 to 8); or

   - the claim is based on deliberate deception or is an abuse of asylum procedures (paragraphs 9 and 10).

   (b) Furthermore, without prejudice to the Dublin Convention, an application for asylum may not be subject to determination by a Member State of refugee status under the terms of the Geneva Convention on the Status of Refugees when it falls within the provisions of the Resolution on host countries adopted by Immigration Ministers meeting in London on 30 November and 1 December 1992.

2. Member States may include within an accelerated procedure (where it exists or is introduced), which need not include full examination at every level of the procedure, those applications which fall within the terms of paragraph 1, although an application need not be included within such procedures if there are national policies providing for its acceptance on other grounds. Member States may also operate admissibility procedures under which applications may be rejected very quickly on objective grounds.

3. Member States will aim to reach initial decisions on applications which fall within the terms of paragraph 1 as soon as possible and at the latest within one month and to complete any appeal or review procedures as soon as possible. Appeal or review procedures may be more simplified than those generally available in the case of other rejected asylum applications.

4. A decision to refuse an asylum application which falls within the terms of paragraph 1 will be taken by a competent authority at the appropriate level fully qualified in asylum or refugee matters. Amongst other procedural guarantees the applicant should be given the opportunity for a personal interview with a qualified official empowered under national law before any final decision is taken.

5. Without prejudice to the provisions of the Dublin Convention, where an application is refused under the terms of paragraph 1 the Member State concerned will ensure that the applicant leaves Community territory, unless he is given permission to enter or remain on other grounds.

No substance to claim to fear persecution

6. Member States may consider under the provisions of paragraph 2 above all applications the terms of which raise no question of refugee status within the terms of the Geneva Convention. This may be because:

   (a) the grounds of the application are outside the scope of the Geneva Convention: the applicant does not invoke fear of persecution based on his belonging to a race, a religion, a nationality, a social group, or on his political opinions, but reasons such as the search for a job or better living conditions;

   (b) the application is totally lacking in substance: the applicant provides no indications that he would be exposed to fear of persecution or his story contains no circumstantial or personal details;

(c) the application is manifestly lacking in any credibility: his story is inconsistent, contradictory or fundamentally improbable.

7. Member States may consider under the provisions of paragraph 2 above an application for asylum from claimed persecution which is clearly limited to a specific geographical area where effective protection is readily available for that individual in another part of his own country to which it would be reasonable to expect him to go, in accordance with Article 33.1 of the Geneva Convention. When necessary, the Member States will consult each other in the appropriate framework, taking account of information received from UNHCR, on situations which might allow, subject to an individual examination, the application of this paragraph.

8. It is open to an individual Member State to decide in accordance with the conclusions of Immigration Ministers of 1 December 1992 that a country is one in which there is in general terms no serious risk of persecution. In deciding whether a country is one in which there is no serious risk of persecution, the Member State will take into account the elements which are set out in the aforementioned conclusions of Ministers. Member States have the goal to reach common assessment of certain countries that are of particular interest in this context. The Member State will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption. In the absence of such indications, the application may be considered under the provisions of paragraph 2 above.

Deliberate deception or abuse of asylum procedures

9. Member States may consider under the provisions of paragraph 2 above all applications which are clearly based on deliberate deceit or are an abuse of asylum procedures. Member States may consider under accelerated procedures all cases in which the applicant has, without reasonable explanation:

(a) based his application on a false identity or on forged or counterfeit documents which he has maintained are genuine when questioned about them;

(b) deliberately made false representations about his claim, either orally or in writing, after applying for asylum;

(c) in bad faith destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his asylum application or to make the consideration of his application more difficult;

(d) deliberately failed to reveal that he has previously lodged an application in one or more countries, particularly when false identities are used;

(e) having had ample earlier opportunity to submit an asylum application, submitted the application in order to forestall an impending expulsion measure;

(f) flagrantly failed to comply with substantive obligations imposed by national rules relating to asylum procedures;

(g) submitted an application in one of the Member States, having had his application previously rejected in another country following an examination comprising adequate procedural guarantees and in accordance with the Geneva Convention on the Status of Refugees. To this effect, contacts between Member States and third countries would, when necessary, be made through UNHCR.

Member States will consult in the appropriate framework when it seems that new situations occur which may justify the implementation of accelerated procedures.

10. The factors listed in paragraph 9 are clear indications of bad faith and justify consideration of a case under the procedures described in paragraph 2 above in the absence of a satisfactory explanation for the applicant's behaviour. But they cannot in themselves outweigh a well-founded fear of persecution under Article 1 of the Geneva Convention and none of them carries any greater weight than any other.

Other cases to which accelerated procedures may apply

11. This Resolution does not affect national provisions of Member States for considering under accelerated procedures, where they exist, other cases where an urgent resolution of the claim is necessary, in which it is established that the applicant has committed a serious offence in the territory of the Member States, if a case manifestly falls within the situations mentioned in Article 1.F of the 1951 Geneva Convention, or for serious reasons of public security, even where the cases are not manifestly unfounded in accordance with paragraph 1.

Further action

12. Ministers agreed to seek to ensure that their national laws are adapted, if need be, to incorporate the principles of this Resolution as soon as possible, at the latest by 1 January 1995. Member States will from time to time, in co-operation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.

## II.E RESOLUTION ON A HARMONIZED APPROACH TO QUESTIONS CONCERNING HOST THIRD COUNTRIES (1)

(London, 30 November and 1 December 1992)

The Ministers of the Member States of the European Communities responsible for Immigration, meeting in London on 30 November and 1 December 1992;

DETERMINED to achieve the objective of harmonizing asylum policies as it was defined by the Luxembourg European Council in June 1991 and clarified by the Maastricht European Council in December 1991;

TRUE to the principles 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, and in particular Articles 31 and 33 thereof;

CONCERNED especially at the problem of refugees and asylum seekers unlawfully leaving countries where they have already been granted protection or have had a genuine opportunity to seek such protection and CONVINCED that a concerted response should be made to it, as suggested in Conclusion No 58 on Protection adopted by the UNHCR Executive Committee at its 40th session (1989);

CONSIDERING the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, and in particular Article 3(5) thereof, and WISHING to harmonize the principles under which they will act under this provision;

ANXIOUS to ensure effective protection for asylum seekers and refugees who require it,

HAVE ADOPTED THE FOLLOWING RESOLUTION:

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(1) Scrutiny reservations by the Danish and Netherlands delegations.
German reservation linked to the constitutional provisions of the FRG.

Procedure for application of the concept of host third country

1. The Resolution on manifestly unfounded applications for asylum, adopted by Ministers meeting in London on 30 November and 1 December 1992, refers in paragraph 1(b) to the concept of host third country. The following principles should form the procedural basis for applying the concept of host third country:

   (a) The formal identification of a host third country in principle precedes the substantive examination of the application for asylum and its justification.

   (b) The principle of the host third country is to be applied to all applicants for asylum, irrespective of whether or not they may be regarded as refugees.

   (c) Thus, if there is a host third country, the application for refugee status may not be examined and the asylum applicant may be sent to that country.

   (d) If the asylum applicant cannot in practice be sent to a host third country, the provisions of the Dublin Convention will apply.

   (e) Any Member State retains the right, for humanitarian reasons, not to remove the asylum applicant to a host third country.

   Cases falling within this concept may be considered under the accelerated procedures provided for in the aforementioned Resolution.

Substantive application: requirements and criteria for establishing whether a country is a host third country

2. Fulfilment of all the following fundamental requirements determines a host third country and should be assessed by the Member State in each individual case:

(a) In those third countries, the life or freedom of the asylum applicant must not be threatened, within the meaning of Article 33 of the Geneva Convention.

(b) The asylum applicant must not be exposed to torture or inhuman or degrading treatment in the third country.

(c) It must either be the case that the asylum applicant has already been granted protection in the third country or has had an opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek their protection, before approaching the Member State in which he is applying for asylum, or that there is clear evidence of his admissibility to a third country.

(d) The asylum applicant must be afforded effective protection in the host third country against refoulement, within the meaning of the Geneva Convention.

If two or more countries fulfil the above conditions, the Member States may expel the asylum applicant to one of those third countries. Member States will take into account, on the basis in particular of the information available from the UNHCR, known practice in the third countries, especially with regard to the principle of non-refoulement before considering sending asylum applicants to them.

Dublin Convention

3. The following principles set out the relationship between the application of the concept of the third host country, in accordance with Article 3(5) of the Dublin Convention, and the procedures under the Convention for determining the Member State responsible for examining an asylum application:

(a) The Member State in which the application for asylum has been lodged will examine whether or not the principle of the host third country can be applied. If that State decides to apply the principle, it will set in train the procedures necessary for sending the asylum applicant to the host third country before considering whether or not to transfer responsibility for examining the application for asylum to another Member State pursuant to the Dublin Convention.

(b) A Member State may not decline responsibility for examining an application for asylum, pursuant to the Dublin Convention, by claiming that the requesting Member State should have returned the applicant to a host third country.

(c) Notwithstanding the above, the Member State responsible for examining the application will retain the right, pursuant to its national laws, to send an applicant for asylum to the host third country.

(d) The above provisions do not prejudice the application of Article 3(4) and Article 9 of the Dublin Convention by the Member State in which the application for asylum has been lodged.

Future action

4. Ministers agreed to seek to ensure that their national laws are adapted, if need be, and to incorporate the principles of this resolution as soon as possible, at the latest by the time of the entry into force of the Dublin Convention. Member States will from time to time, in co-operation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.

## II.F RESOLUTION ON CERTAIN COMMON GUIDELINES AS REGARDS THE ADMISSION OF PARTICULARLY VULNERABLE GROUPS OF PERSONS FROM THE FORMER YUGOSLAVIA

THE MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES RESPONSIBLE FOR IMMIGRATION IN THE MEMBER STATES OF THE EUROPEAN COMMUNITIES, meeting in Copenhagen on 1 and 2 June 1993,

CONCERNED at the continuing humanitarian crisis in the former Yugoslavia,

RECALLING the common position adopted by the European Community and its Member States at the Geneva Conference of 29 July 1992 organized by the United Nations High Commissioner for Refugees,

RECALLING the conclusions of the European Council meeting held on 11 and 12 December 1992 in Edinburgh,

DECLARING their support for the work carried out both within and outside the former Yugoslavia by the United Nations High Commissioner for Refugees and by other humanitarian organizations.

EMPHASIZING that, in accordance with the approach of the United Nations High Commissioner for Refugees that protection and assistance should wherever possible be provided in the region of origin, they consider that displaced persons should be helped to remain in safe areas situated as close as possible to their homes, and that the efforts of the Member States should be aimed at creating safe conditions for these persons and sufficient funds for them to be able to remain in these areas,

REAFFIRMING their willingness, in co-operation with the United Nations High Commissioner for Refugees, to admit, according to their possibilities, particularly vulnerable persons in order to afford them temporary protection,

HAVE ADOPTED THE FOLLOWING RESOLUTION:

1. Member States, in compliance with their national procedures and laws, will take suitable measures for the admittance, within the limits of the possibilities of each Member State, of particularly vulnerable persons from the former Yugoslavia in order to afford them temporary protection.

   These arrangements are especially intended to apply to:

   (a) persons from the former Yugoslavia who:

   - have been held in a prisoner-of-war or internment camp and cannot otherwise be saved from a threat to life or limb;

   - are injured or seriously ill and for whom medical treatment cannot be obtained locally;

   - are under a direct threat to life or limb and whose protection cannot otherwise be secured;

   - have been subjected to sexual assault, provided that there is no suitable means for assisting them in safe areas situated as close as possible to their homes;

   (b) persons from the former Yugoslavia who have come directly from combat zones within their borders and who cannot return to their homes because of the conflict and human rights abuses.

2. Member States will endeavour to administer such arrangements on the basis of the overall objective that persons from the former Yugoslavia who are admitted to the Member States and given temporary protection are to return to an area in the former Yugoslavia in which they can live in safety as soon as the conditions in that area make it possible to do so safely.

3. Each Member State will make every effort to take the measures required to enable the persons concerned to stay in its territory temporarily within the framework of the general objective referred to in point 2.

   To that end Member States will in particular ensure the implementation of principles conducive to conditions in which the persons admitted to their territory can live in dignity during their stay.

   Those principles shall include the following:

   - the persons concerned shall be entitled to stay temporarily as far as is possible until conditions are suitable for their return, unless their stay constitutes a threat to public order, national security or the international relations of the Member States;

   - arrangements must be made for access to resources which allow them to live in decent conditions. Each Member State will determine the appropriate level and the means of achieving this, whether by earnings from work, exceptional aid or social benefits; they will pay special attention to the possibilities for housing the persons admitted;

   - Member States will pay due heed to the possibilities for access to health care, each Member State determining the arrangements for setting up this benefit;

- Member States will make every endeavour to ensure children can develop normally. To that end the host State will in particular ensure that they can attend school;

- as far as is possible, arrangements will be made for contacts to be maintained with close relatives (spouses and children who are minors). In exceptional circumstances, in particular on humanitarian grounds, provisional permission to stay may be granted for this purpose;

- whenever possible, the persons concerned will be informed of the conditions of stay in the host country;

- as far as is possible, with the involvement of local authorities and associations, displaced persons will be encouraged to take part in the host country's cultural and social activities.

These principles will be implemented in respect both of persons whose admission has been organized directly by the Member States and of those who make their own way to national territory once they have been granted provisional leave to stay. Member States will in this regard be motivated by the traditions of respect for the rights of the individual on which the European Community is built.

## II.G COUNCIL CONCLUSIONS CONCERNING THE POSSIBLE APPLICATION OF ARTICLE K.9 OF THE TREATY ON EUROPEAN UNION TO ASYLUM POLICY

The Council noted the progress made in asylum policy cooperation in recent years on the basis, in particular, of the programme approved by the Maastricht European Council.

Aware of the need to intensify such cooperation, it agreed to implement as soon as possible the new instruments available to it under the Treaty on European Union. They will make it possible to improve the effectiveness of the measures adopted in the framework of the Union in implementation of the priority programmes to be drawn up.

The Council took cognizance of the Commission report on the application of Article K.9 to asylum policy, as provided for in paragraph 2 of the Declaration contained in the Final Act of the Treaty on European Union.

The Council noted that, in the Commission's view, application of Article K.9 would offer certain advantages. It considers, however, like the Commission, that the time is not yet right to propose such application so soon after the entry into force of the TEU. Nevertheless, it believes that it might be advisable to reconsider this matter at a later date in the light of experience and by the end of 1995 at the latest.

## II.H DECISION ESTABLISHING THE CLEARING HOUSE

THE MINISTERS RESPONSIBLE FOR IMMIGRATION, HEREINAFTER REFERRED TO AS "THE MINISTERS",

Whereas Article 14 of 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 and in Luxembourg on 13 June 1991, provides for an exchange of information;

Whereas, in their report on immigration and asylum policy to the European Council meeting in Maastricht, they decided to establish a clearing house for information, discussion and exchange on asylum;

Wishing to fulfil the task entrusted to them by the European Council meeting in Maastricht, which invited them to implement, within the proposed time-scale, the programme of work contained in that report;

Considering the Declaration on asylum annexed to the Treaty on European Union,

HAVE DECIDED TO:

- agree to the provisions set out in the Annex for the establishment of the Centre for Information, Discussion and Exchange on Asylum (clearing house);

- ask the ad hoc Group on Immigration to draw up in proper form the act which, after ratification of the Treaty on European Union, will be submitted to the Council for approval under the procedures laid down for that purpose;

– ask the ad hoc Group on Immigration to:

= supervise the provisional operation of the clearing house, until the abovementioned act is adopted;

= carry out further studies on the definitive structures and financing of the clearing house.

ANNEX to the Decision

A Centre for Information, Discussion and Exchange on Asylum, hereinafter referred to as the "clearing house", to operate within the framework of the General Secretariat of the Council of the European Communities, is hereby established.

The Member States shall designate to participate in the clearing house:

- their delegates, who shall in principle be the persons dealing with asylum matters in the relevant Council body;

- officials responsible in the Member States for implementing laws and regulations on asylum and more specifically experts responsible for processing asylum applications.

The Commission shall be fully associated with the work of the clearing house.

The tasks and operating methods of the clearing house shall be as follows:

I.

Powers

The clearing house shall:

- for the time being operate provisionally within the framework of this Decision;

- act within the framework of the provisions of the act to be adopted on the basis of the Treaty on European Union as soon as possible after the latter comes into force;

- be an informal forum for exchanges of information and consultations, without any decision-making power.

II.

## Objectives

The clearing house shall gather, exchange and disseminate information and compile documentation on all matters relating to asylum.

The aim of this exchange of information shall be the development within the clearing house of greater informal consultation, itself designed to facilitate, through competent bodies, coordination and harmonization of asylum practice and policies.

The clearing house may draw the attention of national bodies and/or the Council to certain problems. Those bodies via the Ministers and/or the Ministers themselves may ask the clearing house to conduct studies, which may be accompanied by proposals.

III.

## Gathering of information

The following information shall be exchanged within the clearing house:

- Member States' legislation and rules on the right of asylum;
- important policy documents (in their final form);
- important case law and legal principles;
- statistics.

The Ministers recognize the usefulness to the clearing house of exchanges of information concerning in particular:

- the situation in the countries of origin of applicants for asylum;

- indications available under early warning;

- routes taken by asylum seekers and the involvement of intermediaries and/or transport operators;

- reception and accommodation conditions;

- matters already harmonized.

Data stored by the Office of the United Nations High Commissioner for Refugees or by other bodies may be taken into account.

This information is to serve as a basis for documentation and discussion and is to be disseminated under the conditions described below.

## IV.

## Dissemination of information

The Ministers, national authorities participating in the work of the clearing house and the Commission shall have access to the information held by the clearing house.

The Ministers shall determine the framework and conditions for the clearing house to disseminate information to international organizations, non-governmental organizations, universities and the media in particular.

When supplying information, Member States shall state how they wish it to be classified. A Member State may oppose the dissemination of information which it has supplied.

V.

**Reports**

The clearing house shall draw up a report for the Council, in principle twice a year.

The Ministers may ask the clearing house to draw up a report on Member States' application of the 1951 Geneva Convention.

VI.

**Meetings**

For particular topics, the clearing house may invite other persons to contribute to its proceedings.

VII.

The clearing house may, within its terms of reference, suggest to the Ministers the establishment of all co-operation which it deems necessary, in particular with the Office of the United Nations High Commissioner for Refugees.

ANNEX

# STATEMENT FOR THE MINUTES OF THE MEETING OF MINISTERS RESPONSIBLE FOR IMMIGRATION

The Ministers invite the clearing house to concentrate its initial discussions on the obligatory exchange of information provided for in the Dublin Convention.

## I. DRAFT RESOLUTION ON MINIMUM GUARANTEES FOR ASYLUM PROCEDURES

1. At its meeting on 9 and 10 March 1995, the Council (JHA) reached agreement in principle on the text of the draft Resolution set out in the Annex hereto. At the meeting, the Swedish and Danish delegations entered reservations linked to inaccuracies in the text of their language versions.

2. Furthermore, the Council agreed that, once definitively approved, the Resolution would be sent to the European Parliament.

3. As the text has been finalized, it is suggested that the Permanent Representatives Committee recommend that the Council adopt the text set out in Annex I, together with the statements set out in Annex II et seq.

ANNEX I

# RESOLUTION

## on minimum guarantees for asylum procedures

**THE COUNCIL,**

at its meeting in Brussels on .....,

**HAVING REGARD TO** Article K.1 of the Treaty on European Union, which includes asylum policy as a matter of common interest,

**DETERMINED,** in keeping with the common humanitarian tradition of the Member States, to guarantee adequate protection to refugees in need of such protection in accordance with the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967,

**RECALLING** the Member States' commitments under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,

**NOTING** that, under national legislation, Member States may exceptionally allow aliens to stay for other compelling reasons not covered by the 1951 Geneva Convention,

**AFFIRMING** the intention of Member States to apply the Dublin Convention of 15 June 1990 determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities,

**CONVINCED** that this requires decisions on asylum applications to be taken on the basis of equivalent procedures in all Member States and common procedural guarantees to be adopted for asylum-seekers to that end, taking into account the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees and Recommendation R(81) 16 of the Committee of Ministers of the Council of Europe,

**HEREBY ADOPTS THIS RESOLUTION:**

I. The guarantees provided for in this Resolution will apply to the examination of asylum applications within the meaning of Article 3 of the Dublin Convention, with the exception of procedures to determine the Member State responsible under the said Convention. The specific guarantees applicable to those procedures will be determined by the Executive Committee set up by the Dublin Convention.

II. <u>Universal principles concerning fair and effective asylum procedures</u>

1. Asylum procedures will be applied in full compliance with the 1951 Geneva Convention, and the 1967 New York Protocol relating to the Status of Refugees and other obligations under international law in respect of refugees and human rights. In particular, the procedures will comply fully with Article 1 of the 1951 Convention concerning the definition of a refugee, Article 33 relating to the principle of "non-refoulement" and Article 35 concerning cooperation with the Office of the United Nations High Commissioner for Refugees, including the facilitation of its duty of supervising the application of the Convention.

2. In order to ensure effectively the principle of "non-refoulement", no expulsion measure will be carried out as long as no decision has been taken on the asylum application.

III. <u>Guarantees concerning the examination of asylum applications</u>

3. The regulations on access to the asylum procedure, the basic features of the asylum procedure itself and the designation of the authorities responsible for examination of asylum applications are to be laid down in the individual Member State's legislation.

4. Asylum applications will be examined by an authority fully qualified in the field of asylum and refugee matters. Decisions will be taken independently in the sense that all asylum applications will be examined and decided upon individually, objectively and impartially.

5. When examining an application for asylum the competent authority must, of its own initiative, take into consideration and seek to establish all the relevant facts and give the applicant the opportunity to present a substantial description of the circumstances of the case and to prove them. For his part the applicant must present all the facts and circumstances known to him and give access to all the available evidence.

   Recognition of refugee status is not dependent on the production of any particular formal evidence.

6. The authorities responsible for the examination of the asylum application must be fully qualified in the field of asylum and refugee matters. To this effect, they must:

   - have at their disposal specialized personnel with the necessary knowledge and experience in the field of asylum and refugee matters, who have an understanding of an applicant's particular situation;

   - have access to precise and up-to-date information from various sources, including information from the UNHCR, concerning the situation prevailing in the countries of origin of asylum-seekers and in transit countries;

   - have the right to ask advice, whenever necessary, from experts on particular issues, e.g. a medical issue or an issue of a cultural nature.

7. The authorities responsible for border controls and the local authorities with which asylum applications are lodged must receive clear and detailed instructions so that the applications, together with all other information available, can be forwarded without delay to the competent authority for examination.

8. In the case of a negative decision, provision must be made for an appeal to a court or a review authority which gives an independent ruling on individual cases under the conditions laid down in paragraph 4.

9. Member States must ensure that the competent authorities are adequately provided with staff and equipment so that they can discharge their duties promptly and under the best possible conditions.

IV. Rights of asylum-seekers during examination, appeal and review procedures

10. An asylum-seeker must have an effective opportunity to lodge his asylum application as early as possible.

11. Declarations made by the asylum-seeker and other details of his application are very sensitive data, requiring protection. National law must therefore provide adequate data protection guarantees, particularly as against the authorities of the asylum-seeker's country of origin.

12. As long as the asylum application has not been decided on, the general principle applies that the applicant is allowed to remain in the territory of the State in which his application has been lodged or is being examined.

13. Asylum-seekers must be informed of the procedure to be followed and of their rights and obligations during the procedure, in a language which they can understand. In particular:

- they must be given the services of an interpreter, whenever necessary, for submitting their case to the authorities concerned. These services must be paid for out of public funds, if the interpreter is appointed by the competent authorities;

- in accordance with the rules of the Member State concerned, they may call in a legal adviser or other counsellor to assist them during the procedure;

- they must be given the opportunity, at all stages of the procedure, to communicate with the Office of the United Nations High Commissioner for Refugees (UNHCR) or with other refugee organizations which may be working on behalf of the UNHCR in the Member State concerned, and vice versa.

  In addition, asylum-seekers may enter into contact with other refugee organizations under procedures laid down by the Member States.

  The opportunity for an asylum-seeker to communicate with the UNHCR and other refugee organizations need not necessarily prevent implementation of a decision;

- the representative of the Office of the UNHCR must be given the opportunity to be informed of the course of the procedure, to learn about the decisions of the competent authorities and to submit his observations.

14. Before a final decision is taken on the asylum application, the asylum-seeker must be given the opportunity of a personal interview with an official qualified under national law.

15. The decision on the asylum application must be communicated to the asylum-seeker in writing. If the application is rejected, the asylum-seeker must be informed of the reasons and of any possibility of having the decision reviewed. The asylum-seeker must have the opportunity, inasmuch as national law so provides, to acquaint himself with or be informed of the main purport of the decision and any possibility of appeal, in a language which he understands.

16. The asylum-seeker must be given an adequate period of time within which to appeal and to prepare his case when requesting review of the decision. These time-limits must be communicated to the asylum-seeker in good time.

17. Until a decision has been taken on the appeal, the general principle will apply that the asylum-seeker may remain in the territory of the Member State concerned. Where the national law of a Member State permits a derogation from this principle in certain cases, the asylum-seeker should at least be able to apply to the bodies referred to in paragraph 8 (court or independent review authority) for leave to remain in the territory of the Member State temporarily during procedures before those bodies, on the grounds of the particular circumstances of his case; no expulsion may take place until a decision has been taken on this application.

**Manifestly unfounded asylum applications**

18. Manifestly unfounded asylum applications within the meaning of the Resolution adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992 will be dealt with in accordance with that Resolution. Subject to the principles laid down therein, the guarantees laid down in the present Resolution will apply.

19. By way of derogation from paragraph 8, Member States may exclude the possibility of lodging an appeal against a decision to reject an application if, instead, an independent body which is distinct from the examining authority has already confirmed the decision.

20. The Member States observe that, with due regard for the 1951 Geneva Refugee Convention, there should be no de facto or de jure grounds for granting refugee status to an asylum applicant who is a national of another Member State.

On this basis, a particularly rapid or simplified procedure will be applied to the application for asylum lodged by a national of another Member State, in accordance with each Member States's rules and practice, it being specified that the Member States continue to be obliged to examine individually every application for asylum, as provided by the Geneva Convention to which the Treaty on European Union refers.

21. Member States may provide for exceptions to the principle in paragraph 17 in limited cases, under national law, when, in consideration of objective criteria extraneous to the application itself, an application is manifestly unfounded in accordance with paragraphs 9 and 10 of the Resolution adopted by the Immigration Ministers on 30 November and 1 December 1992. However, in such cases it should at least be guaranteed that the decision on the application is taken at a high level and that additional sufficient safeguards (e.g. the same assessment, before the execution of the decision, by another authority which must be of a central nature and have the necessary knowledge and experience in the field of asylum and refugee law) ensure the correctness of the decision.

22. Member States may provide for exceptions to the principle in paragraph 17 with respect to asylum applications where, under national law, the host third country concept is applicable in accordance with the Resolution adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992. In such cases Member States may also provide, by way of derogation from paragraph 15, that the decision rejecting the application, its underlying reasons and the asylum-seeker's rights may be communicated to him orally instead of in writing. Upon request, the decision will be confirmed in writing. The third country authorities must, where necessary, be informed that the asylum application was not examined as to substance.

Asylum applications at the border

23. Member States will adopt administrative measures ensuring that any asylum-seeker arriving at their frontiers is afforded an opportunity to lodge an asylum application.

24. Member States may, inasmuch as national law so provides, apply special procedures to establish, prior to the decision on admission, whether or not the application for asylum is manifestly unfounded. No expulsion measure will be carried out during this procedure.

Where an application for asylum is manifestly unfounded, the asylum-seeker may be refused admission. In such cases, the national law of a Member State may permit an exception to the general principle of the suspensive effect of the appeal (paragraph 17). However, it must at least be ensured that the decision on the refusal of admission is taken by a ministry or comparable central authority and that additional sufficient safeguards (for example, prior examination by another central authority) ensure the correctness of the decision. Such authorities must be fully qualified in asylum and refugee matters.

25. In addition, where, under national law, the host third country concept is applicable in accordance with the Resolution adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992, Member States may provide for exceptions to the principles in paragraphs 7 and 17. Member States may also provide, by way of derogation from paragraph 15, that the decision rejecting the application, its underlying reasons and any possibility of appeal may be communicated to the asylum-seeker orally instead of in writing. Upon request, the decision will be confirmed in writing.

The procedure in the cases referred to in the first sentence of the preceding subparagraph may be carried out before the decision on admission has been taken. In such cases, admission may be refused.

## V. Additional safeguards for unaccompanied minors and women

### Unaccompanied minors

26. Provision must be made for unaccompanied minors seeking asylum to be represented by a specifically appointed institution or adult if they do not have capacity under national law. During the interview, unaccompanied minors may be accompanied by that adult or representatives of that institution. These persons are to protect the child's interests.

27. When examining an application for asylum from an unaccompanied minor, his mental development and maturity will be taken into account.

### Women

28. Member States must endeavour to involve skilled female employees and female interpreters in the asylum procedure where necessary, particularly where female asylum-seekers find it difficult to present the grounds for their application in a comprehensive manner owing to the experiences they have undergone or to their cultural origin.

## VI. Residence where the criteria for classification as a refugee are met

29. A Member State which, notwithstanding national provisions on application of the host third country concept, has examined an asylum application must grant refugee status to an asylum-seeker fulfilling the criteria of Article 1 of the Geneva Convention. Member States may provide, in accordance with their national law, that they will not make full use of the exclusion clauses contained in the Geneva Convention.

The refugee should in principle be granted the right of residence in the Member State concerned.

## VII. Other cases

30. This Resolution does not affect the laws and regulations of the various Member States regarding the cases covered in paragraph 11 of the Resolution on manifestly unfounded asylum applications adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992.

## VIII. Further action

31. Member States will take account of these principles in the case of all proposals for changes to their national legislation. In addition, Member States will strive to bring their national legislation into line with these principles by 1 January 1996. In conjunction with the Commission and in consultation with the UNHCR, they will periodically review the operation of these principles and consider whether any additional measures are necessary.

## IX. More favourable provisions

32. Member States have the right to enact national provisions on guarantees provided by procedures applicable to asylum-seekers which are more favourable than those contained in the common minimum guarantees.

ANNEX II

**Statement by the Austrian delegation**
**for the Council minutes**

"On the occasion of the adoption of the Council Resolution on minimum guarantees for asylum procedures, it is the Austrian representative's understanding that:

1. this Resolution will be without prejudice to the Resolution on manifestly unfounded asylum applications, adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992, and that

2. for application of paragraph 8, the appeal provided for in Austrian law, which is referral to the Federal Ministry of the Interior, meets the requirements of individual, objective and impartial examination."

**ANNEX III**

**Statement by the Belgian delegation**
**for the Council minutes**

"The Belgian delegation interprets the reference to the European Convention on Human Rights as implying that compliance therewith will not be affected:

- either by the use of the possibility offered by Article 15 of that Convention to derogate significantly therefrom;

- or by departures from the case law of the European Court in the interpretation of Article 13 of that Convention on the right to "an effective remedy"."

**ANNEX IV**

**Statement by the Irish delegation**
**for the Council minutes**

"In relation to the appeal against a decision referred to in paragraphs 8 and 17, in the Irish context the appeal is against the recommendation of the examining authority to the Ministry of Justice."

ANNEX V

**Statement by the United Kingdom and Danish delegations for the Council minutes**

"The United Kingdom and Denmark state that they will apply the procedure provided for in the second sentence of paragraph 20 insofar as the legislation of their countries so permits."

ANNEX VI

Statements by the Swedish delegation
for the Council minutes

Re paragraph 8

"In relation to the appeal against a decision referred to in paragraph 8, in the Swedish context the appeal is against the recommendation of the examining authority to the Government."

Re paragraph 17

"In relation to the authorization to apply for leave to remain in the territory of the Member State temporarily during procedures before the review authority, in the Swedish context this application will be decided on by the Swedish Immigration Board."

J. *(Acts adopted pursuant to Title VI of the Treaty on European Union)*

# JOINT POSITION

of 4 March 1996

defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees

(96/196/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3 (2) (a) thereof,

Whereas under Article K.1 of the Treaty, asylum policy is regarded as a matter of common interest;

Whereas the European Council, meeting in Strasbourg on 8 and 9 December 1990, set the objective of harmonizing Member States' asylum policies, which was further developed by the European Council in Maastricht on 9 and 10 December 1991 and in Brussels on 10 and 11 December 1993, and in the Commission communication on immigration and asylum policies of 23 February 1994;

Emphasizing, in keeping with the Member States' common humanitarian tradition, the importance of guaranteeing appropriate protection for refugees in accordance with the provisions of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, hereafter referred to as the 'Geneva Convention';

Having established that the Handbook of the United Nations High Commissioner for Refugees (UNHCR) is a valuable aid to Member States in determining refugee status;

Whereas harmonized application of the criteria for determining refugee status is essential for the harmonization of asylum policies in the Member States,

HAS ADOPTED THIS JOINT POSITION:

— The guidelines set out below for the application of criteria for recognition and admission as a refugee are hereby approved.

— These guidelines shall be notified to the administrative bodies responsible for recognition of refugee status, which are hereby requested to take them as a basis, without prejudice to Member States' caselaw on asylum matters and their relevant constitutional positions.

— This joint position is adopted within the limits of the constitutional powers of the Governments of the Member States; it shall not bind the legislative authorities or affect decisions of the judicial authorities of the Member States.

— The Council shall review the application of these guidelines once a year and, if appropriate, adapt them to developments in asylum applications.

## 1. Recognition as a refugee

Determination of the status of refugee is based on criteria according to which the competent national bodies decide to grant an asylum-seeker the protection provided for in the Geneva Convention. This document relates to implementation of the criteria as defined in Article 1 of that Convention. It in no way affects the conditions under which a Member State may, according to its domestic law, permit a person to remain in its territory if his safety or physical integrity would be endangered if he were to return to his country because of circumstances which are not covered by the Geneva Convention but which constitute a reason for not returning him to his country of origin.

## 2. Individual or collective determination of refugee status

Each application for asylum is examined on the basis of the facts and circumstances put forward in each individual case and taking account of the objective situation prevailing in the country of origin.

In practice it may be that a whole group of people are exposed to persecution. In such cases, too, applications will be examined individually, although in specific cases this examination may be limited to determining whether the individual belongs to the group in question.

3. Establishment of the evidence required for granting refugee status

The determining factor for granting refugee status in accordance with the Geneva Convention is the existence of a well-founded fear of persecution on grounds of race, religion, nationality, political opinions or membership of a particular social group. The question of whether fear of persecution is well-founded must be appreciated in the light of the circumstances of each case. It is for the asylum-seeker to submit the evidence needed to assess the veracity of the facts and circumstances put forward. It should be understood that once the credibility of the asylum-seeker's statements has been sufficiently established, it will not be necessary to seek detailed confirmation of the facts put forward and the asylum-seeker should, unless there are good reasons to the contrary, be given the benefit of the doubt.

The fact that an individual has already been subject to persecution or to direct threats of persecution is a serious indication of the risk of persecution, unless a radical change of conditions has taken place since then in his country of origin or in his relations with his country of origin.

The fact that an individual, prior to his departure from his country of origin, was not subject to persecution or directly threatened with persecution does not *per se* mean that he cannot in asylum proceedings claim a well-founded fear of persecution.

4. 'Persecution' within the meaning of Article 1A of the Geneva Convention

The term 'persecution' as it is used in this document is taken from Article 1A of the Geneva Convention.

The term is not defined in the Convention. Nor is a universally accepted definition to be found either in the conclusions of the UNHCR Executive Committee or in legal literature on the subject. The guidelines in this document do not constitute a definition.

However, it is generally agreed that, in order to constitue 'persecution' within the meaning of Article 1A, acts suffered or feared must:

— be sufficiently serious, by their nature or their repetition: they must either constitute a basic attack on human rights, for example, life, freedom or physical integrity, or, in the light of all the facts of the case, manifestly preclude the person who has suffered them from continuing to live in his country of origin(1), and

— be based on one of the grounds mentioned in Article 1A: race, religion, nationality, membership of a particular social group or political opinions. Grounds of persecution may overlap and several will often be applicable to the same person. The fact that these grounds are genuine or simply attributed to the person concerned by the persecutor is immaterial.

Several types of persecution may occur together and the combination of events each of which, taken separately, does not constitute persecution may, depending on the circumstances, amount to actual persecution or be regarded as a serious ground for fear of persecution.

In the following guiding principles, the term 'persecution' is to be understood with reference to this section.

5. Origins of persecution

5.1. *Persecution by the State*

Persecution is generally the act of a State organ (central State or federal States, regional and local authorities) whatever its status in international law, or of parties or organizations controlling the State.

In addition to cases in which persecution takes the form of the use of brute force, it may also take the form of administrative and/or judicial measures which either have the appearance of legality and are misused for the purposes of persecution, or are carried out in breach of the law.

5.1.1. Legal, administrative and police measures

(a) *General measures*

The official authorities of a country are sometimes moved to take general measures to maintain public order, safeguard State security, preserve public health, etc. As

(1) This wording is without prejudice to point 8: 'whether the person concerned cannot find effective protection in another part of his own country...'.

required, such measures may include restrictions on the exercise of certain freedoms. They may also be accompanied by the use of force, but such restrictions or use of force do not in themselves constitute sufficient grounds for granting refugee status to the individuals against whom the measures are directed. However, if it emerges that such measures are being implemented in a discriminatory manner on one or more of the grounds mentioned in Article 1A of the Geneva Convention and may have sufficiently serious consequences, they may give rise to a well-founded fear of persecution on the part of individuals who are victims of their improper application. Such is the case, in particular, where general measures are used to camouflage individual measures taken against persons who, for the reasons mentioned in Article 1A, are likely to be threatened by their authorities.

(b) *Measures directed against certain categories*

Measures directed against one or more specific categories of the population may be legitimate in a society, even when they impose particular constraints or restrictions on certain freedoms.

However, they may be considered as justifying fears of persecution, in particular where the aim which they pursue has been condemned by the international community, or where they are manifestly disproportionate to the end sought, or where their implementation leads to serious abuses aimed at treating a certain group differently and less favourably than the population as a whole.

(c) *Individual measures*

Any administrative measure taken against an individual, leaving aside any consideration of general interest referred to above, on one of the grounds mentioned in Article 1A, which is sufficiently severe in the light of the criteria referred to in section 4 of this Joint Position, may be regarded as persecution, in particular where it is intentional, systematic and lasting.

It is important, therefore, to take account of all the circumstances surrounding the individual measure reported by the asylum-seeker, in order to assess whether his fears of persecution are well-founded.

In all the cases referred to above, consideration must be given to whether there is an effective remedy or remedies which would put an end to the situation of abuse. As a general rule, persecution will be indicated by the fact that no redress exists or, if there are means of redress, that the individual or individuals concerned are deprived of the opportunity of having access to them or by the fact that the decisions of the competent authority are not impartial (see 5.1.2) or have no effect.

5.1.2. Prosecution

Whilst appearing to be lawful, prosecution or court sentences may amount to persecution where they include a discriminatory element and where they are sufficiently severe in the light of the criteria referred to in section 4 of this Joint Position. This is particularly true in the event of:

(a) *Discriminatory prosecution*

This concerns a situation in which the criminal law provision is applicable to all but where only certain persons are prosecuted on grounds of characteristics likely to lead to the award of refugee status. It is therefore the discriminatory element in the implementation of prosecution policy which is essential for recognizing a person as a refugee.

(b) *Discriminatory punishment*

Punishment or the threat thereof on the basis of a universally applicable criminal law provision will be discriminatory if persons who breach the law are punished but certain persons are subject to more severe punishment on account of characteristics likely to lead to the award of refugee status. The discriminatory element in the punishment imposed is essential. Persecution may be deemed to exist in the event of a disproportionate sentence, provided that there is a link with one of the grounds of persecution referred to in Article 1A.

(c) *Breach of a criminal law provision on account of the grounds of persecution*

Intentional breach of a criminal law provision — whether applicable universally or to certain categories of persons — on account of the grounds of persecution must be clearly the result of pronouncements or participation in certain activities in the country of origin or be the objective consequence of characteristics of the asylum-seeker liable to

lead to the grant of refugee status. The deciding factors are the nature of the punishment, the severity of the punishment in relation to the offence committed, the legal system and the human rights situation in the country of origin. Consideration should be given to whether the intentional breach of the criminal law provision can be deemed unavoidable in the light of the individual circumstances of the person involved and the situation in the country of origin.

5.2. *Persecution by third parties*

Persecution by third parties will be considered to fall within the scope of the Geneva Convention where it is based on one of the grounds in Article 1A of that Convention, is individual in nature and is encouraged or permitted by the authorities. Where the official authorities fail to act, such persecution should give rise to individual examination of each application for refugee status, in accordance with national judicial practice, in the light in particular of whether or not the failure to act was deliberate. The persons concerned may be eligible in any event for appropriate forms of protection under national law.

6. Civil war and other internal or generalized armed conflicts

Reference to a civil war or internal or generalized armed conflict and the dangers which it entails is not in itself sufficient to warrant the grant of refugee status. Fear of persecution must in all cases be based on one of the grounds in Article 1A of the Geneva Convention and be individual in nature.

In such situations, persecution may stem either from the legal authorities or third parties encouraged or tolerated by them, or from *de facto* authorities in control of part of the territory within which the State cannot afford its nationals protection.

In principle, use of the armed forces does not constitute persecution where it is in accordance with international rules of war and internationally recognized practice; however, it becomes persecution where, for instance, authority is established over a particular area and its attacks on opponents or on the population fulfil the criteria in section 4.

In other cases, other forms of protection may be provided under national legislation.

7. Grounds of persecution

7.1. *Race*

The concept of race should be understood in the broad sense and include membership of different ethnic groups. As a general rule, persecution should be deemed to be founded on racial grounds where the persecutor regards the victim of his persecution as belonging to a racial group other than his own, by reason of a real or supposed difference, and this forms the grounds for his action.

7.2. *Religion*

The concept of religion may be understood in the broad sense and include theistic, non-theistic and atheistic beliefs.

Persecution on religious grounds may take various forms, such as a total ban on worship and religious instruction, or severe discriminatory measures against persons belonging to a particular religious group. For persecution to occur, the interference and impairment suffered must be sufficiently severe in the light of the criteria referred to in section 4 of this Joint Position. This may apply where, over and above measures essential to maintain public order, the State also prohibits or penalizes religious activity even in private life.

Persecution on religious grounds may also occur where such interference targets a person who does not wish to profess any religion, refuses to take up a particular religion or does not wish to comply with all or part of the rites and customs relating to a religion.

7.3. *Nationality*

This should not be confined exclusively to the idea of citizenship but should also include membership of a group determined by its cultural or linguistic identity or its relationship with the population of another State.

7.4. *Political opinions*

Holding political opinions different from those of the government is not in itself a sufficient ground for securing refugee status; the applicant must show that:

— the authorities know about his political opinions or attribute them to him,

— those opinions are not tolerated by the authorities,

— given the situation in his country he would be likely to be persecuted for holding such opinions.

7.5. *Social group*

A specific social group normally comprises persons from the same background, with the same customs or the same social status, etc.

Fear of persecution cited under this heading may frequently overlap with fear of persecution on other grounds, for example race, religion or nationality.

Membership of a social group may simply be attributed to the victimized person or group by the persecutor.

In some cases, the social group may not have existed previously but may be determined by the common characteristics of the victimized persons because the persecutor sees them as an obstacle to achieving his aims.

8. Relocation within the country of origin

Where it appears that persecution is clearly confined to a specific part of a country's territory, it may be necessary, in order to check that the condition laid down in Article 1A of the Geneva Convention has been fulfilled, namely that the person concerned 'is unable or, owing to such fear (of persecution), is unwilling to avail himself of the protection of that country', to ascertain whether the person concerned cannot find effective protection in another part of his own country, to which he may reasonably be expected to move.

9. Refugee *sur place*

The fear of persecution need not necessarily have existed at the time of an asylum-seeker's departure from his country of origin. An individual who had no reason to fear persecution on leaving his country of origin may subsequently become a refugee *sur place*. A well-founded fear of persecution may be based on the fact that the situation in his country of origin has changed since his departure, with serious consequences for him, or on his own actions.

In any event the asylum-related characteristics of the individual should be such that the authorities in the country of origin know or could come to know of them before the individual's fear of persecution can be justified.

9.1. *Fear arising from a new situation in the country of origin after departure*

Political changes in the country of origin may justify fear of persecution, but only if the asylum-seeker can demonstrate that as a result of those changes he would personally have grounds to fear persecution if he returned.

9.2. *Fear on account of activities outside the country of origin*

Refugee status may be granted if the activities which gave rise to the asylum-seeker's fear of persecution constitute the expression and continuation of convictions which he had held in his country of origin or can objectively be regarded as the consequence of the asylum-related characteristics of the individual. However, such continuity must not be a requirement where the person concerned was not yet able to establish convictions because of age.

On the other hand, if it is clear that he expresses his convictions mainly for the purpose of creating the necessary conditions for being admitted as a refugee, his activities cannot in principle furnish grounds for admission as a refugee; this does not prejudice his right not to be returned to a country where his life, physical integrity or freedom would be in danger.

10. Conscientious objection, absence without leave and desertion

The fear of punishment for conscientious objection, absence without leave or desertion is investigated on an individual basis. It should in itself be insufficient to justify recognition of refugee status. The penalty must be assessed in particular in accordance with the principles set out in point 5.

In cases of absence without leave or desertion, the person concerned must be accorded refugee status if the conditions under which military duties are performed themselves constitute persecution.

Similarly, refugee status may be granted, in the light of all the other requirements of the definition, in cases of punishment of conscientious objection or deliberate absence without leave and

desertion on grounds of conscience if the performance of his military duties were to have the effect of leading the person concerned to participate in acts falling under the exclusion clauses in Article 1F of the Geneva Convention.

11. Cessation of refugee status (Article 1C)

Whether or not refugee status may be withdrawn on the basis of Article 1C of the Geneva Convention is always investigated on an individual basis.

The Member States should make every effort, by exchanging information, to harmonize their practice with regard to the application of the cessation clauses of Article 1C wherever possible.

The circumstances in which the cessation clause in Article 1C may be applied should be of a fundamental nature and should be determined in an objective and verifiable manner. Information provided by the Centre for Information, Discussion and Exchange on Asylum (Cirea) and the UNHCR may be of considerable relevance here.

12. Article 1D of the Geneva Convention

Any person who deliberately removes himself from the protection and assistance referred to in Article 1D of the Geneva Convention is no longer automatically covered by that Convention. In such cases, refugee status is in principle to be determined in accordance with Article 1A.

13. Article 1F of the Geneva Convention

The clauses in Article 1F of the Geneva Convention are designed to exclude from protection under that Convention persons who cannot enjoy international protection because of the seriousness of the crimes which they have committed.

They may also be applied where the acts become known after the grant of refugee status (see point 11).

In view of the serious consequences of such a decision for the asylum-seeker, Article 1F must be used with care and after thorough consideration, and in accordance with the procedures laid down in national law.

13.1. *Article 1F (a)*

The crimes referred to in Article 1F (a) are those defined in international instruments to which the Member States have acceded, and in resolutions adopted by the United Nations or other international or regional organizations to the extent that they have been accepted by the Member States.

13.2. *Article 1F (b)*

The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected.

Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators.

13.3. *Article 1F (c)*

The purposes and principles referred to in Article 1F (c) are in the first instance those laid down in the Charter of the United Nations, which determines the obligations of the States party to it in their mutual relations, particularly for the purpose of maintaining peace, and with regard to human rights and fundamental freedoms.

Article 1F (c) applies to cases in which those principles have been breached and is directed notably at persons in senior positions in the State who, by virtue of their responsibilities, have ordered or lent their authority to action at variance with those purposes and principles as well as at persons who, as members of the security forces, have been prompted to assume personal responsibility for the performance of such action.

In order to determine whether an action may be deemed contrary to the purposes and principles of the United Nations, Member States should take account of the conventions and resolutions adopted in this connection under the auspices of the United Nations.

Done at Brussels, 4 March 1996.

*For the Council*
*The President*
P. BARATTA