



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 27 June 2011 (28.06)
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ASILE 54

NOTE

from: German, French and United Kingdom delegations

No. Cion prop.: 11214/11 ASILE 46 CODEC 981, 11207/11 ASILE 45 CODEC 980

Subject: Joint contribution of the German, French and United Kingdom delegations
regarding the proposals for a directive laying down standards for the reception of
asylum seekers and for asylum procedures

Delegations will find attached the abovementioned contribution.

The Member States, following on from the terms of the joint Franco-German Declaration of 14 September 2010¹, which they confirm remains relevant, wish to set out their common objectives for harmonisation in this area, which cannot in any case amount to the creation of uniform asylum systems, each Member State having its own administrative constraints or fundamental principles which underpin its national law.

The continued rise in the number of asylum claims registered in 2010 leaves France, and Germany among the top four industrialised countries in the world measured by asylum intake- behind the USA. If one adds the UK and Belgium, which appear after Canada, we have five EU Member States amongst the seven industrialised countries that receive the most asylum claims in the world.

This situation is accompanied by a prevalence of unfounded claims from people who have no protection needs.

Our countries face a situation marked by considerable stresses and serious challenges for our asylum systems, with in particular the risk of a considerable lengthening of the time it takes to consider asylum claims, and the saturation of reception facilities. The likely evolution of the situation in the Mediterranean gives us no reason to expect a rapid improvement in this situation which has already been characterised by strong pressures.

This is the context in which the new Commission proposals to recast the Procedures and Reception Conditions Directives will be introduced. The Commission has heard the message contained in the Franco-German Ministerial declaration of September 2010 and has agreed to relaunch the negotiations on a new basis, more in agreement with Member States' objectives.

¹ 14507/10 ASILE 72.

It is crucial that the new texts reflect the concerns expressed in this regard by the Member States. If they do not, the negotiations on the “asylum package” will be difficult and the objective of creating a Common European Asylum System by 2012 could be compromised. The asylum situation in Member States shows how urgent it is to create a common system, addressing the reasons that lead to five Member States dealing with 70% of the asylum claims presented in the territory of the EU.

Common objectives for bringing law and practice closer together

I. So far as the Reception Conditions Directive is concerned, the new proposals should contribute to the good management of the problem of asylum, in the context of the rise in intake, and should not make claiming asylum more attractive or increase costs on Member States.

We therefore wish the Commission’s new proposals to include the following provisions:

- 1. Access to the labour market for asylum seekers should not be authorised after six months, but after a year.** Otherwise, we will be adding a new element that makes claiming asylum more attractive, and will encourage the integration of asylum seekers making their eventual removal more difficult if their claim is ultimately rejected.

- 2. The Commission’s proposals about the level of material support to be paid to asylum seekers [NB, this refers to their December 2008 proposal to require asylum support to be paid at the same rate that benefit claimants in the Member State concerned receive] could encourage abusive claims for asylum and would weigh more heavily on the most generous Member States.**

- 3. The current definition of the members of the family, which is limited to the nuclear family, should be kept as it is.** The expansion of the definition would lead to excessive costs, which would affect the level of financial support provided to asylum seekers and their family members, a level that is already high.

II. So far as the Procedures Directive is concerned, the proposals should be clear, readable, efficient and sustainable guaranteeing a high level of protection while retaining provisions that allow Member States to combat abuses [“hijacking”] of asylum procedures.

We therefore wish to have the following provisions:

- 1. Provisions that authorise the application of accelerated procedures** when dealing with certain asylum claims that are manifestly unfounded or amount to an abuse of the procedure are essential in order to discourage abuse of the right to asylum, for example in the following circumstances: threat to public order, manifestly unfounded claims (as defined by Article 23(4)(b) of the current Directive), deliberate fraud, failure to respect the obligation to cooperate with the asylum service, people coming from safe countries...;
- 2. Clear provisions allowing the effective management of multiple claims.** These provisions must give Member States the means better and more rapidly to respond to the hijacking of asylum procedures linked to abusive further submissions, for example by introducing a time limit within which asylum seekers must submit any new grounds;
- 3. Provisions around free legal assistance that are fair, do not “judicialise” the administrative first instance asylum procedure and do not impose additional burdens or significant additional costs** for the Member States, but respect their national legal systems. This is particularly important while asylum intake is rising and given the budgetary situation in Member States.
- 4. Provisions on the right of appeal that reconcile the demands of ECHR caselaw with the need to have rapid and effective procedures in the case of abuse of the right of asylum;** this implies for example exceptions from the principle that appeals should have suspensive effect.

5. Fair provisions on the guarantees given to vulnerable persons, particularly unaccompanied minors. We support the principle, contained in the Stockholm Programme, of taking account of the needs of vulnerable people. These provisions should be fair and pragmatic and should, on the one hand, properly define vulnerable persons and adequately take account of their needs and, on the other hand, avoid heavy procedural burdens or any situation where, for example, it was impossible to subject vulnerable people to accelerated procedures or special asylum processes for use at the border or to reject their claims as manifestly ill founded.

... and no creation of uniform asylum systems

1. The United Kingdom Government does not agree that participation on a common asylum system, involving further legislative harmonisation, is in its national interest. However, the UK is committed to working with other Member States to raise standards to a common minimum level across the EU and agrees with the specific recommendations set out above.

2. France wishes to be able to maintain its procedure for dealing with asylum claims made at the border, which reconciles respect for the right to asylum with the need to control migratory flows and is linked to constitutional constraints. This means that procedures for asylum seekers to be admitted to French territory for asylum should remain the responsibility of the Minister responsible for immigration.

3. So far as detention is concerned, Germany, for constitutional and operational reasons, wishes to continue to apply its national procedures. France cannot on its part accept provisions requiring detention, or the placing of an individual in a “waiting zone” to require judicial authorisation, as that would contradict its national rules. Germany cannot accept this in respect of its procedure for claiming asylum at an airport. France wishes equally to retain its procedures that allow unaccompanied foreign minors to be placed in a “waiting zone”, provided they have the necessary guarantees.

4. It is important for Germany to retain the ability to apply the rules governing the reexamination of asylum claims in the case of an asylum seeker who has implicitly withdrawn or renounced his or her claim, when the procedure is reopened or a new claim is made.

5. It is also of crucial importance for Germany to have an exception from the suspensive effect of an appeal where a claim for asylum is rejected as manifestly ill founded.
