

Asylum: Member State responsible for examining an application lodged by a third-country national

2001/0182(CNS) - 18/02/2003 - Final act

PURPOSE : to establish the criteria and mechanism for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.

COMMUNITY MEASURE : Council Regulation 343/2003/EC. **CONTENT :** This Regulation is part of the EU's objective to establish a common policy on asylum. It sets out a method for determining the Member State responsible for the examination of an asylum application. This Regulation shall replace the Convention determining the State responsible for examining applications for asylum lodged in one of the member states of the European Communities, signed in Dublin on 15 June 1999 (Dublin Convention). The process of determining the Member State responsible starts as soon as an application for asylum is first lodged, and is set out in this regulation. One of the key points is that there is provision for the processing together of the asylum applications of the members of one family by a single Member State. This makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent. Member States are able to derogate from the responsibility criteria so as to make it possible to bring family members together where this is necessary on humanitarian grounds. **PRINCIPLES :** each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in the Regulation. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member States concerned. It should be added that the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for asylum of that parent or guardian even if the minor is not individually an asylum seeker. **HIERARCHY OF CRITERIA :** the criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Regulation and on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State. The Regulation states that : - where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum. - where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire. - if the asylum seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire. - where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum. - where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, unless the visa was issued when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for asylum. - where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision. - where the asylum seeker is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for

examining the application for asylum shall be assumed by the Member States in the following order: a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date; b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type; c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity, or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date. - where the asylum seeker is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than 6 months previously and which enabled him actually to enter the territory of a Member State shall apply for such time as the applicant has not left the territories of the Member States. - where the asylum seeker is in possession of one or more residence documents which have expired more than 2 years previously or one or more visas which have expired more than 6 months previously and enabled him actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application is lodged shall be responsible. - where it is established, on the basis of proof or circumstantial evidence that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum. This responsibility shall cease 12 months after the date on which the irregular border crossing took place. - when a Member State cannot or can no longer be held responsible and where it is established, on the basis of proof or circumstantial evidence, that the asylum seeker - who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established - at the time of lodging the application has been previously living for a continuous period of at least 5 months in a Member State, that Member State shall be responsible for examining the application for asylum. If the applicant has been living for periods of time of at least 5 months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application. - where the applicant for asylum is made in an international transit area of an airport of a Member State by a third-country national, that Member State shall be responsible for examining the application. - where several members of a family submit applications for asylum in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to them being separated, the Member State responsible shall be determined on the basis of the following provisions: a) responsibility for examining the applications for asylum of all the members of the family shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members; b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them. **HUMANITARIAN CLAUSE** : any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case that Member State shall, at the request of another Member State, examine the application for Asylum of the person concerned. The persons concerned must consent. **TAKING CHARGE** : where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it. Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged. **ADMINISTRATIVE COOPERATION** : each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker is appropriate, relevant and non-excessive for: a) the determination of the Member State responsible for examining the application for asylum; b) examining the application for asylum; c) implementing any obligation arising under this Regulation. The information to be communicated shall cover personal details of the applicant, the members of the family, identity and travel papers, places of residence and routes travelled, finger prints (in accordance with Regulation 2725/2000/EC). Member States shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Regulation and shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers. Member States may, on a bilateral basis,

establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness.

ENTRY INTO FORCE : 17/03/03. A report on the application of this Regulation shall be published on 17 March 2006, proposing amendments if necessary.

DATE APPLICABLE : to asylum applications lodged as from 01/09/03. From 01/09/03, this Regulation applies to any request to take charge of or to take back asylum seekers, irrespective of the date on which the application was made.

TERRITORIAL APPLICATION : the UK and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation. Denmark, on the other hand, does not wish to participate in the in the adoption of this Regulation and is not bound by it nor subject to its application.