

# EUROPEAN PARLIAMENT

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*Committee on Petitions*

28 November 2001

## **OPINION**

of the Committee on Petitions

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

(COM(2001) 447 – C5-0403/2001 – 2001/0182 (CNS))

Draftsman: Luciana Sbarbati



## PROCEDURE

The Committee on Petitions appointed Luciana Sbarbati draftsman at its meeting of 13 September 2001.

It considered the draft opinion at its meetings of 26-7 November 2001.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Vitaliano Gemelli, chairman; Roy Perry and Proinsias De Rossa, vice-chairmen; Felipe Camisón Asensio, Laura González Álvarez, Jean Lambert, Ioannis Marinos and Jens Dyhr Okking (for Véronique Mathieu).

## SHORT JUSTIFICATION

### Preliminary considerations

**Is this regulation an alternative to the Dublin Convention? Not exactly, but it is an improvement on it.**

1. The draft Council regulation presented by the Commission aims to replace the Dublin Convention, which determines the Member State responsible for examining an asylum application. It is no secret that there have been many practical and legal difficulties in the application of this convention and that it has come in for strong criticism from several humanitarian organisations and, of course, refugee applicants. Traces of this criticism can also be found in a Commission working paper on the re-examination of this convention (SEC(2000) 522 final of 21 March 2000). Amnesty International<sup>1</sup>, the Conference of Churches on migrants in Europe, the UNHCR (UN High Commissioner's Office for Refugees) and others strongly criticised this document.
2. Does this regulation constitute an alternative or a different approach to that taken by the Dublin Convention?

No, because from the outset the Commission considers that *'it would ... not be realistic to envisage a system for determining the Member State responsible for examining an asylum application which diverges fundamentally from the Dublin Convention'*. Moreover, Recital 13 clearly states that the regulation's territorial application is the same as that for the Dublin Convention. This is due to the fact that the significant differences between the Member States in terms of procedures for granting refugee status, reception conditions for asylum seekers and the administration of complementary forms of protection have a direct influence on the destination chosen by asylum seekers.

3. Almost daily the press and other media show pictures of hundreds of asylum seekers blocking the roads leading to the Channel tunnel (hence the ironic headline in *le Soir* of 6 September 2001 – *'Les demandeurs d'asile font la Manche'* ('Asylum seekers queue up and beg at Channel port'). This is due not only to the fact that these Afghans, Kurds, Iranians and Iraqis wish to leave the unbearable Sangatte detention centre<sup>2</sup> but, above all, to the fact that they want to obtain political refugee status in the United Kingdom, to which they are often more closely linked by language, culture and family connections<sup>3</sup>. Although it is estimated that 400 000 people enter the United Kingdom annually, nobody really knows how many refugees arrive each year, as Harriet Sergeant points out in a report for the Centre for Policy Studies which she has ironically entitled *'Welcome to the asylum'*. In any case, everyone knows, for example, that when the *East-Sea* ran aground off southern France in February 2001, the hundreds of Kurds, Syrians and Iraqis whom the French authorities attempted to take in almost all 'evaporated' from reception centres and moved

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<sup>1</sup> See 'The Asylum Crisis'.

<sup>2</sup> Since this reception centre opened in September 1999, 40 000 immigrants have stayed there.

<sup>3</sup> As soon as they arrive in the United Kingdom, the 'Migrant Help Line', a non-governmental organisation subsidised by the state, takes responsibility for asylum seekers. Adults over 25 have a right to a weekly allowance, and vouchers for food and clothes. English lessons are given and if there has been no decision six months after the asylum request was lodged, the applicant may request a work permit. In France, however, asylum seekers do not have the right to work while in receipt of a financial allowance, they can find no accommodation in the overcrowded reception centres, and 80% of asylum seekers must manage by themselves.

to Germany where the structured Kurdish community was more obviously equipped to integrate them than Modan or Béziers, particularly since other family members were often already in Germany.

The same holds true for the dozens of overloaded old tubs which land in Puglia or the rickety boats piled up with illegal immigrants and refugees in the same plight heading for Andalusia.

4. In this opinion your rapporteur does not wish to single out certain provisions of the regulation for particular criticism, such as Article 12<sup>1</sup>, which certain humanitarian organisations have nonetheless dubbed ‘the special Sangatte article’. Nor will she censure the conduct of those Member States which prefer to concentrate on the most repressive aspects of the law and to give higher priority to border control than the protection of individuals. In the review of Yasmine Kassari’s documentary film, ‘*When men cry*’, published in the 10 October 2001 issue of *Le Monde*, we read and recognise the relevance of the following passage: ‘Labelled as *Moros* (Moors) and considered as ‘heathens’ by the local population in a terrifying resurgence of the old religious wars, which still seem to burn brightly today, these men are the butt of abject racism and suffer the humiliation of a modern kind of slavery ... This excellent documentary draws the audience close to **that painful continent called exile**’.
5. Your rapporteur restricts herself to noting that this regulation seeks to find a balance between two opposing demands, namely preventing abuse of asylum procedures, such as multiple asylum applications submitted by the same person in several Member States, while at the same time ensuring that asylum seekers have effective access to the procedures for determining refugee status, reducing delays and above all facilitating and protecting family group unity, in line with humanitarian concerns.

The regulation introduces new criteria or derogations that were not included in the Dublin Convention, in order to preserve the unity of family groups in one Member State. A second group of criteria also places more responsibility on a Member State which does not take effective action against the illegal presence of third-country nationals on its territory, making liability equivalent to that of a Member State which fails to control its borders properly. **This approach, which is taken to several situations, constitutes, together with the other point mentioned above, an undeniable improvement as compared with the Dublin Convention.** When the Commission replaces the convention with this regulation, your rapporteur will therefore not accuse it of acting as if ‘*something had to change, so that everything could stay the same*’<sup>2</sup>.

6. She points out once again that in reality illegal immigrants and those applying for political refugee status all too often follow the same routes and take the same boats, since the provisions of the Geneva Convention on asylum are applied by all the Member States in a way that is increasingly over-restrictive. Sometimes even before their application has been rejected asylum seekers swell the ranks of those without rights, without homes and without papers who call out to us in their plight, as the group study ‘*New citizenships: refugees*

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<sup>1</sup> This article provides that ‘a Member State which has knowingly tolerated the unlawful presence of a third-country national on its territory for more than two months shall be responsible for examining the asylum application’.

<sup>2</sup> Quotation from the Prince of Salina, hero of *The Leopard* by Lampedusa.

*and those without papers in the European area*<sup>1</sup> confirms. In any case she stresses – in a spirit of realism and not cynicism – that in erecting manifold barriers to hold back the flood of asylum seekers, the Member States have forgotten a simple but obvious fact: that throughout history, no matter what the geographical circumstances, no barrier has been able to prevent people in search of refuge finding a way to cross the border.

7. Finally, as the Commission itself states in the introductory section to the regulation, it will only be possible to abandon the criteria used in the Dublin Convention when a common procedure and uniform status for asylum seekers is introduced. This idea was the subject of a Commission Communication, on which the Committee on Petitions has already given an opinion (written by your rapporteur). Therefore we reiterate our request for the introduction – in compliance with the wishes of the special meeting of the European Council in Tampere – of a ‘fair and efficient’ asylum procedure and a ‘clear and workable’ method including new provisions on the criteria and mechanisms for determining the Member State responsible for examining an asylum application.

## CONCLUSIONS

The Committee on Petitions calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to take account of the following points:

1. Welcomes the proposal for a Council regulation, in general terms;
2. Welcomes the principle that each Member State is answerable to all the others for its actions concerning the entry and residence of third-country nationals and should, in a spirit of solidarity and responsibility, assume the consequences thereof as regards asylum;
3. Calls on the Union, however, to introduce in the very near future a common procedure and uniform status for the asylum procedure, valid throughout the Union, as the Commission proposed in its Communication of 22 November 2000;
4. Welcomes the exceptions, designed to protect family unity, to the general principle determining the Member State with responsibility for examining an asylum application;
5. Welcomes the fact that, to ensure that applications for asylum are processed rapidly, much shorter procedural deadlines have been set which are consistent with the procedures for granting and withdrawing refugee status;
6. Welcomes the provision designed to unite unaccompanied minors with adult members of their family who are already present in a Member State and are able to take charge of them;
7. Considers that the possibility of asking for an urgent response to an asylum application and the obligation on the Member State to notify applicants of the decision taken within shorter and more consistent deadlines are positive steps;
8. Expresses concern, on the other hand, over the fact that on the grounds that an appeal

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<sup>1</sup> Published by the French Institute of International Relations (IFRI), Paris, 2001.

against a rejection of an asylum application can be used as a stalling tactic, appeals no longer have suspensive effect;

9. Reiterates its concern about the restrictive application of national rules on political refugees, which gives rise to a corresponding increase in illegal immigrants, who are frequently exploited shamelessly by gangs;
10. Welcomes, in particular, the fact that Article 27 of the regulation bans any discrimination *'based on sex, race, colour, nationality or country of origin, ethnic or social origins, genetic characteristics, language, religion or convictions, political opinions or any other opinion, membership of a national minority, wealth, birth, a handicap, age or sexual orientation'*. In its precision and detail, this list seems particularly progressive and modern, and takes due account of the provisions of the European Union's Charter of Fundamental Rights.

