

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

(2001/C 304 E/10)

(Text with EEA relevance)

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(Submitted by the Commission on 26 July 2001)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas:

- (1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.
- (3) The Tampere conclusions also stated that this system should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application.
- (4) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to rapidly determine the Member State responsible, so as to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum applications which is the basis of Council Directive .../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

(5) As regards the introduction in successive phases of a common European asylum system that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted asylum, it is appropriate at this stage, while making the necessary improvements in the light of experience, to confirm the principles underlying the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities⁽¹⁾, signed in Dublin on 15 June 1990 (hereinafter referred to as 'the Dublin Convention'), whose implementation has stimulated the process of harmonising asylum policies and has made it possible to mitigate the negative aspects of the unequal direction of the flows of asylum seekers.

(6) Family unity should be preserved in so far as this is compatible with the other objectives pursued by establishing criteria and mechanisms for determining the State responsible for examining an asylum application.

(7) The processing together of the asylum applications of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly and the decisions taken in respect of them are consistent. However, this principle should not contradict the objective of examining asylum applications quickly and should therefore be limited to those cases where the asylum application of the family member who arrived first is held over by the authority responsible for the determination of refugee status under a normal procedure, with the exception of admissibility procedures, accelerated procedures applicable to manifestly unfounded applications, and appeals. Nevertheless, the Member States should be able to derogate from the responsibility criteria, so as to make it possible to bring family members together where this is necessary on serious grounds, in particular those of a humanitarian nature.

(8) The progressive creation of an area without internal frontiers in which the free movement of persons is guaranteed in accordance with the Treaty establishing the European Community means 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. The criteria for assigning responsibility should reflect this principle.

⁽¹⁾ OJ C 254, 19.8.1997, p. 1.

- (9) Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data shall apply ⁽¹⁾. It is necessary, to allow the exchanges of personal data essential for the implementation of the provisions relating to taking charge of and taking back asylum seekers and for the fulfilment of all obligations resulting from this Regulation, to clarify the application of certain provisions of that Directive.
- (10) The application of the Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communications between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.
- (11) A system for limiting the number of transfers of asylum seekers between two Member States may constitute a rationalisation that can benefit both the Member States concerned and the asylum seekers.
- (12) Continuity between the system for determining the State responsible established by the Dublin Convention and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention ⁽²⁾.
- (13) There is no reason why this Regulation should have a different territorial application from that of the Dublin Convention, which it is intended to replace, especially in view of the excessive constraints which any transfer from remote territories would involve for the persons concerned.
- (14) The Regulation should be applied in the same way for all asylum seekers without discrimination.
- (15) The Member States should provide a system of penalties for the infringement of this Regulation.
- (16) Since the measures required for implementing this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾, such measures should be adopted under the regulatory procedure laid down in Article 5 of the said Decision.
- (17) The application of the Regulation should be evaluated at regular intervals.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 316, 15.12.2000, p. 1.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

- (18) The Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union ⁽⁴⁾. In particular, it seeks to ensure full observance of the right to asylum guaranteed by Article 18.
- (19) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of the proposed measure, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, cannot be attained by the Member States and, given the scale and effects, can therefore be achieved only at Community level. This Regulation is limited to the minimum required to achieve that objective and does not go beyond what is necessary for that purpose.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

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

Article 2

For the purposes of this Regulation,

- (a) 'third-country national' means anyone who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community;
- (b) 'Geneva Convention' means the Convention of 28 July 1951 relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967;
- (c) 'asylum application' means the request for protection which is submitted by a third-country national to a Member State and which can be regarded as having been submitted on the grounds that the third-country national is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any request for protection shall be deemed to be an asylum application, unless the person concerned explicitly seeks another type of protection for which a separate request can be submitted;
- (d) 'applicant' or 'asylum seeker' means the third-country national who has lodged an application for asylum concerning which no final decision has yet been taken; any decision from which all possible means of appeal provided for by Directive .../.../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status have been exhausted shall be final;

⁽⁴⁾ OJ C 364, 18.12.2000, p. 1.

- (e) 'examination of an asylum application' means any examination of, or decision or ruling concerning, an asylum application by the competent authorities in accordance with Council Directive .../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] except for procedures for determining the State responsible in accordance with this Regulation;
- (f) 'withdrawal of the asylum application' means the action by which the asylum seeker terminates the procedures initiated by the submission of his asylum application; such action may be either express, i.e. where the applicant makes his wish known to the authority responsible in writing, or implicit, i.e. where the tests stipulated in the relevant provisions of Council Directive .../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] are satisfied or where the applicant stays without having received permission to do so on the territory of another Member State during the determination of the State responsible or during the examination of his application;
- (g) 'refugee' means any third-country national qualifying for the status defined by the Geneva Convention and authorised to reside as such on the territory of a Member State;
- (h) 'unaccompanied minor' means any third-country national under the age of eighteen who arrives on the territory of a Member State without being accompanied by an adult responsible for him whether by law or by custom, and for as long as he is not effectively in the care of such a person;
- (i) 'family members' means an asylum seeker's spouse or unmarried partner in a stable relationship, if the legislation of the Member State responsible treats unmarried couples in the same way as married couples, provided that the couple was formed in the country of origin; his unmarried minor children under the age of eighteen, irrespective of the nature of their filiation or his ward; his father, his mother or his guardian, if the asylum seeker is himself an unmarried minor under the age of eighteen; where appropriate, other persons to whom the applicant is related and who used to live in the same home in the country of origin, if one of the persons concerned is dependent on the other;
- (j) 'residence document' means any authorisation issued by the authorities of a Member State authorizing a third-country national to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the examination of an application for a residence document or of an asylum application;
- (k) 'visa' means the authorisation or decision of a Member State required for transit or entry for a proposed stay in that Member State or in several Member States. The nature of the visa is determined in accordance with the following definitions:
- (i) 'long-stay visa': the authorisation or decision of a Member State required for entry for a proposed stay in that Member State of more than three months;
- (ii) 'short-stay visa': the authorisation or decision of a Member State required for entry for a proposed stay in that State or in several Member States for a period whose total duration does not exceed three months;
- (iii) 'transit visa' means the authorisation or decision of a Member State for entry for a transit through the territory of that Member State or several Member States, excluding transit at an airport;
- (iv) 'airport transit visa' mean the authorisation or decision allowing a third-country national specifically subject to this requirement to pass through the transit zone of an airport, without gaining access to the national territory of the Member State concerned, during a stopover or a transfer between two sections of an international flight.

CHAPTER II

GENERAL PRINCIPLES

Article 3

1. An asylum application shall be examined by a single Member State. That Member State shall be the one which the criteria set out in Chapter III indicate is responsible.
2. The application shall be examined by the Member State responsible in conformity with Council Directive .../EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.
3. In derogation from paragraph 1, each Member State may examine an asylum application lodged with it by a third-country national, even if such examination is not its responsibility under the criteria of this Regulation. In such an event, that State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the State conducting a procedure for determining the State responsible or the State which has been requested to take charge of or take back the applicant.

The asylum seeker shall be informed in writing of the date when the examination of his application shall start.

Article 4

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

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

3. The substitution of a request for protection on a basis other than the Geneva Convention for an asylum application that has been duly lodged shall not stop the procedure for determining the State responsible from continuing.

4. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2(1) shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the asylum application of the said parent or guardian, even if the minor is not individually an asylum seeker.

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

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

6. An asylum seeker who is present in another Member State and there lodges an asylum application after withdrawing his application during the process of determining the State responsible shall be taken back, under the conditions laid down in Article 21, by the Member State with which that asylum application was lodged, with a view to completing the process of determining the State responsible for examining the asylum application.

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

CHAPTER III

HIERARCHY OF CRITERIA

Article 5

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

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

Article 6

Where the asylum seeker is an unaccompanied minor, the Member State where a member of his family is who is able to take charge of him shall be responsible, provided that this is in the best interests of the child.

Article 7

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

Article 8

1. Where the asylum seeker has a member of his family whose asylum application is being examined in a Member State under a normal procedure within the meaning of Directive .../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] and has not yet been the subject of a decision by the authority responsible for the determination within the meaning of the said Directive, that Member State shall be responsible for examining the asylum application, provided that the persons concerned so desire.

2. Where the family member's asylum application is the subject of an admissibility procedure within the meaning of Directive .../EC [on minimum standards on procedures in Member States for granting and withdrawing refugee status] when the Member State on whose territory that person is contacted by the Member State conducting the procedure for determining the Member State responsible for examining the application, the Member State requested shall so inform the requesting Member State in a provisional reply within not more than two weeks. The Member State in which the family member is shall inform the requesting State immediately of the outcome of the admissibility procedure. Where the family member's application is allowed under the normal procedure, paragraph 1 shall apply.

Article 9

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

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

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

- (a) the State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the State which issued the residence document 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.

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

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

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

Article 10

Where it can be shown that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air,

having come from a non-member State of the European Union, the Member State thus entered shall be responsible for examining the asylum application.

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

Article 11

1. Responsibility for examining the asylum application of a third-country national not subject to a visa requirement shall lie with the Member State in which he lodges his application.

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

Article 12

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.

Article 13

Where it can be shown that a third-country national has remained unlawfully for six months or more on the territory of a Member State, that State shall be responsible for examining the asylum application.

Such responsibility shall cease, if the applicant has subsequently remained unlawfully for six months or more on the territory of another Member State, or if he has left the territories of the Member States for a period of more than three months.

Article 14

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

Article 15

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

- (a) responsibility for examining the asylum applications of all the members of the family shall lie with the Member State which the criteria indicate is responsible for examining the applications of the largest number of them;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

CHAPTER IV

HUMANITARIAN CLAUSE

Article 16

1. Any Member State, even where it is not responsible under the criteria set out in this Regulation, may for humanitarian reasons, based in particular on family or cultural considerations, examine an asylum application at the request of another Member State, provided that the applicant consents. Member States shall regard situations where one of the persons concerned is dependent on the assistance of the other on account of pregnancy or maternity, their state of health or great age as justifying the uniting of the asylum seeker with a member of his family present on the territory of one of the Member States in circumstances not provided for by this Regulation.

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

2. The conditions and procedures for implementing this Article, including, where appropriate, conciliation mechanisms for settling differences between Member States concerning the need to unite the persons in question, or the place where this should be done, shall be adopted in accordance with the procedure referred to in Article 29(2).

CHAPTER V

TAKING CHARGE AND TAKING BACK

Article 17

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

- (a) take charge, under the conditions laid down in Articles 18 to 20, of an asylum seeker who has lodged an application in a different Member State,
- (b) complete the examination of the asylum application,
- (c) take back, under the conditions laid down in Article 21, an applicant whose application is under examination and who is on the territory of another Member State without permission,
- (d) take back, under the conditions laid down in Article 21, an applicant who has withdrawn the application under examination and made an application in another Member State,
- (e) take back, under the conditions laid down in Article 21, a third-country national whose application it has rejected and who is on the territory of another Member State without permission.

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

3. Where it can be shown that the asylum seeker has resided for at least six months in a Member State, the obligations specified in paragraph 1 shall be transferred to that Member State.

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

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

Article 18

1. Where a Member State with which an asylum application 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 sixty-five working days of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge is not made within the period of sixty-five working days, responsibility for examining the asylum application shall lie with the State in which the application was lodged.

2. The request to take charge shall contain information enabling the authorities of the State requested to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The rules on the preparation of and the procedures for transmitting requests shall be adopted in accordance with the procedure referred to in Article 29(2).

3. The requesting Member State may ask for an urgent reply in cases where the asylum application was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and where the asylum seeker is held in detention. The request shall state the legal and factual information warranting an urgent reply and the period within which a reply is expected.

4. The applicant shall be informed immediately, and in a language which he understands, of the fact that a request to take charge has been sent to another Member State and of the time limits applicable.

Article 19

1. The Member State requested shall make the necessary checks, in particular in its files, and shall give a decision on the request to take charge within one month of the date on which the request was received. If there is no formal proof, the requested State shall acknowledge its responsibility where there is a body of corroborating evidence which makes it possible to invoke that State's responsibility with a reasonable degree of probability.

The list of proof and evidence and the rules relating to its interpretation shall be adopted in accordance with the procedure referred to in Article 29(2).

2. Where the requesting State has pleaded urgency, the State requested shall do all it can to reply within the time limit requested. Failing this, it shall inform the requesting State before that time limit expires when it will be able to provide a definitive answer.

3. Failure to act within the period of one month mentioned in paragraph 1 shall be tantamount to accepting the request.

Article 20

1. Where the State requested accepts that it should take charge, the State in which the asylum application was lodged shall communicate to the applicant a single decision concerning the inadmissibility of his application in that Member State and the transfer to the State responsible within no more than fifteen working days from the date of receipt of the reply from the State responsible.

2. The decision referred to in paragraph 1 shall set out the grounds on which it is based. It shall contain details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the State responsible by his own means. Appeal from the decision shall lie to the courts. Appeal shall not suspend the performance of the transfer.

3. The transfer of the applicant from the Member State in which the asylum application was lodged to the Member State responsible shall be carried out in accordance with the national law of the first Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request to take charge.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez-passer of the design adopted in accordance with the procedure referred to in Article 29(2).

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

4. Where the transfer does not take place within the period of six months, responsibility shall lie with the Member State in which the asylum application was lodged.

5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 29(2).

Article 21

1. An asylum seeker shall be taken back in accordance with Article 4(6) and Article 17(c), (d) and (e) as follows:

(a) the request for the applicant to be taken back must contain information enabling the State requested to check that it is responsible;

(b) the State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it within eight days of the referral;

(c) in exceptional cases, the Member State requested may, before the eight-day time limit has expired, give a provisional reply stating the period within which it will give its definitive answer. Such period should be as brief as possible and may, in any event, not exceed the period of fourteen days from the date of dispatch of the provisional reply;

(d) where the Member State requested does not communicate its decision within the eight days mentioned in subparagraph (b), or within the fourteen days mentioned in subparagraph (c), it shall be considered to have agreed to take back the asylum seeker.

(e) a State which agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request to take charge;

(f) the requesting State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible within a period not exceeding fifteen working days from the receipt of the reply from the State responsible. The decision shall set out the grounds on which it is based. It shall be supplemented with details of the time limit on carrying out the transfer and shall, if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the State responsible by his own means. Appeal from the decision shall lie to the courts. Appeal shall not suspend performance of the transfer.

If necessary, the asylum seeker shall be supplied by the requesting State with a laissez-passer of the design adopted in accordance with the procedure referred to in Article 29(2).

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

2. Where the transfer is not carried out within the six-month time limit, the State responsible shall be relieved of its obligation to take back, and responsibility shall then be transferred to the requesting State.

3. The rules of proof and evidence and their interpretation, and on the preparation of and the procedures for transmitting requests, shall be adopted in accordance with the procedure referred to in Article 29(2).

4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 29(2).

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 22

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

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

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

- (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth),
- (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.),
- (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000;
- (d) places of residence and routes travelled,
- (e) residence documents or visas issued by a Member State,
- (f) the place where the application was lodged,
- (g) the date any previous asylum application was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

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

4. Any request for information shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the Member State requested, shall state on what evidence or what specific and verifiable part of the applicant's statements it is based.

5. The Member State requested shall be obliged to reply within one month. Where particular difficulties arise, the Member State requested may, within no more than two weeks, give a provisional reply stating the period in which it will be possible to give a definitive reply. Such period should be as brief as possible and may in no case be longer than six weeks. If the researches carried out by the Member State requested which has exercised the right to give a provisional reply yield information which shows that it is liable, that State may not invoke the expiry of the time limit provided for in Article 18(1) as a reason for refusing to comply with a request to take charge.

6. The 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 Commission, which shall inform the other Member States thereof.

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

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

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

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

If he finds that this information has been processed in breach of this Regulation or of Directive 95/46/EC, in particular because it is incomplete or inaccurate, he is entitled to have it corrected, erased or blocked.

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

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

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

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

Article 23

Member States shall ensure that the departments responsible for fulfilling the obligations arising under this Regulation shall 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 and requests to take back.

Article 24

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

- (a) exchanges of liaison officers;
- (b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge and take back;
- (c) a mechanism for rationalising transfers making it possible, at the end of an agreed period which may not exceed one month, to carry out, without prejudice to Articles 6, 7, 8, 15 and 16, the transfer only of those cases for which a Member State is still in debit vis-à-vis the other Member State, once acceptances which cancel each other out have been discounted. Any arrangement concerning the rationalisation of transfers shall state the criteria on the basis of which it is decided to perform, or not to perform, the transfer of the asylum seekers concerned.

2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall approve the arrangements referred to in subparagraphs (b) and (c), after it has checked that they do not infringe this Regulation.

CHAPTER VII

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 25

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

2. However, to ensure continuity of the arrangements for determining the Member State responsible for an asylum application, where an application has been lodged after the date mentioned in the second paragraph of Article 31, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date.

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

Article 26

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

Article 27

Member States shall apply this Regulation to asylum seekers without 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.

Article 28

Member States shall determine the system of penalties for infringements of this Regulation and shall take any measures necessary to ensure their implementation. The penalties thus provided for should be effective, proportionate and dissuasive.

Article 29

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the Commission representative.

2. In those cases where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in accordance with Article 7 thereof.

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

Article 30

At the latest three years after the date mentioned in the first paragraph of Article 31, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

Having presented the said report, the Commission shall report to the European Parliament and the Council on the application

of this Regulation at the same time as it presents reports on the implementation of the Eurodac system provided for by Article 24(5) of Regulation (EC) No 2725/2000.

Article 31

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

It shall apply to asylum applications lodged as from the first day of the sixth month following its entry into force. The Member State responsible for the examination of an asylum application submitted before that date shall be determined in accordance with the criteria set out in the Dublin Convention.

This Regulation shall be binding in its entirety and shall be directly applicable in all Member States.
