Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR

4

REGIONAL INSTRUMENTS

Europe

UNHCR
The UN Refugee Agency

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Volume 4
Regional Instruments

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Foreword

The first edition of the *Collection of International Instruments Concerning Refugees* was published in 1979. Thereafter, the compilation was updated regularly as new developments took place in the international law relating to refugees and other persons of concern to UNHCR.

The 2007 edition takes account of the increasingly apparent inter-relationship and complimentarity between, on one hand, international refugee law and, on the other, human rights, humanitarian, criminal and other bodies of law. The *Collection* features over 260 instruments and legal texts drawn from across this broad spectrum. Compared to the earlier edition of the *Collection*, this edition includes many international instruments and legal texts relating to issues such as statelessness, the internally displaced and the asylum-migration debate (such as trafficking, smuggling, maritime and aviation law and migrants) as well as matters such as torture, discrimination, detention and the protection of women and children. The range of relevant regional instruments and legal texts have also been enhanced, not least to ensure that they are used more effectively while advocating for refugees and others of concern to UNHCR.

Today, users can access veritable reference resources by electronic means. The *Collection* itself is accessible on-line. For users not able to access electronic facilities, it provides, in hard copy, the most important instruments in a manner easy to use in daily work. Indeed, even for those otherwise able to take advantage of electronic facilities, the availability of these instruments systematically in a single source offers unique facility and benefits.

In this spirit, the *Collection* is strongly commended for the most frequent, wide, and extensive use. Government officials, academics, lawyers, humanitarian workers, non-governmental organizations and members of civil society at large will find their respective activities on behalf of refugees and other victims of forced displacement greatly enhanced by the *Collection*. In particular, it should facilitate the most complete view possible of the international rights and obligations undergirding the protection and welfare of those groups and finding solutions for their problems.



George Okoth-Obbo
Director
Division of International Protection Services
Office of the United Nations High Commissioner for Refugees

Geneva, 1 June 2007

Preface

This *Collection of International Instruments and Legal Texts* spans four volumes and contains over 260 documents that have been compiled after extensive consultations to support those working on issues relating to forced displacement, statelessness and related matters.

Every attempt has been made to ensure that the structure and format of this publication allows the user to easily access the international instruments and legal texts. In particular:

- A **table of contents** has been provided at the beginning of each volume. **Page numbering** continues in sequence through the four volumes.

- **International** instruments are placed at the beginning of this *Collection* followed by **regional** instruments.

- The instruments and legal texts have been compiled under specific **thematic headings** such as Nationality and Statelessness, Human Rights, etc. Thematic issues relating to asylum, refugees, nationality and statelessness and the internally displaced have been placed ahead of human rights, migration and miscellaneous issues.

- Within each thematic heading, instruments that are binding on States (such as Conventions) are placed ahead of legal texts (such as declarations) that are often less binding in nature. **Protocols always follow the parent instrument** in order (for instance, the *Palermo Protocols* on Smuggling and Trafficking follow the parent Convention on Transnational Crime in the International Criminal Law section). **Chronology** has been maintained within this structure only (i.e.: all declarations under a sub-heading are chronological). Instruments that have not entered into force have still been included ahead of legal texts.

- In Volume 1 and 2 only, where an instrument or declaration under one thematic area may be relevant to another thematic area, **a cross reference** has been provided in the Table of Contents (for instance, the *Palermo Protocols* on Smuggling and Trafficking are situated in the International Criminal Law section but are also relevant to the sections relating to torture, slavery, slavery-like practices and forced labour, women and children).

- **Short names** of Conventions are mentioned where possible for ease of reference (for instance, the *Palermo Protocols, SOLAS, SAR,* etc*)*. International Labour Conventions have been marked accordingly.

- The **language** used in the original version or translation of an instruments or legal text has been replicated without any alteration. As such, readers will notice that both American and British English are used in this Collection.

- The **date of adoption and date of entry into force** feature under the title of international and regional instruments. The date of entry into force is absent in cases where the instrument had not come into force at the time of this publication.

- For reasons of space, State **ratification or reservations** to international and regional instruments have not been included. As well, this information would need to be updated regularly by the reader.

- For reasons of space, only relevant **excerpts** of certain instruments have been published (this is the case of the *Geneva Convention*).

- An **index** has been provided at the end of every volume.

- A short list of **electronic resources** has also been provided at the end of each volume for those who wish to access other international and regional instruments and legal texts as well as national legislation.

Please write to UNHCR's Division of International Protection Services (DIPS) in Geneva for any questions, comments or clarifications you may have in relation to this *Collection* at **HQPR10@unhcr.org**.

Division of International Protection Services
Office of the United Nations High Commissioner for Refugees

Geneva, 1 June 2007

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Section 2.5

Europe

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EUROPEAN AGREEMENT ON THE ABOLITION OF VISAS FOR REFUGEES

Adopted in Strasbourg on 20 April 1959

Entry into force: 4 September 1960, in accordance with Article 9
Text: *European Treaty Series*, No. 31

The governments signatory hereto, being members of the Council of Europe,

Desirous of facilitating travel for refugees residing in their territory,

Have agreed as follows:

Article 1

1. Refugees lawfully resident in the territory of a Contracting Party shall be exempt, under the terms of this Agreement and subject to reciprocity, from the obligation to obtain visas for entering or leaving the territory of another Party by any frontier, provided that:

   (*a*) They hold a valid travel document issued in accordance with the Convention on the Status of Refugees of 28th July 1951 or the Agreement relating to the issue of a travel document to refugees of 15th October 1946, by the authorities of the Contracting Party in whose territory they are lawfully resident;

   (*b*) Their visit is of not more than three months' duration.

2. A visa may be required for a stay of longer than three months or for the purpose of taking up gainful employment in the territory of another Contracting Party.

Article 2

For the purposes of the present Agreement the "territory" of a Contracting Party shall have the meaning assigned to it by this Party in a declaration addressed to the Secretary General of the Council of Europe.

Article 3

To the extent that one or more Contracting Parties deem necessary, the frontier shall be crossed only at authorised points.

Article 4

1. The provisions of this Agreement shall be without prejudice to the laws or regulations governing visits by aliens to the territory of any Contracting Party.

2. Each Contracting Party reserves the right to prohibit persons it deems to be undesirable from entering or staying in its territory.

Article 5

Refugees who have entered the territory of a Contracting Party by virtue of the present Agreement shall be re-admitted at any time to the territory of the Contracting Party by whose authorities the travel document was issued, at the simple request of the first-mentioned Party, except where this Party has authorised the persons concerned to settle on its territory.

Article 6

This Agreement shall not prejudice the provisions of any municipal law or bilateral or multilateral treaties, conventions or agreements now in force or which may hereafter enter into force, whereby more favourable terms are applied to refugees lawfully residing in the territory of a Contracting Party in respect of the crossing of frontiers.

Article 7

1. Each Contracting Party reserves the option, for reasons of *ordre public*, security or public health, to delay the entry into force of this Agreement, or order the temporary suspension thereof in respect of all or some of the other Parties, except in so far as the provisions of Article 5 are concerned. The Secretary General of the Council of Europe shall immediately be informed when any such measure is taken and again when it ceases to be operative.
2. A Contracting Party which avails itself of either of the options provided for in the foregoing paragraph may not claim the application of this Agreement by any other Party save in so far as it also applies it in respect of that Party.

Article 8

This Agreement shall be open to the signature of members of the Council of Europe, who may become Parties thereto either by:

(*a*) Signature without reservation in respect of ratification, or

(*b*) Signature with reservation in respect of ratification, followed by ratification.

Instruments of ratification shall be deposited with the Secretary General of the Council of Europe.

Article 9

1. The Agreement shall enter into force one month after the date on which three members of the Council, in accordance with Article 8, shall have signed the Agreement without reservation in respect of ratification or shall have ratified it.
2. In the case of any member who shall subsequently sign the Agreement without reservation in respect of ratification, or shall ratify it, the Agreement shall enter into force one month after the date of such signature or the date of deposit of the instrument of ratification.

Article 10

After this Agreement has entered into force the Committee of Ministers of the Council of Europe may, by unanimous vote, invite any government not a member of the Council, which is party either to the Convention on the Status of Refugees of 28th July 1951 or to the Agreement relating to the issue of a travel document to refugees of 15th October 1946, to accede to this Agreement. Such accession shall take effect one month after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 11

The Secretary General of the Council of Europe shall notify Member States of the Council and States acceding to this Agreement:

(*a*) Of every signature, with any reservations in respect of ratification, of the deposit of each instrument of ratification, and of the date on which the Agreement enters into force;

(*b*) Of the deposit of any instrument of accession in accordance with Article 10;

(*c*) Of any notification or declaration received in accordance with Articles 2, 7 and 12, and the date on which it takes effect.

Article 12

Any Contracting Party may terminate its own application of the Agreement by giving three months' notice to that effect to the Secretary General of the Council of Europe.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to the signatory governments.

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EUROPEAN CONVENTION ON SOCIAL SECURITY (EXCERPTS)

Adopted in Paris on 14 December 1972

Entry into force: 1 March 1977
Text: *European Treaty Series*, No. 78

(Articles 1, 2 and 4)

The Member States of the Council of Europe signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular for the purpose of facilitating their social progress;

Considering that multilateral co-ordination of social security legislation is one of the means of achieving that aim;

Considering that the European Code of Social Security, opened for signature on 16 April 1964, provides, in Article 73, that the Contracting Parties to the Code shall endeavour to conclude a special instrument governing questions relating to social security for foreigners and migrants, particularly with regard to equality of treatment with their own nationals and to the maintenance of acquired rights and rights in course of acquisition;

Affirming the principle of equality of treatment for nationals of the Contracting Parties, refugees and stateless persons, under the social security legislation of each Contracting Party, and the principle that the benefits under social security legislation should be maintained despite any change of residence by the protected persons within the territories of the Contracting Parties, principles which underlie not only certain provisions of the European Social Charter but also several conventions of the International Labour Organization,

Have agreed as follows:

TITLE I

GENERAL PROVISIONS

Article 1

For the purposes of this Convention:

(*a*) The term "Contracting Party" means any State which has deposited an instrument of ratification, of acceptance or of accession, in accordance with the provisions of Article 75, paragraph 1, or of Article 77;

(*b*) The terms "territory of a Contracting Party" and "national of a Contracting Party" are defined in Annex I; each Contracting Party shall give notice, in accordance with the provisions of Article 81, paragraph 1, of any amendment to be made to Annex I;

(*c*) The term "legislation" means any laws, regulations and other statutory instruments which are in force at the time of signature of this Convention or may enter into force subsequently in the whole or any part of the territory of each Contracting Party and which relate to the social security branches and schemes specified in Article 2, paragraphs 1 and 2;

(*d*) The term "social security convention" means any bilateral or multilateral instrument by which two or more Contracting Parties are, or may subsequently be, bound exclusively, and any multilateral instrument by which at least two Contracting Parties and one or more other States are, or may subsequently be, bound in the field of social security in respect of all or of part of the social security branches and schemes specified in Article 2, paragraphs 1 and 2, as well as any agreements concluded pursuant to the said instruments;

(*e*) The term "competent authority" means the minister, ministers or other corresponding authority responsible for the social security schemes in all or any part of the territory of each Contracting Party;

(*f*) The term "institution" means the body or authority responsible for applying all or part of the legislation of each Contracting Party;

(*g*) The term "competent institution" means:

(i) In relation to a social insurance scheme, either the institution with which the person concerned is insured when he claims benefit, or the institution from which he is entitled to receive benefit or would be entitled to receive benefit if he were resident in the territory of the Contracting Party where that institution is situated, or the institution designated by the competent authority of the Contracting Party concerned;

(ii) In relation to a scheme other than a social insurance scheme, or in relation to a family benefits scheme, the institution designated by the competent authority of the Contracting Party concerned;

(iii) In relation to a scheme concerning an employer's liability in respect of benefits referred to in Article 2, paragraph 1, either the employer or his insurer or, in default thereof, the body or authority designated by the competent authority of the Contracting Party concerned;

(*h*) The term "competent State" means the Contracting Party in whose territory the competent institution is situated;

(*i*) The term "residence" means ordinary residence;

(*j*) The term "temporary residence" means a temporary stay;

(*k*) The term "institution of the place of residence" means the institution empowered, under the Contracting Party's legislation which it applies, to pay the benefits in question at the place of residence or, where no such institution exists, the institution designated by the competent authority of the Contracting Party concerned;

(*l*) The term "institution of the place of temporary residence" means the institution empowered, under the Contracting Party's legislation which it applies, to pay the benefits in question at the place of temporary residence or, where no such institution exists, the institution designated by the competent authority of the Contracting Party concerned;

(*m*) The term "worker" means an employed person or a self-employed person or a person treated as such under the legislation of the Contracting Party concerned, unless otherwise specified in this Convention;

(*n*) The term "frontier worker" means an employed person who is employed in the territory of one Contracting Party and resides in the territory of another Contracting Party where he returns in principle every day or at least once a week; provided that

(i) As regards relations between France and the Contracting Parties bordering France, the person concerned must, to be deemed a frontier worker, reside and be employed within a zone which does not, in principle, extend more than twenty kilometres on either side of the common frontier;

(ii) A frontier worker employed in the territory of one Contracting Party by an undertaking which is his normal employer, who is sent by that undertaking to work outside the frontier area, either in the territory of the same Contracting Party or in the territory of another Contracting Party, for a period not expected to exceed four months, shall retain the status of frontier worker during such employment for a period not exceeding four months;

(*o*) The term "refugee" has the meaning assigned to it in Article 1, Section A, of the Convention on the Status of Refugees, signed at Geneva on 28 July 1951, and in Article 1, paragraph 2, of the Protocol on the Status of Refugees of 31 January 1967, without any geographical limitation;

(*p*) The term "stateless person" has the meaning assigned to it in Article 1 of the Convention on the Status of Stateless Persons, done at New York on 28 September 1954;

(*q*) The term "members of the family" means the persons defined, or recognised as such, or designated as members of the household, by the institution responsible for paying benefits, or, in the cases referred to in Article 21, paragraph 1, sub-paragraphs a and c and Article 24, paragraph 6, by the legislation of the Contracting Party in whose territory they reside; where, however, this legislation

regards only persons living with the person concerned as members of the family or members of the household, this condition shall be deemed to be satisfied if such persons are mainly maintained by the person concerned;

(*r*) The term "survivors" means the persons defined or recognised as such by the legislation under which the benefits are granted; where, however, this legislation regards as survivors only persons who were living with the deceased, this condition shall be deemed to be satisfied, if the persons concerned were mainly maintained by the deceased;

(*s*) The term "periods of insurance" means periods of contributions, employment, occupational activity or residence as defined or recognised as periods of insurance by the legislation under which they were completed, and any other periods, in so far as they are regarded by this legislation as equivalent to periods of insurance;

(*t*) The terms "periods of employment" and "periods of occupational activity" mean periods defined or recognised as such by the legislation under which they were completed, and any other periods, in so far as they are regarded by this legislation as equivalent to periods of employment or occupational activity;

(*u*) The term "periods of residence" means periods of residence as defined or recognised as such by the legislation under which they were completed;

(*v*) The terms "benefits" and "pensions" mean all benefits or pensions including all components thereof provided out of public funds and all increases, revaluation allowances or supplementary allowances, unless otherwise specified in this Convention, and any benefits awarded for the purpose of maintaining or improving earning capacity, such lump sum benefits as are payable in lieu of pensions and, where applicable, any payments made by way of refund of contributions;

(*w*) The term "family allowances" means periodical cash benefits granted according to the number and age of children; the expression "family benefits" means any benefits in kind or in cash granted to offset family maintenance costs, except the special birth grants explicitly excluded in Annex II; each Contracting Party concerned shall give notice in accordance with the provisions of Article 81, paragraph 1, of any amendment to be made to Annex II in respect of any special birth grants provided by its legislation;

(*x*) The term "death grant" means any lump sum payable in the event of death, other than the lump sum benefits mentioned in sub-paragraph v of this article;

(*y*) The term "contributory" applies to benefits, the award of which depends either on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity, and to legislation or schemes which provide for such benefits; benefits, the award of which does not depend on direct financial participation by the persons protected or by their employer, or on a qualifying period of occupational activity, and the legislation or schemes under which they are exclusively awarded, are said to be "non-contributory";

(*z*) The term "benefits granted under transitional arrangements" means benefits granted to persons who are over a given age on the date of entry into force of the legislation applicable, or benefits granted provisionally in consideration of events that have occurred or periods that have been completed outside the current frontiers of the territory of a Contracting Party.

Article 2

1. This Convention applies to all legislation governing the following branches of social security:

(*a*) Sickness and maternity benefits;

(*b*) Invalidity benefits;

(*c*) Old-age benefits;

(*d*) Benefits in respect of occupational injuries and diseases;

(*e*) Survivors' benefits;

(*f*) Benefits in respect of occupational injuries and diseases;

(*g*) Death grants;

(*h*) Unemployment benefits;

(*i*) Family benefits.

2. This Convention applies to all general social security schemes and special schemes, whether contributory or non-contributory, including employers' liability schemes in respect of the benefits referred to in the preceding paragraph. Bilateral or multilateral agreements between two or more Contracting Parties shall determine, as far as possible, the conditions in which this Convention shall apply to schemes established by means of collective agreements made compulsory by decision of the public authorities.

3. Where schemes relating to seafarers are concerned, the provisions of Title III of this Convention shall apply without prejudice to the legislation of any Contracting Party governing the liabilities of ship-owners, who shall be treated as the employers for the purposes of the application of this Convention.

4. This Convention does not apply to social or medical assistance schemes, to benefit schemes for victims of war or its consequences, or to special schemes for civil servants or persons treated as such.

5. This Convention does not apply to legislation designed to give effect to a social security convention concluded between a Contracting Party and one or more other States.

Article 4

1. The provisions of this Convention shall be applicable:

(*a*) To persons who are or have been subject to the legislation of one or more of the Contracting Parties and are nationals of a Contracting Party, or are refugees or stateless persons resident in the territory of a Contracting Party, as well as to the members of their families and their survivors;

(*b*) To the survivors of persons who were subject to the legislation of one or more of the Contracting Parties, irrespective of the nationality of such persons, where these survivors are nationals of a Contracting Party, or refugees or stateless persons resident in the territory of a Contracting Party;

(*c*) Without prejudice to Article 2, paragraph 4, to civil servants and persons treated as such under the legislation of the Contracting Party concerned, in so far as they are subject to any legislation of that Contracting Party to which this Convention applies.

2. Notwithstanding the provisions of sub-paragraph c of the preceding paragraph, the categories of persons – other than members of the service staff of diplomatic missions or consular posts and persons employed in the private service of officials of such missions or posts – in respect of whom the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations provide for exemption from the social security provisions which are in force in the receiving State, shall not benefit from the provisions of this Convention.

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EUROPEAN AGREEMENT ON TRANSFER OF RESPONSIBILITY FOR REFUGEES

Adopted in Strasbourg on 16 October 1980

Entry into force: 1 December 1980, in accordance with Article 10
Text: *European Treaty Series*, No. 107

The Member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Wishing to further improve the situation of refugees in Member States of the Council of Europe;

Desirous of facilitating the application of Article 28 of the Convention relating to the status of refugees of 28 July 1951 and paragraphs 6 and 11 of its Schedule, in particular as regards the situation where a refugee has lawfully taken up residence in the territory of another Contracting Party;

Concerned especially to specify, in a liberal and humanitarian spirit, the conditions on which the responsibility for issuing a travel document is transferred from one Contracting Party to another;

Considering that it is desirable to regulate this question in a uniform manner between the Member States of the Council of Europe,

Have agreed as follows:

Article 1

For the purposes of this Agreement:

(*a*) "Refugee" means a person to whom the Convention relating to the status of refugees of 28 July 1951 or, as the case may be, the Protocol relating to the status of refugees of 31 January 1967 applies;

(*b*) "Travel document" means the travel document issued by virtue of the above-mentioned Convention;

(*c*) "First State" means a State, Party to this Agreement, which has issued such a travel document;

(*d*) "Second State" means another State, Party to this Agreement, in which a refugee, holder of a travel document issued by the first State, is present.

Article 2

1. Responsibility shall be considered to be transferred on the expiry of a period of two years of actual and continuous stay in the second State with the agreement of its authorities or earlier if the second State has permitted the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the travel document.

   This period of two years shall run from the date of admission of the refugee to the territory of the second State or, if such a date cannot be established, from the date on which he presents himself to the authorities of the second State.

2. For the calculation of the period specified in paragraph 1 of this Article:

   (*a*) Stays authorised solely for the purpose of studies, training or medical care shall not be taken into account;

   (*b*) Periods of imprisonment of the refugee imposed in connection with a criminal conviction shall not be taken into account;

   (*c*) Periods during which the refugee is allowed to remain in the territory of the second State pending an appeal against a decision of refusal of residence or of removal from the territory shall only be taken into account if the decision on the appeal is favourable to the refugee;

   (*d*) Periods during which the refugee leaves on a temporary basis the territory of the second State for not more than three consecutive months or, on more than one occasion, for not more than six months in total, shall be taken into account, such absences not being deemed to interrupt or suspend the stay.

3. Responsibility shall also be deemed to be transferred if readmission of the refugee to the first State can no longer be requested under Article 4.

Article 3

1. Until the date of transfer of responsibility, the travel document shall be extended or renewed by the first State.
2. The refugee shall not be required to leave the second State to obtain the extension or renewal of his travel document and may for this purpose apply to diplomatic missions or consular posts of the first State.

Article 4

1. As long as transfer of responsibility has not occurred in accordance with Article 2, paragraphs 1 and 2, the refugee shall be readmitted to the territory of the first State at any time, even after the expiry of the travel document. In the latter case readmission shall occur on the simple request of the second State, on condition that the request is made during the six months following the expiry of the travel document.
2. If the authorities of the second State do not know the whereabouts of the refugee and for this reason are not able to make the request mentioned in paragraph 1 during the six months following the expiry of the travel document, that request must be made within the six months following the time at which the whereabouts of the refugee become known to the second State, but in no case later than two years after the expiry of the travel document.

Article 5

1. From the date of transfer of responsibility:

   (*a*) The responsibility of the first State to extend or renew the travel document of the refugee shall cease;

   (*b*) The second State shall be responsible for issuing a new travel document to the refugee.

2. The second State shall inform the first State that transfer of responsibility has taken place.

Article 6

After the date of transfer of responsibility, the second State shall, in the interest of family reunification and for humanitarian reasons, facilitate the admission to its territory of the refugee's spouse and minor or dependent children.

Article 7

The competent authorities of the Parties may communicate directly with each other as regards the application of this Agreement. These authorities shall be specified by each State, when expressing its consent to be bound by the Agreement, by means of a notification addressed to the Secretary General of the Council of Europe.

Article 8

1. Nothing in this Agreement shall impair any rights and benefits which have been or which may be granted to refugees independently of this Agreement.
2. None of the provisions of this Agreement shall be interpreted as preventing a Party from extending the benefits of this Agreement to persons who do not fulfil the conditions laid down.
3. The provisions of bilateral agreements concluded between Parties relating to the transfer of responsibility for the issuing of Convention travel documents or to the readmission of refugees in the absence of such a transfer shall cease to be applicable from the date of entry into force of this Agreement between those Parties. Rights and benefits acquired or in the course of being acquired by refugees under such agreements shall not be affected.

Article 9

1. This Agreement shall be open for signature by the Member States of the Council of Europe, which may express their consent to be bound by:

   (*a*) Signature without reservation as to ratification, acceptance or approval, or

   (*b*) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 10

1. This Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date on which two Member States of the Council of Europe have expressed their consent to be bound by the Agreement, in accordance with the provisions of Article 9.

2. In respect of any Member State which subsequently expresses its consent to be bound by it, the Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of signature or of the deposit of the instrument of ratification, acceptance or approval.

Article 11

1. After the entry into force of this Agreement, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council which is a Party to the Convention relating to the status of refugees of 28 July 1951 or, as the case may be, the Protocol relating to the status of refugees of 31 January 1967, to accede to the Agreement. The decision to invite shall be taken by the majority provided for by Article 20.d of the Statute and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State, the Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 12

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Agreement shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Agreement to any other territory specified in the declaration. In respect of such territory the Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 13

Without prejudice to the provisions of Article 12, this Agreement shall apply to each Party subject to the same limitations and reservations applicable to its obligations under the Convention relating to the status of refugees of 28 July 1951 or, as the case may be, the Protocol relating to the status of refugees of 31 January 1967.

Article 14

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or both of the reservations provided for in the Annex to this Agreement. No other reservation may be made.

2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

3. A Party which has made a reservation in respect of any provision of this Agreement may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision insofar as it has itself accepted it.

Article 15

1. Difficulties with regard to the interpretation and application of this Agreement shall be settled by direct consultation between the competent administrative authorities and, if the need arises, through diplomatic channels.

2. Any dispute between Parties concerning the interpretation or application of this Agreement which it has not been possible to settle by negotiation or other means shall, at the request of any party to the dispute, be referred to arbitration. Each party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other party by the President of the European Court of Human Rights. If the latter should be a national of one of the parties to the dispute, this duty shall be carried out by the Vice-President of the Court, or, if the Vice-President is a national of one of the parties to the dispute, by the most senior judge of the Court not being a national of one of the parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.

   The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

Article 16

1. Any Party may at any time denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

3. Rights and benefits acquired or in the course of being acquired by refugees under this Agreement shall not be affected in the event of the Agreement being denounced.

Article 17

The Secretary General of the Council of Europe shall notify the Member States of the Council and any State which has acceded to this Agreement of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance, approval or accession;

(*c*) Any date of entry into force of this Agreement in accordance with Articles 10, 11 and 12;

(*d*) Any other act, notification or communication relating to this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Strasbourg, the 16th day of October 1980, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe and to any State invited to accede to this Agreement.

Annex

Reservations

Under paragraph 1 of Article 14 of this Agreement, any State may declare:

1. That insofar as it is concerned, transfer of responsibility under the provisions of paragraph 1 of Article 2 shall not occur for the reason that it has authorised the refugee to stay in its territory for a period exceeding the validity of the travel document solely for the purposes of studies or training.
2. That it will not accept a request for readmission presented on the basis of the provisions of paragraph 2 of Article 4.

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DECLARATION ON TERRITORIAL ASYLUM

Adopted By the Committee of Ministers on 18 November 1977 at the 278th Meeting of the Ministers' Deputies

The Committee of Ministers of the Council of Europe,

Having examined the present situation in the field of territorial asylum;

Taking into account the principles contained in particular in the United Nations Charter, in the Universal Declaration of Human Rights and in the United Nations Declaration on Territorial Asylum of 1967;

Acting in pursuance of the objectives contained in the Statute of the Council of Europe;

Bearing in mind the European Convention on Human Rights,

Having regard to Resolution (67) 14 of 29 June 1967;

Wishing to underline the practice which is common to the Member States of the Council of Europe in the field of territorial asylum,

Declares:

Article 1

In fulfilling their humanitarian duties, the Member States of the Council of Europe reaffirm their intention to maintain, in particular on the basis of the principles set out in Resolution (67) 14, their liberal attitude with regard to persons seeking asylum on their territory;

Article 2

The Member States of the Council of Europe, parties to the 1951 Convention relating to the Status of Refugees, reaffirm their right to grant asylum to any person who, having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, also fulfils the other conditions of eligibility for the benefits of that convention, as well as to any other person they consider worthy of receiving asylum for humanitarian reasons;

Article 3

The Member States of the Council of Europe reaffirm that the grant of territorial asylum is a peaceful and humanitarian act and shall not be regarded as an act unfriendly to any other state and shall be respected by all states.

195

RECOMMENDATION 293 (1961) ON THE RIGHT OF ASYLUM[1]

Adopted by the Consultative Assembly of the Council of Europe, on 26 September 1961

Text: Council of Europe Recommendation 293 (1961)

The Assembly,

Recalling its Recommendation 234 proposing the conclusion of a Second Protocol to the European Convention on Human Rights;

Considering the tradition which already obtains in Member States of according asylum to political refugees and believing that it is now appropriate to give legal recognition to this practice more particularly as the enjoyment by political refugees of human rights and fundamental freedoms may depend on their being granted asylum;

Considering that it is desirable that Member States should confer upon such persons a right to seek, receive and enjoy asylum to the extent compatible with safeguarding their own legitimate interest;

Having considered the Report of its Legal Committee (Doc. 1329),

Recommends to the Committee of Ministers:

1. That it should instruct the Committee of Government Experts which has already been entrusted with the task of studying problems relating to the European Convention on Human Rights to include in the Second Protocol to the Convention an Article on the right of asylum based on the attached draft.

2. That it should submit the draft Protocol prepared by the Committee of Experts to the Assembly for an opinion before signature by member Governments.

Article . . .

1. Everyone has the right to seek and to enjoy in the territories of High Contracting Parties asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political offences.

3. No one seeking or enjoying asylum in accordance with paragraphs 1 and 2 of this Article shall, except for overriding reasons of national security or safeguarding of the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

4. If a High Contracting Party rejects, returns or expels a person seeking or enjoying asylum in accordance with paragraphs 1 and 2 of this Article, it shall allow such person a reasonable period and the necessary facilities to obtain admission into another country.

[1] *Assembly debate* on 26th September 1961 (15th Sitting) (see Doc. 1329, Report of the Legal Committee).

Text adopted by the Assembly on 26th September 1961 (15th Sitting).

196

RESOLUTION 14 (1967) ASYLUM TO PERSONS IN DANGER OF PERSECUTION

Adopted by the Ministers' Deputies on 29 June 1967

Text: Council of Europe Resolution 14 (1967)

The Committee of Ministers,

Considering Recommendation 293 (1961) of the Assembly on the right of asylum and Recommendation 434 (1965) of the Assembly on the granting of the right of asylum to European refugees;

Aware of the liberal practice based on humanitarian considerations already followed in regard to asylum by the Governments of Member States;

Considering, moreover, that Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that no one shall be subjected to inhuman treatment;

Desirous that member Governments should, in a humanitarian spirit, do all that is possible, individually and collectively, to assure to persons in danger of persecution the security and protection of which they stand in need;

Recognising the need for member Governments to take account both of their obligations under existing international treaties and of the necessity of safeguarding national security and of protecting the community from serious danger,

Recommends that member Governments should be guided by the following principles:

1. They should act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory;
2. They should, in the same spirit, ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;
3. If, in order to safeguard national security or protect the community from serious danger, a member Government contemplates taking measures which might entail such consequences, it should, as far as possible and under such conditions as it may consider appropriate, accord to the individual concerned the opportunity of going to a country other than that where he would be in danger of persecution;
4. Where difficulties arise for a Member State in consequence of its action in accordance with the above recommendations, Governments of other Member States should, in a spirit of European solidarity and of common responsibility in this field, consider individually, or in co-operation, particularly in the framework of the Council of Europe, appropriate measures in order to overcome such difficulties.

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RECOMMENDATION NO. R (84) 1 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PROTECTION OF PERSONS SATISFYING THE CRITERIA IN THE GENEVA CONVENTION WHO ARE NOT FORMALLY RECOGNISED AS REFUGEES

Adopted by the Committee of Ministers on 25 January 1984
at the 366th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (84) 1

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Having regard to the Convention relating to the Status of Refugees of 28 July 1951 amended by the Protocol relating to the Status of Refugees of 31 January 1967, and particularly to Article 33 of the Convention;

Considering that in the Member States of the Council of Europe there are persons who satisfy the criteria given for definition of the term "refugee" within the meaning of Article 1 of the Convention of 28 July 1951 relating to the Status of Refugees amended by the Protocol of 31 January 1967 but who because they have not applied for refugee status or for other reasons are not formally recognised as refugees;

Recalling the liberal and humanitarian attitude of Council of Europe Member States to persons requesting asylum and, in particular, their commitment to the principle of *non-refoulement* as reflected in Resolution (67) 14 on asylum to persons in danger of persecution and the 1977 Declaration on territorial asylum;

Considering that the principle of *non-refoulement* has been recognised as a general principle applicable to all persons;

Bearing in mind the European Convention on Human Rights, and particularly Article 3;

Considering Consultative Assembly Recommendation 773 (1976) on the situation of *de facto* refugees,

Recommends that governments of Member States, without prejudice to the exceptions provided for in Article 33, paragraph 2, of the Geneva Convention, ensure that the principle according to which no person should be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to, or remain in, a territory where he has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, shall be applied regardless of whether this person has been recognised as a refugee under the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967.

198

RECOMMENDATION R (94) 5 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON GUIDELINES TO INSPIRE PRACTICES OF THE MEMBER STATES OF THE COUNCIL OF EUROPE CONCERNING THE ARRIVAL OF ASYLUM-SEEKERS AT EUROPEAN AIRPORTS

Adopted by the Committee of Ministers on 21 June 1994
at the 515th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (94) 5

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling the liberal and humanitarian attitude of Member States of the Council of Europe with regard to asylum-seekers;

Having regard to Recommendation 1163 (1991) of the Parliamentary Assembly on the arrival of asylum-seekers at European airports;

Considering that the Member States of the Council of Europe since the mid-1980s, as a whole, have been unceasingly confronted by a very large number of asylum requests;

Taking into account that the particular position of asylum-seekers at the airports may entail specific difficulties, linked to the reception itself as well as the handling of their requests;

Considering that, without prejudice to other principles applicable in this field, guidelines based on the fundamental principles in the field of human rights should inspire the practices of Member States with regard to the protection of asylum-seekers at airports, and contribute to the development of legislation and the establishment of an administrative infrastructure concerning the reception of asylum-seekers in new host countries,

Recommends that the governments of Member States apply the following guidelines:

I *Fundamental principles*

1. Member states reaffirm their obligations under the Geneva Convention of 28 July 1951 and the New York Protocol of 31 January 1967 relating to the Status of Refugees, and also the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

II *Asylum requests*

2. The examination of all asylum requests presented at the airport shall be assured, in compliance with the rule of law, on the basis of domestic law and the international obligations of each state.
3. Moreover, each state preserves the possibility of sending an asylum-seeker to a third country subject to respect to the provisions of the Geneva Convention Relating to the Status of Refugees, in particular its Article 33, and with respect to the European Convention on Human Rights, in particular its Article 3.
4. States should also further develop their co-operation with regard to the treatment of asylum requests.
5. The request shall be examined with all diligence required in order not to prolong the stay of the applicant at the airport beyond a period strictly necessary for the handling of such a request.
6. The authorities entrusted with the receipt of applications at the border shall receive training adapted to the specific situation of people seeking asylum. Such authorities should, moreover, have precise instructions on the procedures to be followed.
7. The examination of such requests, including the interview with the applicant, shall be reserved to authorities competent in matters of asylum and appointed for that task.
8. The whole procedure shall be under the supervision of the competent authorities with a view to ensuring compliance with the principles mentioned above.

III *Asylum-seekers*

9. When the asylum-seeker has to stay at the border pending a decision, he or she shall be received and accommodated in an appropriate place, whenever possible provided to that effect.

10. The asylum-seeker can be held in such a place only under the conditions and for the maximum duration provided for by law.

11. When the request is received, the asylum-seeker shall be informed about the procedure to be followed, and about his or her rights and obligations. This information shall be provided orally or in the form of a written document and, if necessary, with the assistance of an interpreter.

12. The asylum-seeker has a right to the assistance of a qualified and impartial interpreter during the interview with the competent authority.

13. The competent authority shall draw the attention of the asylum-seeker to the confidential nature of the interview and of the information contained in his or her file.

14. A representative of the United Nations High Commissioner for Refugees shall be allowed to contact the asylum-seeker in the airports, according to the procedures of each Member State.

15. After the first interview with the competent authorities, the asylum-seeker shall be allowed to contact a legal counsellor or a lawyer.

16. The reception of the asylum-seeker at the border shall be under the best possible conditions.

17. The responsible authority shall provide sufficient accommodation and food and, to the extent possible in case of a prolonged stay, recreational facilities.

18. Medical and social assistance shall be provided.

19. According to the procedures fixed by each Member State, the asylum-seeker can ask to meet with, among others, a representative of a religion, a lawyer and a representative of the United Nations High Commissioner for Refugees. To that effect, they shall all be allowed access to the place of accommodation.

20. The persons in charge of the reception of asylum-seekers shall receive appropriate training to fulfil this task.

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RECOMMENDATION NO. R (97) 22 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONTAINING GUIDELINES ON THE APPLICATION OF THE SAFE THIRD COUNTRY CONCEPT

Adopted by the Committee of Ministers on 25 November 1997,
at their 609th meeting of Ministers' Deputies

Text: Council of Europe Recommendation R (97) 22

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to principles relating to asylum as enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration on Human Rights, the United Nations Declaration on Territorial Asylum and the Declaration on Territorial Asylum adopted by the Committee of Ministers of the Council of Europe, and recalling the importance of the full implementation of the 1951 Convention and 1967 Protocol relating to the Status of Refugees;

Recognising the growing complexity of asylum issues in Member States;

Stressing the importance of Member States agreeing common principles relating to certain asylum issues;

Conscious of the need to avoid asylum-seekers being sent successively from one state to another without any of these states considering their asylum claim;

Anxious to provide for appropriate and effective protection for asylum-seekers and refugees who are in need of it, and that asylum-seekers are given an opportunity to have their claims examined by one state;

Noting that in those cases where a Member State considers that asylum-seekers should apply for asylum in the first or subsequent country in which they had an opportunity to do so, and where the asylum-seeker is to be removed to that country or sent to another country, there is a need to establish under which conditions such a country can be considered safe for the asylum-seeker;

Without prejudice to other international instruments applicable between Member States,

Adopts the following guidelines:

I. In order to assess whether a country is a safe third country to which an asylum-seeker can be sent, all the criteria indicated below should be met in each individual case:

   (*a*) Observance by the third country of international human rights standards relevant to asylum as established in universal and regional instruments, including compliance with the prohibition of torture, inhuman or degrading treatment or punishment;

   (*b*) Observance by the third country of international principles relating to the protection of refugees as embodied in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, with special regard to the principle of *non-refoulement*;

   (*c*) The third country will provide effective protection against *refoulement* and the possibility to seek and enjoy asylum;

   (*d*) The asylum-seeker has already been granted effective protection in the third country or has had the opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek protection there before moving on to the Member State where the asylum request is lodged or, that as a result of personal circumstances of the asylum-seeker, including his or her prior relations with the third country, there is clear evidence of the admissibility of the asylum-seeker to the third country.

II. States should adopt modalities to provide for informing the asylum-seeker and, as far as necessary and in accordance with existing data protection legislation – or, in absence of such legislation, with the consent of the asylum-seeker – the authorities of the third country that, when a country is considered safe in the above-stated manner, applications for asylum are generally not examined in substance.

200

RECOMMENDATION NO. R (98) 13 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE RIGHT OF REJECTED ASYLUM SEEKERS TO AN EFFECTIVE REMEDY AGAINST DECISIONS ON EXPULSION IN THE CONTEXT OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Adopted by the Committee of Ministers on 18 September 1998,
at the 641st meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (98) 13

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling, as stipulated by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, "that no one shall be subjected to torture or to inhuman or degrading treatment or punishment";

Affirming that no one, including rejected asylum seekers, shall be expelled to a country where they would be subjected to torture or inhuman or degrading treatment or punishment;

Bearing in mind that Article 13 of the European Convention on Human Rights provides that "everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity";

Having regard to the case law of the European Court of Human Rights in relation to Article 13 in conjunction with Article 3 of the Convention as it concerns rejected asylum seekers who face expulsion;

Without prejudice to the exercise of any right of rejected asylum seekers to appeal against a negative decision on their asylum request, as recommended, among others, in Council of Europe Recommendation No. R (81) 16 of the Committee of Ministers to Member States on the harmonisation of national procedures relating to asylum,

Recommends that governments of Member States, while applying their own procedural rules, ensure that the following guarantees are complied with in their legislation or practice:

1. An effective remedy before a national authority should be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment.

2. In applying paragraph 1 of this recommendation, a remedy before a national authority is considered effective when:

   2.1. That authority is judicial; or, if it is a quasi-judicial or administrative authority, it is clearly identified and composed of members who are impartial and who enjoy safeguards of independence;

   2.2. That authority has competence both to decide on the existence of the conditions provided for by Article 3 of the Convention and to grant appropriate relief;

   2.3. The remedy is accessible for the rejected asylum seeker; and

   2.4. The execution of the expulsion order is suspended until a decision under 2.2 is taken.

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RECOMMENDATION NO. R (98) 15 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE TRAINING OF OFFICIALS WHO FIRST COME INTO CONTACT WITH ASYLUM SEEKERS, IN PARTICULAR AT BORDER POINTS

Adopted by the Committee of Ministers on 15 December 1998,
at the 652nd meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (98) 15

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention and its 1967 Protocol Relating to the Status of Refugees as well as other provisions relevant to refugees and asylum seekers, adopted by the Council of Europe and other competent international fora;

Having regard to Resolution 1309 (1996) of the Parliamentary Assembly on the training of officials receiving asylum seekers at border points;

Bearing in mind that, in order to fulfil their important tasks in an effective manner and to prevent *refoulement* and the turning away of the asylum seeker at the border as well as to ensure unimpeded access to the asylum procedure by those seeking asylum, officials who first come into contact with asylum seekers, in particular those fulfilling their duties at border points, need appropriate and adequate, initial and in-service training on how to recognise requests for protection and handle specific situations in connection with asylum seekers;

Stressing that the responsibility for providing appropriate and adequate training and the selection of training methods for officials who first come into contact with asylum seekers lies primarily with Member States and that international co-operation, both between states and between states and competent international Organizations, is of high importance, with particular relevance to those Member States which consider themselves in need of a special international assistance for such training;

Without prejudice to the guarantees enshrined in international and applicable regional provisions concerning training and instruction for officials who first come into contact with asylum seekers;

Noting that in Member States, different practices and competences exist for the reception and processing of asylum requests;

Considering that in the respective practices of Member States, there are different categories of officials who first come into contact with asylum seekers;

Recognising, therefore, the importance of Member States' agreeing to common principles relating to certain asylum issues which can guide their respective practices,

Recommends to Member States that officials who first come into contact with asylum seekers should receive training on how to recognise requests for protection and handle specific situations in connection with asylum seekers.

1. For those of such officials who are required to refer these asylum seekers to the competent asylum authority, their training should lead to the acquisition of:

   1.1. Basic knowledge of the provisions of national legislation related to the protection of asylum seekers and refugees, including the relevant administrative issues and knowledge of internal instructions, wherever applicable, on how to deal with asylum seekers;

   1.2. Basic knowledge of the provisions of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees and general principles of refugee protection as provided by international law, in particular the prohibition of *refoulement* and the situation of refugees staying unlawfully in the country of refuge;

   1.3. Basic knowledge of the provisions relating to the prohibition of torture and inhuman or degrading treatment or punishment as enshrined in the European Convention on Human Rights;

1.4. Basic knowledge concerning limitations under national and international law to the use of detention;

1.5. Skills to detect and understand asylum requests even in cases where asylum seekers are not in a position clearly to communicate their intention to seek asylum, as well as basic communication skills concerning how to address asylum seekers, including those with special needs;

1.6. The skill to make the correct choice and use of the services of an interpreter when necessary.

2. For those officials whose responsibility is to receive and also to process asylum applications, and also whose responsibility might be to take a decision, bearing in mind that a decision on an asylum request shall be taken only by a central authority**,** their training should lead to the acquisition of:

2.1. Detailed and thorough knowledge of all the provisions and skills listed under 1.1 to 1.6;

2.2. Interviewing techniques, including skills of interpersonal and intercultural communication;

2.3. Knowledge concerning the human rights situation in the countries of origin of asylum seekers and in other relevant third countries;

2.4. Skills in establishing the identity of asylum seekers;

2.5. Knowledge of the application of the "safe third country" concept by some Member States.

3. Training on the issues enumerated under paragraphs 1 and 2 above should be included in initial and in-service training programmes for the officials concerned. Those responsible within the national administration for such training for officials should be familiarised with available materials prepared, and participate in special programmes when they are made available, by competent international governmental or non-governmental agencies and by national agencies in the framework of bilateral or multilateral co-operation.

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RECOMMENDATION NO. R (99) 12
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE RETURN OF REJECTED ASYLUM SEEKERS

Adopted by the Committee of Ministers on 18 May 1999 at the 670th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (99) 12

The Committee of Ministers under the terms of Article 15.b of the Statute of the Council of Europe

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the 1951 Convention and its 1967 Protocol Relating to the Status of Refugees;

Anxious to preserve the institution of asylum and to ensure that persons who are in need of international protection have the possibility to seek and enjoy it;

Stressing that everyone shall be free to leave any country including one's own and that no one shall be deprived of the right to enter the territory of the country of nationality;

Conscious of the need to avoid cases of statelessness;

Bearing in mind that persons who, after due consideration of their asylum claim in a fair and full procedure, are found by the competent authorities not to qualify for refugee status, or not to be in need of other forms of protection, have no right, unless authorised on other grounds, to stay on the territory of the host country and are therefore expected to co-operate with the respective authorities to facilitate return;

Considering that the competent authorities of the host country may take appropriate measures to ensure the return of such persons to their countries of nationality or former habitual residence, as the case may be;

Underlining that such measures shall be implemented under the conditions as prescribed by law and in conformity with applicable international obligations of the state, in particular as provided for by the European Convention on Human Rights;

Being aware of Parliamentary Assembly Recommendation 1237 (1994) on the situation of asylum seekers whose asylum applications have been rejected;

Desiring to ensure that national legislation and practice concerning the return of rejected asylum seekers be in conformity with the principles indicated above and that the states concerned co-operate to that effect,

Recommends that

1. The country hosting the person to be returned ensures that
   - Whereas voluntary return is preferable, when nevertheless the resorting to mandatory return is necessary, it takes place in a humane manner with full respect for fundamental human rights and without the use of excessive force,
   - The principle of family unity be taken into account;
2. The country of origin of the person to be returned (country of which such person is a national or a non-national former habitual resident):
   - Respects its obligation under international law to readmit its own nationals without formalities, delays or obstacles,
   - Refrains from applying sanctions against returnees on account of their having filed asylum applications or sought other forms of protection in another country,
   - Takes into account the principle of family unity, in particular as it concerns the admission of such family members of the persons to be returned who do not possess its nationality,
   - Does not arbitrarily deprive the person concerned of its nationality, in particular, to avoid statelessness,

– Does not permit the renunciation of nationality when it may lead to statelessness as a means to prevent the return of the rejected asylum seeker;

3. Host countries and countries of origin

(*a*) Co-operate in order to facilitate the return of rejected asylum seekers, in particular through conclusion of readmission agreements,

(*b*) Co-operate, through their respective competent authorities, in determining nationality or place of habitual residence, in order to permit the return of rejected asylum seekers;

4. Member States share their experiences concerning their respective national return programmes and their co-operation with countries of origin and competent international agencies in the context of voluntary return.

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RECOMMENDATION NO. R (99) 23 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON FAMILY REUNION FOR REFUGEES AND OTHER PERSONS IN NEED OF INTERNATIONAL PROTECTION

Adopted by the Committee of Ministers on 15 December 1999 at the 692nd meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (99) 23

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol and its Final Act;

Bearing in mind that everyone has the right to respect for family life and that the family is the natural and fundamental unit of society and is entitled to protection by society and the state;

Aware that well-founded fear of persecution and other risks to the lives and safety of persons force them to flee their country of origin and that such flight threatens family unity and often leads to the separation of members of the same family;

Considering that members of separated families can only enjoy their right to respect for family life through the reunion of family members in a country where they can lead a normal family life together;

Conscious of the need to preserve and defend the principle of family unity while fully respecting the fundamental human rights and dignity of refugees and other persons in need of international protection, including the best interests of children;

Recognising that preserving the integrity of refugee families both enhances the protection of their members and facilitates appropriate longer-term solutions for them;

Adopted the following recommendation:

1. Member States hosting refugees and other persons in need of international protection, who have no other country than the country of asylum or protection in order to lead a normal family life together, should promote through appropriate measures family reunion, taking into account the relevant case-law of the European Court of Human Rights.

2. Members of the family of the refugee or other person in need of international protection covered by this recommendation are the spouse, dependent minor children and, according to domestic legislation or practice, other relatives.

3. The rights and entitlements to be granted by Member States to joining family members should in principle be the same as those accorded to their family member who is a refugee or another person in need of international protection, respectively.

4. Member States should deal with applications for family reunion from refugees and other persons in need of international protection in a positive, humane and expeditious manner. In order to verify family links, Member States should primarily rely on available documents provided by the applicant, by competent humanitarian agencies or in any other way. The absence of such documents should not *per se* be considered as an impediment to the application and Member States may request the applicants to provide evidence of existing family links in other ways. Where applications for family reunion by such persons are rejected, independent and impartial review of such decisions should be available.

5. Member States should pay particular attention to applications for family reunion concerning persons who are in a vulnerable position. In particular, with regard to unaccompanied minors, Member States should, with a view to family reunion, co-operate with children or their representatives in order to trace the members of the family of the unaccompanied minor.

6. Member States should facilitate the work of governmental and non-governmental Organizations and other institutions active in the humanitarian field with a view to promoting family reunion of refugees and other persons in need of international protection.

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RECOMMENDATION NO. R (2000) 9 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON TEMPORARY PROTECTION

Adopted by the Committee of Ministers on 3 May 2000 at the 708th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (2000) 9

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and other relevant international instruments;

Bearing in mind the Conclusions adopted by the *Ad hoc* Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) at its 1999 extraordinary meeting on Kosovo and Recommendation No. R (99) 23 of the Committee of Ministers to Member States on family reunion for refugees and other persons in need of international protection, as well as the 1981 Conclusion No. 22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx and the 1998 Conclusion No. 85 (XLIX) on International Protection by the Executive Committee of the Program of the United Nations High Commissioner for Refugees (UNHCR);

Having regard to Recommendation 1348 (1997) of the Parliamentary Assembly on the temporary protection of persons forced to flee their country;

Anxious to preserve the institution of asylum and to ensure that persons who are in need of international protection have the possibility to seek and enjoy such protection with full respect for their fundamental human rights and dignity;

Considering that, in cases of massive and sudden influx of persons in need of international protection, Member States might decide to adopt temporary protection measures;

Underlining that temporary protection is an exceptional, practical measure, limited in time and that it complements the protection regime enshrined in the 1951 Convention and its 1967 Protocol;

Noting that among beneficiaries of temporary protection there may be refugees within the meaning of the 1951 Convention and the 1967 Protocol and that the granting of temporary protection must not prejudice recognition of refugee status under those instruments;

Stressing that international solidarity is a key to coping with situations of massive and sudden influx and that the obligation of states to offer protection based on the principle of *non-refoulement* is not dependent on burden-sharing arrangements between states;

Emphasising that return under safe and dignified conditions to the country of origin is to be facilitated, and that voluntary return is preferable;

Desiring to establish certain minimum guarantees for the persons concerned in relation to those Member States which apply or wish to apply temporary protection measures,

Adopts the following recommendations:

1. Persons in need of international protection should, for their safety, be admitted to the country where they first seek protection with only minimal formalities. The granting of such protection by one state should not prejudice the possibility of subsequent admission to a third state. These persons should be treated with full respect for their fundamental human rights and liberties. In taking decisions to initiate temporary protection measures, competent national authorities should consult with the United Nations High Commissioner for Refugees (UNHCR).

2. Persons benefiting from temporary protection should be swiftly registered and allowed to remain in the territory of the host country for the duration of applicable temporary protection measures. The freedom of movement of such persons within the territory of the host country should not be unnecessarily restricted.

3. Persons benefiting from temporary protection should have access, at least, to:

   – Adequate means of subsistence, including accommodation,

- Appropriate health care,
- Education for their children,
- The labour market in conformity with national legislation.

4. With regard to family reunion for persons benefiting from temporary protection who are not able to lead a normal family life together elsewhere, Recommendation No. (99) 23 of the Committee of Ministers, where appropriate, should apply.
5. The needs of vulnerable persons for special protection and assistance should be met, to the extent possible.
6. In the spirit of international solidarity and in an effort to alleviate the burden that falls upon the host countries, Member States should take appropriate steps to co-operate with each other. Such co-operation should take place, on the one hand, between different host countries for the purpose of temporary protection and, on the other hand, between host countries and countries of origin for the safe and dignified return of those involved to, and re-integration into their country of origin.
7. Co-operation by states to prepare for emergencies would facilitate the exercise of international solidarity in situations of unexpected, massive and sudden influx. Member States affected by such situations may decide to turn to the Committee of Ministers for rapid consultation.
8. Individual applications for refugee status, where national law allows the suspension of examination of such applications, should be examined according to modalities provided for by internal legislation, at the latest, when temporary protection measures cease to apply. However, such suspension of examination should not last longer than can reasonably be justified by the exceptional circumstances.
9. Temporary protection measures cease to apply by decision of the competent authorities of the host country when the circumstances in the country of origin which had given rise to the massive and sudden flight have changed in a manner which enable the return in safety and dignity of the persons benefiting from these measures.
10. After a prolonged period of time without change in the relevant circumstances in the country of origin, temporary protection measures also cease to apply by decision of the competent authorities of the host country to offer long-term solutions with an adequate level of entitlements to the persons concerned.
11. In phasing out temporary protection measures, competent national authorities should consult with the UNHCR.
12. Member states should facilitate, through all available means, the voluntary return of persons whose temporary protection comes to an end. The decision by such persons to return must be well-informed. Where appropriate, the possibility of visiting the country of origin should be envisaged.
13. The right to return to one's own country should be respected by all states. Countries of origin should treat returning persons in a dignified manner and with full respect for their human rights.
14. When deciding about the return of the persons concerned, Member States should take into consideration compelling humanitarian reasons, which would make return in such individual cases impossible or unreasonable.

RECOMMENDATION REC(2001)18 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON SUBSIDIARY PROTECTION

Adopted by the Committee of Ministers on 27 November 2001 at the 774th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation Rec(2001)18

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and other relevant international instruments, namely the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child, the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights;

Affirming that persons in need of international protection must be able to seek and enjoy such protection with full respect to their fundamental human rights and dignity;

Considering that not all persons with international protection needs are covered by a full application of the 1951 Convention and its 1967 Protocol and that such persons should be given adequate treatment;

Stressing that protection measures, subsidiary to those enshrined in the 1951 Convention and its 1967 Protocol, should be implemented in such a manner that these measures do not undermine but complement the existing refugee protection regime;

Underlining that the availability of subsidiary protection must not prejudice the right of persons to apply for refugee status and that nothing in this recommendation shall be interpreted as restricting or adversely affecting the rights of persons as recognised by international law, in particular by the 1951 Convention, its 1967 Protocol and by national legislation and practice;

Bearing in mind the functions of the Office of the United Nations High Commissioner for Refugees (UNHCR) under Article 35 of the 1951 Convention Relating to the Status of Refugees and its extended mandate stipulated by various resolutions of the United Nations General Assembly;

Considering that subsidiary protection is a category of individual protection as opposed to the concept of temporary protection which, as defined by Recommendation No. R (2000) 9 of the Committee of Ministers, is an exceptional practical measure, limited in time, applicable as such in situations of massive and sudden influx;

Calling on Member States, in which legislative and administrative mechanisms do not exist for granting subsidiary protection to persons in need of international protection but who are not covered by the 1951 Convention and its 1967 Protocol, to introduce such mechanisms, either by legislation or practice,

Adopts the following recommendations:

1. Subsidiary protection should be granted by Member States to a person who, on the basis of a decision taken individually by the competent authorities, does not fulfil the criteria for refugee status under the 1951 Convention and its 1967 Protocol but is found to be in need of international protection:
   - Because that person faces a risk of torture or inhuman or degrading treatment or punishment in his/her country of origin or
   - Because that person has been forced to flee or remain outside his/her country of origin as a result of a threat to his/her life, security or liberty, for reasons of indiscriminate violence, arising from situations such as armed conflict or
   - For other reasons recognised by the legislation or practice of the Member State and therefore cannot be returned to the country of origin.

Procedures

2. All possible protection grounds should preferably be considered in a single procedure. If there is an application for refugee status, that should be examined first.

3. When considering the cessation of, and exclusion from subsidiary protection, Member States should be fully aware of the absolute character of Article 3 of the European Convention on Human Rights and other relevant human rights instruments. Such cases should be decided individually in an objective and non-arbitrary manner.

4. Provisions incorporated in Recommendation No. R (81) 16 of the Committee of Ministers of the Council of Europe on the harmonisation of national procedures relating to asylum and in Conclusion 8 (XXVIII) of the Executive Committee of the UNHCR (EXCOM) on the determination of refugee status, should, in so far as possible, be applied by Member States when deciding on the granting of subsidiary protection.

Minimum standards of treatment

5. Host Member States should ensure that beneficiaries of subsidiary protection enjoy a legal status and therefore, in particular, they:

   – Are issued with documents certifying their legal status;

   – Are issued, in conformity with national law, with a travel document if the beneficiary has no access to such a document issued by the authorities of the country of origin;

   – Enjoy freedom of movement within the territory of the host state, restricted only by interests of national security or public order;

   – Have access to courts and administrative authorities;

   – Enjoy basic social and economic rights, in particular, access to housing, legal means of subsistence (access to social benefits or to the labour market), basic healthcare and, as appropriate, education or training.

6. For family reunion of beneficiaries of subsidiary protection, the provisions of Recommendation No. R (99) 23 of the Committee of Ministers on family reunion for refugees and other persons in need of international protection apply.

7. If the stay of beneficiaries of subsidiary protection in the host country is prolonged due to the continuation of conditions on which subsidiary protection is based under paragraph 1, Member States should consider the granting of a long-term residence permit to such beneficiaries, in particular when their stay exceeds five years.

RECOMMENDATION REC(2003)5 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON MEASURES OF DETENTION OF ASYLUM SEEKERS[1]

Adopted by the Committee of Ministers on 16 April 2003 at the 837th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation Rec(2003)5

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 European Convention on Human Rights and its relevant protocols, the relevant case-law of the European Court of Human Rights, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child;

Taking into account Conclusion No. 44 (XXXVII) of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR) on the detention of refugees and asylum seekers;

Anxious to ensure that persons who are in need of international protection are able to seek and enjoy it;

Reiterating that no one shall be deprived of his liberty save in exceptional cases and in accordance with a procedure prescribed by law, as stipulated by Article 5.1.b. and f of the European Convention on Human Rights and that all guarantees enumerated in Article 5, as appropriate, apply to those asylum seekers falling within the scope of this recommendation;

Emphasising that penalties shall not be imposed on persons seeking international protection coming directly from a country of persecution on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence;

Underlining that the present recommendation does not affect Recommendation No. R (94) 5 on guidelines to inspire practices of the Member States of the Council of Europe concerning the arrival of asylum seekers at European airports, and Recommendation No. R (99) 12 on the return of rejected asylum seekers;

Considering that a number of asylum seekers are subject to detention by reason of their illegal entry or presence in search of asylum or for other relevant reasons linked to their asylum request and that, in such situations, certain guarantees of treatment should be provided for these asylum seekers,

Recommends to the governments of the Member States to apply the following principles in their legislation and administrative practice:

Definition and scope of application

1. In the context of this recommendation, "measures of detention of asylum seekers" means any confinement of asylum seekers within a narrowly bounded or restricted location, where they are deprived of liberty. Persons who are subject to restrictions on domicile or residence are not generally considered to be subject to detention measures.

2. This recommendation does not concern measures of detention of asylum seekers on criminal charges or rejected asylum seekers detained pending their removal from the host country.

General provisions

3. The aim of detention is not to penalise asylum seekers. Measures of detention of asylum seekers may be resorted to only in the following situations:

[1] In conformity with Article 10.2c of the Rules of Procedure of the Ministers' Deputies, Ireland made the following statement: "With regard to paragraph 10 of the recommendation, Ireland wishes to point out that in exceptional circumstances it may not be possible for Ireland to keep asylum seekers separate from convicted criminals and prisoners on remand at all times."

(*a*) When their identity, including nationality, has in case of doubt to be verified, in particular when asylum seekers have destroyed their travel or identity documents or used fraudulent documents in order to mislead the authorities of the host state;

(*b*) When elements on which the asylum claim is based have to be determined which, in the absence of detention, could not be obtained;

(*c*) When a decision needs to be taken on their right to enter the territory of the state concerned, or

(*d*) When protection of national security and public order so requires.

4. Measures of detention of asylum seekers should be applied only after a careful examination of their necessity in each individual case. These measures should be specific, temporary and non-arbitrary and should be applied for the shortest possible time. Such measures are to be implemented as prescribed by law and in conformity with standards established by the relevant international instruments and by the case-law of the European Court of Human Rights.

5. Measures of detention of asylum seekers, reviewed regularly by a court in accordance with Article 5, paragraph 4, of the European Convention on Human Rights, should be applied only under the conditions and maximum duration provided for by law. If a maximum duration has not been provided for by law, the duration of the detention should form part of the review by the above-mentioned court.

6. Alternative and non-custodial measures, feasible in the individual case, should be considered before resorting to measures of detention.

7. Measures of detention should not constitute an obstacle to asylum seekers being able to submit and pursue their application for asylum.

8. Asylum applications from persons in detention should be prioritized for the purposes of processing. This is especially the case where a person is held in detention because of reasons resulting from the law pertaining to foreigners.

9. Measures of detention should be implemented in a humane manner, respecting the inherent dignity of the person and in accordance with applicable norms of international law and international standards.

10. The place of detention should be appropriate and, wherever possible, be provided for the specific purpose of detaining asylum seekers. In principle, asylum seekers should not be detained in prison. If special detention facilities are not available, asylum seekers should at least be separated from convicted criminals and prisoners on remand.

11. The basic needs and requirements of detained asylum seekers to ensure a standard of living adequate for their health and well-being should be met.

12. Asylum seekers should be screened at the outset of their detention to identify torture victims and traumatised persons among them so that appropriate treatment and conditions can be provided for them.

13. Appropriate medical treatment and, where necessary, psychological counselling should be provided. This is particularly relevant for persons with special needs: minors, pregnant women, elderly people, persons with physical or mental disabilities and people who have been seriously traumatised, including torture victims.

14. Separate accommodation within the detention facilities between men and women, as well as between children and adults should, as a rule, be ensured, except when the persons concerned are part of a family unit, in which case they should be accommodated together. The right to a private and family life should be ensured.

15. Detained asylum seekers should be allowed to practice their religion and to observe any special diet in accordance with their religion.

16. Detained asylum seekers should have the right to contact a UNHCR office and the UNHCR should have unhindered access to asylum seekers in detention.

17. Detained asylum seekers should also have the right to contact a legal counsellor or a lawyer and to benefit from their assistance.

18. Asylum seekers should be allowed to contact and, wherever possible, receive visits from relatives, friends, social and religious counsellors, non-governmental Organizations active in the field of human rights or in the protection of refugees or asylum seekers, and to establish communication with the outside world.

19. Asylum seekers should be guaranteed access to a complaints mechanism concerning the conditions of detention.

Additional provisions for minors

20. As a rule, minors should not be detained unless as a measure of last resort and for the shortest possible time.

21. Minors should not be separated from their parents against their will, nor from other adults responsible for them whether by law or custom.

22. If minors are detained, they must not be held under prison-like conditions. Every effort must be made to release them from detention as quickly as possible and place them in other accommodation. If this proves impossible, special arrangements must be made which are suitable for children and their families.

23. For unaccompanied minor asylum seekers, alternative and non-custodial care arrangements, such as residential homes or foster placements, should be arranged and, where provided for by national legislation, legal guardians should be appointed, within the shortest possible time.

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RECOMMENDATION REC(2004)9 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE CONCEPT OF "MEMBERSHIP OF A PARTICULAR SOCIAL GROUP" (MPSG) IN THE CONTEXT OF THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES

Adopted by the Committee of Ministers on 30 June 2004, at the 890th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation Rec(2004)9

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that, according to Article 1.a, paragraph 2, of the 1951 Convention relating to the Status of Refugees, the term "refugee" shall apply to any person who has a "well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion";

Taking into account the increasing number of cases where fear of being persecuted because of "membership of a particular social group" (MPSG) is claimed as grounds for refugee status and considering also the growing variety of reasons invoked to that effect;

Anxious to provide guidance to Member States in applying this particular motif, as described in the Convention, which requires clarification, and to ensure a uniform application of the 1951 Convention in the Member States of the Council of Europe;

Reiterating the liberal and humanitarian attitude of Member States of the Council of Europe with regard to asylum;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and to other relevant universal and regional human rights instruments;

Bearing in mind Recommendation No. R (81) 16 on the harmonisation of national procedures relating to asylum; Recommendation No. R (94) 5 on guidelines to inspire practices of the Member States of the Council of Europe concerning the arrival of asylum seekers at European airports; Recommendation No. R (98) 15 on the training of officials who first come into contact with asylum seekers, in particular at border points; Recommendation Rec(2001)18 on subsidiary protection;

Aware of Parliamentary Assembly Recommendation 1374 (1998) on the situation of refugee women in Europe and of Parliamentary Assembly Recommendation 1470 (2000) on the situation of gays and lesbians and their partners in respect of asylum and immigration in the Member States of the Council of Europe,

Considers that a "particular social group" is a group of persons who have, or are attributed with, a common characteristic other than the risk of being persecuted and who are perceived as a group by society or identified as such by the state or the persecutors. Persecutory action towards a group may however be a relevant factor in determining the visibility of a group in a particular society.

The concept would in particular include:

(*a*) Groups which may be defined by innate or immutable characteristics;

(*b*) Groups comprised of persons who share a common or historical background or characteristic that either is unchangeable or so fundamental to their identity, conscience or human dignity that those persons should not be forced to renounce it;

Recommends that Member States take into account the following principles when determining, in the context of Article 1. A, paragraph 2, of the 1951 Convention, whether a person is persecuted because of membership of a particular social group:

1. There is no hierarchy amongst the five grounds of the 1951 Convention, that is, race, religion, nationality, MPSG and political opinion. All are applicable on an equal basis. Depending on the circumstances of an individual case, grounds may overlap and an asylum seeker may be eligible for refugee status on more than one of the grounds;

2. The concept of MPSG should be interpreted in a broad and inclusive manner in the light of the object and purpose of the 1951 Convention. However, interpretation of the concept of MPSG should not extend the scope of the Convention to impose upon states obligations to which they have not consented;
3. There is no requirement that a group be cohesive in order to be recognised as a "particular social group"; it is not necessary for members of the group to know one another or to associate. Nor is it necessary that all members of the group are at risk of being persecuted;
4. The size of the group is irrelevant in determining whether the concept of MPSG applies;
5. Mere membership of a particular social group, as described above, will not normally be enough to substantiate a claim for refugee status. Each asylum claim must be considered individually with regard to the nexus between the MPSG and the existing risk of persecution. Furthermore, the factual circumstances in the country of origin need to be taken into account. There may, however, be special circumstances in individual cases where mere membership can be a sufficient ground for fearing persecution;
6. When considering asylum requests based on MPSG, the competent authorities should, in addition to general standards prescribed in relevant international instruments, pay particular attention to standards with regard to gender- and age-related issues, confidentiality of the request and information about the country of origin;

   Invites Member States to inform the *Ad Hoc* Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) about the implementation of the principles stated above.

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RECOMMENDATION REC(2005)6 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON EXCLUSION FROM REFUGEE STATUS IN THE CONTEXT OF ARTICLE 1 F OF THE CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951

Adopted by the Committee of Ministers on 23 March 2005
at the 920th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation Rec(2005)6

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Stressing the need for humane treatment of asylum-seekers by member states of the Council of Europe, in conformity with relevant international instruments dealing with human rights;

Recalling the liberal and humanitarian attitude of the member states of the Council of Europe with regard to asylum-seekers, and bearing in mind the importance of preserving the integrity of the asylum system established by the Geneva Convention of 28 July 1951 and its 1967 Protocol relating to the Status of Refugees (hereinafter "the 1951 Convention");

Anxious to provide refugees with adequate international protection and to exclude from such protection those persons who have perpetrated acts of such gravity that they do not deserve this protection;

Believing that a scrupulous and appropriate application of the exclusion clauses contained in Article 1.F of the 1951 Convention would lead to such a result;

Recalling the absolute nature of the rights protected under Article 3 of the European Convention on Human Rights;

Having in mind that exclusion from refugee status is a different issue than removal of foreigners, in the sense that exclusion does not automatically lead to the removal of a foreigner from the asylum country;

Considering that Article 1.F of the 1951 Convention provides that:

"The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(*a*) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(*b*) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(*c*) he has been guilty of acts contrary to the purposes and principles of the United Nations";

Recommends that member states take into account the following principles while applying Article 1.F of the 1951 Convention:

1. With regard to the interpretation of Article 1.F:

(*a*) as an exception to the refugee protection regime provided by the 1951 Convention, whose application can have very serious consequences for a person in fear of persecution, the exclusion clauses contained in Article 1.F should be interpreted restrictively;

(*b*) the words "serious reasons for considering" in the heading of Article 1.F refer to the standard of proof required. Exclusion does not require a determination of guilt in the criminal sense. However, clear and credible information is required to satisfy the "serious reasons" standard;

(*c*) in interpreting "crimes against peace, war crimes and crimes against humanity" in Article 1.F.a, due consideration should be given to the developments in international law that have taken place since the drafting of the 1951 Convention;

(*d*) with respect to Article 1.F.b, a crime should be considered "non-political" if it was committed for personal reasons or gain rather than for political reasons, if there is no clear link between the crime and the political goal pursued or if the act was disproportionate to the political objective. Egregious acts of violence, including for example acts that involve random killing and other physical assaults carried out indiscriminately on the population, should also be considered to be non-political. For a crime to be regarded as political in nature, the political objectives should be consistent with human rights principles. International anti-terrorism instruments adopted within the framework of the United Nations and the Council of Europe which specify certain crimes as non-political should provide guidance for determining the political element of a crime;

(*e*) while examining the "seriousness" of a non-political crime in the context of Article 1.F.b the nature of the crime and the harm inflicted are relevant factors. Other relevant factors could be whether most jurisdictions of the member states of the Council of Europe would consider the act in question as a serious crime, the form of procedure used to prosecute the crime, and the severity of punishment in case of a conviction;

(*f*) Article 1.F.c relates to the purposes and principles of the United Nations as contained in Articles 1 and 2 of the United Nations Charter. It is primarily aimed at persons who have been in a position of power;

(*g*) exclusion from refugee status can only be decided on the basis of individual responsibility. The degree of involvement of a person who is linked by virtue of his or her position, action or inaction, to particular parties and entities who commit crimes or advocate violence must be subject to careful analysis. Consideration must be given to grounds for the exemption from individual responsability, such as psychological or factual circumstances under which the acts were committed;

2. With regard to procedural aspects in relation with Article 1.F:

(*a*) traditional procedural safeguards especially those concerning asylum procedures apply for the application of exclusion clauses;

(*b*) the applicability of the exclusion clauses should be dealt with individually within the regular refugee status determination procedure;

3. With regard to particular issues in connection with the exclusion clauses:

(*a*) where a family member is excluded from refugee status, dependants' and other family members' possible qualification for refugee status would need to be considered on an individual basis. Where family members have been granted refugee status, the excluded applicant cannot be recognised as a refugee by application of the principle of family unity;

(*b*) in cases involving the possible exclusion of minors from refugee status, primary consideration needs to be given to the best interests of the child. Exclusion clauses should normally only apply to minors who, at the time of committing a crime, have reached the age of criminal responsibility within the country of asylum and who possess the mental capacity and maturity to be held responsible for the act committed. Other possible extenuating circumstances need to be carefully assessed.

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EUROPEAN CONVENTION ON NATIONALITY

Adopted in Strasbourg on 6 November 1997

Entry into force: 1 March 2000, in accordance with Article 27
Text: *European Treaty Series*, No. 166

PREAMBLE

The Member States of the Council of Europe and the other States signatory to this Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Bearing in mind the numerous international instruments relating to nationality, multiple nationality and statelessness;

Recognising that, in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals;

Desiring to promote the progressive development of legal principles concerning nationality, as well as their adoption in internal law and desiring to avoid, as far as possible, cases of statelessness;

Desiring to avoid discrimination in matters relating to nationality;

Aware of the right to respect for family life as contained in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Noting the varied approach of States to the question of multiple nationality and recognising that each State is free to decide which consequences it attaches in its internal law to the fact that a national acquires or possesses another nationality;

Agreeing on the desirability of finding appropriate solutions to consequences of multiple nationality and in particular as regards the rights and duties of multiple nationals;

Considering it desirable that persons possessing the nationality of two or more States Parties should be required to fulfil their military obligations in relation to only one of those Parties;

Considering the need to promote international co-operation between the national authorities responsible for nationality matters,

Have agreed as follows:

CHAPTER I

GENERAL MATTERS

Article 1

Object of the Convention

This Convention establishes principles and rules relating to the nationality of natural persons and rules regulating military obligations in cases of multiple nationality, to which the internal law of States Parties shall conform.

Article 2

Definitions

For the purpose of this Convention:

(*a*) "Nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin;

(*b*) "Multiple nationality" means the simultaneous possession of two or more nationalities by the same person;

(*c*) "Child" means every person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier;

(*d*) "Internal law" means all types of provisions of the national legal system, including the constitution, legislation, regulations, decrees, case-law, customary rules and practice as well as rules deriving from binding international instruments.

CHAPTER II

GENERAL PRINCIPLES RELATING TO NATIONALITY

Article 3

Competence of the State

1. Each State shall determine under its own law who are its nationals.
2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality.

Article 4

Principles

The rules on nationality of each State Party shall be based on the following principles:

(*a*) Everyone has the right to a nationality;

(*b*) Statelessness shall be avoided;

(*c*) No one shall be arbitrarily deprived of his or her nationality;

(*d*) Neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.

Article 5

Non-discrimination

1. The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.
2. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

CHAPTER III

RULES RELATING TO NATIONALITY

Article 6

Acquisition of nationality

1. Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons:

(*a*) Children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court

order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law;

(*b*) Foundlings found in its territory who would otherwise be stateless.

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:

(*a*) At birth *ex lege*; or

(*b*) Subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

3. Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application.

4. Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons:

(*a*) Spouses of its nationals;

(*b*) Children of one of its nationals, falling under the exception of Article 6, paragraph 1, sub-paragraph a;

(*c*) Children one of whose parents acquires or has acquired its nationality;

(*d*) Children adopted by one of its nationals;

(*e*) Persons who were born on its territory and reside there lawfully and habitually;

(*f*) Persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned;

(*g*) Stateless persons and recognised refugees lawfully and habitually resident on its territory.

Article 7

Loss of nationality *ex lege* or at the initiative of a State Party

1. A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:

(*a*) Voluntary acquisition of another nationality;

(*b*) Acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;

(*c*) Voluntary service in a foreign military force;

(*d*) Conduct seriously prejudicial to the vital interests of the State Party;

(*e*) Lack of a genuine link between the State Party and a national habitually residing abroad;

(*f*) Where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;

(*g*) Adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

2. A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

Article 8

Loss of nationality at the initiative of the individual

1. Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless.
2. However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad.

Article 9

Recovery of nationality

Each State Party shall facilitate, in the cases and under the conditions provided for by its internal law, the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory.

CHAPTER IV

PROCEDURES RELATING TO NATIONALITY

Article 10

Processing of applications

Each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time.

Article 11

Decisions

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing.

Article 12

Right to a review

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law.

Article 13

Fees

1. Each State Party shall ensure that the fees for the acquisition, retention, loss, recovery or certification of its nationality be reasonable.
2. Each State Party shall ensure that the fees for an administrative or judicial review be not an obstacle for applicants.

CHAPTER V

MULTIPLE NATIONALITY

Article 14

Cases of multiple nationality *ex lege*

1. A State Party shall allow:

(*a*) Children having different nationalities acquired automatically at birth to retain these nationalities;

(*b*) Its nationals to possess another nationality where this other nationality is automatically acquired by marriage.

2. The retention of the nationalities mentioned in paragraph 1 is subject to the relevant provisions of Article 7 of this Convention.

Article 15

Other possible cases of multiple nationality

The provisions of this Convention shall not limit the right of a State Party to determine in its internal law whether:

(*a*) Its nationals who acquire or possess the nationality of another State retain its nationality or lose it;

(*b*) The acquisition or retention of its nationality is subject to the renunciation or loss of another nationality.

Article 16

Conservation of previous nationality

A State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required.

Article 17

Rights and duties related to multiple nationality

1. Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party.

2. The provisions of this chapter do not affect:

(*a*) The rules of international law concerning diplomatic or consular protection by a State Party in favour of one of its nationals who simultaneously possesses another nationality;

(*b*) The application of the rules of private international law of each State Party in cases of multiple nationality.

Chapter VI

STATE SUCCESSION AND NATIONALITY

Article 18

Principles

1. In matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights and the principles contained in Articles 4 and 5 of this Convention and in paragraph 2 of this article, in particular in order to avoid statelessness.

2. In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of:

(*a*) The genuine and effective link of the person concerned with the State;

(*b*) The habitual residence of the person concerned at the time of State succession;

(*c*) The will of the person concerned;

(*d*) The territorial origin of the person concerned.

3. Where the acquisition of nationality is subject to the loss of a foreign nationality, the provisions of Article 16 of this Convention shall apply.

Article 19

Settlement by international agreement

In cases of State succession, States Parties concerned shall endeavour to regulate matters relating to nationality by agreement amongst themselves and, where applicable, in their relationship with other States concerned. Such agreements shall respect the principles and rules contained or referred to in this chapter.

Article 20

Principles concerning non-nationals

1. Each State Party shall respect the following principles:

   (*a*) Nationals of a predecessor State habitually resident in the territory over which sovereignty is transferred to a successor State and who have not acquired its nationality shall have the right to remain in that State;

   (*b*) Persons referred to in sub-paragraph a shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights.

2. Each State Party may exclude persons considered under paragraph 1 from employment in the public service involving the exercise of sovereign powers.

CHAPTER VII

MILITARY OBLIGATIONS IN CASES OF MULTIPLE NATIONALITY

Article 21

Fulfilment of military obligations

1. Persons possessing the nationality of two or more States Parties shall be required to fulfil their military obligations in relation to one of those States Parties only.

2. The modes of application of paragraph 1 may be determined by special agreements between any of the States Parties.

3. Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are applicable to persons possessing the nationality of two or more States Parties:

   (*a*) Any such person shall be subject to military obligations in relation to the State Party in whose territory they are habitually resident. Nevertheless, they shall be free to choose, up to the age of 19 years, to submit themselves to military obligations as volunteers in relation to any other State Party of which they are also nationals for a total and effective period at least equal to that of the active military service required by the former State Party;

   (*b*) Persons who are habitually resident in the territory of a State Party of which they are not nationals or in that of a State which is not a State Party may choose to perform their military service in the territory of any State Party of which they are nationals;

   (*c*) Persons who, in accordance with the rules laid down in paragraphs a and b, shall fulfil their military obligations in relation to one State Party, as prescribed by the law of that State Party, shall be deemed to have fulfilled their military obligations in relation to any other State Party or States Parties of which they are also nationals;

   (*d*) Persons who, before the entry into force of this Convention between the States Parties of which they are nationals, have, in relation to one of those States Parties, fulfilled their military obligations in accordance with the law of that State Party, shall be deemed to have fulfilled the same obligations in relation to any other State Party or States Parties of which they are also nationals;

   (*e*) Persons who, in conformity with paragraph a, have performed their active military service in relation to one of the States Parties of which they are nationals, and subsequently transfer their habitual

residence to the territory of the other State Party of which they are nationals, shall be liable to military service in the reserve only in relation to the latter State Party;

(*f*) The application of this article shall not prejudice, in any respect, the nationality of the persons concerned;

(*g*) In the event of mobilisation by any State Party, the obligations arising under this article shall not be binding upon that State Party.

Article 22

Exemption from military obligations or alternative civil service

Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are also applicable to persons possessing the nationality of two or more States Parties:

(*a*) Article 21, paragraph 3, sub-paragraph c, of this Convention shall apply to persons who have been exempted from their military obligations or have fulfilled civil service as an alternative;

(*b*) Persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have their habitual residence in the territory of that State Party. Nevertheless, they should be deemed not to have satisfied their military obligations in relation to a State Party or States Parties of which they are equally nationals and where military service is required unless the said habitual residence has been maintained up to a certain age, which each State Party concerned shall notify at the time of signature or when depositing its instruments of ratification, acceptance or accession;

(*c*) Also persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have enlisted voluntarily in the military forces of that Party for a total and effective period which is at least equal to that of the active military service of the State Party or States Parties of which they are also nationals without regard to where they have their habitual residence.

Chapter VIII

CO-OPERATION BETWEEN THE STATES PARTIES

Article 23

Co-operation between the States Parties

1. With a view to facilitating co-operation between the States Parties, their competent authorities shall:

   (*a*) Provide the Secretary General of the Council of Europe with information about their internal law relating to nationality, including instances of statelessness and multiple nationality, and about developments concerning the application of the Convention;

   (*b*) Provide each other upon request with information about their internal law relating to nationality and about developments concerning the application of the Convention.

2. States Parties shall co-operate amongst themselves and with other Member States of the Council of Europe within the framework of the appropriate intergovernmental body of the Council of Europe in order to deal with all relevant problems and to promote the progressive development of legal principles and practice concerning nationality and related matters.

Article 24

Exchange of information

Each State Party may at any time declare that it shall inform any other State Party, having made the same declaration, of the voluntary acquisition of its nationality by nationals of the other State Party, subject to applicable laws concerning data protection. Such a declaration may indicate the conditions under which the State Party will give such information. The declaration may be withdrawn at any time.

CHAPTER IX

APPLICATION OF THE CONVENTION

Article 25

Declarations concerning the application of the Convention

1. Each State may declare, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, that it will exclude Chapter VII from the application of the Convention.
2. The provisions of Chapter VII shall be applicable only in the relations between States Parties for which it is in force.
3. Each State Party may, at any subsequent time, notify the Secretary General of the Council of Europe that it will apply the provisions of Chapter VII excluded at the time of signature or in its instrument of ratification, acceptance, approval or accession. This notification shall become effective as from the date of its receipt.

Article 26

Effects of this Convention

1. The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals in the field of nationality.
2. This Convention does not prejudice the application of:
   (*a*) The 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality and its Protocols;
   (*b*) Other binding international instruments in so far as such instruments are compatible with this Convention, in the relationship between the States Parties bound by these instruments.

CHAPTER X

FINAL CLAUSES

Article 27

Signature and entry into force

1. This Convention shall be open for signature by the Member States of the Council of Europe and the non-Member States which have participated in its elaboration. Such States may express their consent to be bound by:
   (*a*) Signature without reservation as to ratification, acceptance or approval; or
   (*b*) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

   Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force, for all States having expressed their consent to be bound by the Convention, on the first day of the month following the expiration of a period of three months after the date on which three Member States of the Council of Europe have expressed their consent to be bound by this Convention in accordance with the provisions of the preceding paragraph.
3. In respect of any State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of its instrument of ratification, acceptance or approval.

Article 28

Accession

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe which has not participated in its elaboration to accede to this Convention.
2. In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 29

Reservations

1. No reservations may be made to any of the provisions contained in Chapters I, II and VI of this Convention. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to other provisions of the Convention so long as they are compatible with the object and purpose of this Convention.
2. Any State which makes one or more reservations shall notify the Secretary General of the Council of Europe of the relevant contents of its internal law or of any other relevant information.
3. A State which has made one or more reservations in accordance with paragraph 1 shall consider withdrawing them in whole or in part as soon as circumstances permit. Such withdrawal shall be made by means of a notification addressed to the Secretary General of the Council of Europe and shall become effective as from the date of its receipt.
4. Any State which extends the application of this Convention to a territory mentioned in the declaration referred to in Article 30, paragraph 2, may, in respect of the territory concerned, make one or more reservations in accordance with the provisions of the preceding paragraphs.
5. A State Party which has made reservations in respect of any of the provisions in Chapter VII of the Convention may not claim application of the said provisions by another State Party save in so far as it has itself accepted these provisions.

Article 30

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

Denunciation

1. Any State Party may at any time denounce the Convention as a whole or Chapter VII only by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article 32

Notifications by the Secretary General

The Secretary General of the Council of Europe shall notify the Member States of the Council of Europe, any Signatory, any Party and any other State which has acceded to this Convention of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance, approval or accession;

(*c*) Any date of entry into force of this Convention in accordance with Articles 27 or 28 of this Convention;

(*d*) Any reservation and withdrawal of reservations made in pursuance of the provisions of Article 29 of this Convention;

(*e*) Any notification or declaration made under the provisions of Articles 23, 24, 25, 27, 28, 29, 30 and 31 of this Convention;

(*f*) Any other act, notification or communication relating to this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, this sixth day of November 1997, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention and to any State invited to accede to this Convention.

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COUNCIL OF EUROPE CONVENTION ON THE AVOIDANCE OF STATELESSNESS IN RELATION TO STATE SUCCESSION

Adopted in Strasbourg on 19 May 2006

Entry into force: In accordance with Article 18
Text: *Council of Europe Treaty Series*, No. 200

Preamble

The member states of the Council of Europe and the other states signatory to this Convention;

Considering that the avoidance of statelessness is one of the main concerns of the international community in the field of nationality;

Noting that state succession remains a major source of cases of statelessness;

Recognising that the European Convention on Nationality (ETS No. 166), opened for signature in Strasbourg on 6 November 1997, contains only general principles and not specific rules on nationality in case of state succession;

Bearing in mind that, with regard to statelessness in relation to state succession, other international instruments either do not have a binding character or do not address some important issues;

Convinced that for the reasons above there is a need for a comprehensive international instrument on state succession and the avoidance of statelessness which should be interpreted and applied, bearing in mind the principles of the European Convention on Nationality;

Taking into account Recommendation No. R (99) 18 of the Committee of Ministers on the Avoidance and Reduction of Statelessness, as well as the practical experience gained in recent years with regard to state succession and statelessness;

Having regard to other binding international instruments, namely the United Nations Conventions relating to the Status of Stateless Persons and on the Reduction of Statelessness, and the Vienna Conventions on Succession of States in respect of Treaties and on Succession of States in respect of State Property, Archives and Debts;

Having also regard to the draft articles on nationality of natural persons in relation to the succession of states, prepared by the United Nations International Law Commission, contained in the Appendix to the United Nations General Assembly Resolution 55/153 of 2001 as well as the Declaration of the European Commission for Democracy through Law (Venice Commission) on the Consequences of State Succession for the Nationality of Natural Persons;

Building upon, but without prejudice to, the general principles established in the international instruments and documents mentioned above, by adding specific rules applicable to the particular situation of statelessness in relation to state succession;

In order to give effect to the principles established in the European Convention on Nationality that everyone has the right to a nationality and that the rule of law and human rights, including the prohibition of arbitrary deprivation of nationality and the principle of non-discrimination, must be respected in order to avoid statelessness,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Convention:

(*a*) "State succession" means the replacement of one state by another in the responsibility for the international relations of territory;

(*b*) "State concerned" means the predecessor state or the successor state, as the case may be;

(*c*) "Statelessness" means the situation where a person is not considered as a national by any state under the operation of its internal law;

(*d*) "Habitual residence" means a stable factual residence;

(*e*) "Person concerned" means every individual who, at the time of the state succession, had the nationality of the predecessor state and who has or would become stateless as a result of the state succession.

Article 2

Right to a nationality

Everyone who, at the time of the state succession, had the nationality of the predecessor state and who has or would become stateless as a result of the state succession has the right to the nationality of a state concerned, in accordance with the following articles.

Article 3

Prevention of statelessness

The state concerned shall take all appropriate measures to prevent persons who, at the time of the state succession, had the nationality of the predecessor state, from becoming stateless as a result of the succession.

Article 4

Non-discrimination

When applying this Convention, states concerned shall not discriminate against any person concerned on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 5

Responsibility of the successor state

1. A successor state shall grant its nationality to persons who, at the time of the state succession, had the nationality of the predecessor state, and who have or would become stateless as a result of the state succession if at that time:

(*a*) they were habitually resident in the territory which has become territory of the successor state; or

(*b*) they were not habitually resident in any state concerned but had an appropriate connection with the successor state.

2. For the purpose of paragraph 1, sub-paragraph b, an appropriate connection includes, *inter alia:*

(*a*) a legal bond to a territorial unit of a predecessor state which has become territory of the successor state;

(*b*) birth on the territory which has become territory of the successor state;

(*c*) last habitual residence on the territory of the predecessor state which has become territory of the successor state.

Article 6

Responsibility of the predecessor state

A predecessor state shall not withdraw its nationality from its nationals who have not acquired the nationality of a successor state and who would otherwise become stateless as a result of the state succession.

Article 7

Respect for the expressed will of the person concerned

A successor state shall not refuse to grant its nationality under Article 5 paragraph 1, sub-paragraph b, where such nationality reflects the expressed will of the person concerned, on the grounds that such a person

can acquire the nationality of another state concerned on the basis of an appropriate connection with that state.

Article 8

Rules of proof

1. A successor state shall not insist on its standard requirements of proof necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of state succession and where it is not reasonable for such persons to meet the standard requirements.
2. A successor state shall not require proof of non-acquisition of another nationality before granting its nationality to persons who were habitually resident on its territory at the time of the state succession and who have or would become stateless as a result of the state succession.

Article 9

Facilitating the acquisition of nationality by stateless persons

A state concerned shall facilitate the acquisition of its nationality by persons lawfully and habitually residing on its territory who, despite Articles 5 and 6, are stateless as a result of the state succession.

Article 10

Avoiding statelessness at birth

A state concerned shall grant its nationality at birth to a child born following state succession on its territory to a parent who, at the time of state succession, had the nationality of the predecessor state if that child would otherwise be stateless.

Article 11

Information to persons concerned

States concerned shall take all necessary steps to ensure that persons concerned have sufficient information about rules and procedures with regard to the acquisition of their nationality.

Article 12

Procedural guarantees

When applying this Convention, the state concerned shall ensure that in the framework of the procedures relating to nationality:

(*a*) the relevant applications be processed within a reasonable time;

(*b*) the relevant decisions contain reasons in writing and be open to an administrative or judicial review in conformity with its internal law;

(*c*) the fees be reasonable and not an obstacle for applicants.

Article 13

Settlement by international agreement

States concerned shall endeavour to regulate matters relating to nationality, especially with a view to avoiding statelessness, where appropriate by international agreement.

Article 14

International co-operation

1. In order to adopt appropriate measures to avoid statelessness arising from state succession, states concerned shall co-operate among themselves, including by providing information with regard to the operation of their relevant internal law.
2. For the same purpose as that mentioned in paragraph 1, states concerned shall also co-operate:

(*a*) with the Secretary General of the Council of Europe and the United Nations High Commissioner for Refugees (UNHCR); and

(*b*) where appropriate, with other states and international organisations.

Article 15

Application of this Convention

1. This Convention applies in respect of a state succession which has occurred after its entry into force.
2. A state concerned may, however, declare by notification addressed to the Secretary General of the Council of Europe at the time of expressing its consent to be bound by this Convention, or, at any time thereafter, that it will also apply the provisions of this Convention to a state succession occurring before the entry into force of this Convention.
3. If several states concerned make a declaration, as set out in paragraph 2, in respect of the same state succession, this Convention will apply between the states making such declaration.

Article 16

Effects of this Convention

1. The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals on the avoidance of statelessness.
2. This Convention does not prejudice the application of:

   (*a*) the European Convention on Nationality, in particular its Chapter VI relating to state succession and nationality;

   (*b*) other binding international instruments in so far as such instruments are compatible with this Convention, in the relationship between the States Parties bound by these instruments.

Article 17

Settlement of disputes

Any dispute concerning the interpretation or application of this Convention shall primarily be settled through negotiation.

Article 18

Signature and entry into force

1. This Convention shall be open for signature by the member states of the Council of Europe and the non-member states which have participated in its elaboration. Such states may express their consent to be bound by:

   (*a*) signature without reservation as to ratification, acceptance or approval; or

   (*b*) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

   Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force, for all states having expressed their consent to be bound by the Convention, on the first day of the month following the expiration of a period of three months after the date on which three member states of the Council of Europe have expressed their consent to be bound by this Convention in accordance with the provisions of the preceding paragraph.
3. In respect of any state which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of its instrument of ratification, acceptance or approval.

Article 19

Accession

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member state of the Council of Europe which has not participated in its elaboration to accede to this Convention.
2. In respect of any acceding state, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 20

Reservations

1. No reservations may be made to this Convention except in respect of the provisions of Article 7, Article 8, paragraph 2, Article 12 and Article 14, paragraph 2, sub-paragraph b.
2. Any reservation made by a state in pursuance of paragraph 1 shall be formulated at the time of signature or upon the deposit of its instrument of ratification, acceptance, approval or accession.
3. Any state may wholly or partly withdraw a reservation it has made in accordance with paragraph 1 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

Article 21

Denunciation

1. Any State Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article 22

Notifications

The Secretary General of the Council of Europe shall notify the member states of the Council of Europe, any signatory, any party and any other state which has acceded to this Convention of:

(*a*) any signature;

(*b*) the deposit of any instrument of ratification, acceptance, approval or accession;

(*c*) any date of entry into force of this Convention in accordance with Articles 18 or 19 of this Convention;

(*d*) any reservation and withdrawal of reservations made in pursuance of the provisions of Article 20 of this Convention;

(*e*) any notification or declaration made under the provisions of Articles 15 and 21 of this Convention;

(*f*) any other act, notification or communication relating to this Convention.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, this 19th day of May 2006, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe, to each non-member state having participated in the elaboration of this Convention and to any state invited to accede to this Convention.

RECOMMENDATION NO. R (99) 18 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE AVOIDANCE AND REDUCTION OF STATELESSNESS

Adopted by the Committee of Ministers on 15 September 1999 at the 679th meeting of the Ministers' Deputies

Text: Council of Europe Recommendation R (99) 18

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the negative impact of statelessness on individuals and the problems that statelessness creates for States;

Convinced, therefore, of the need to avoid and reduce, as far as possible, cases of statelessness;

Agreeing that, in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals;

Recalling that neither States nor individuals should benefit from the misuse of nationality laws;

Recalling Recommendation 87 (1955) on statelessness adopted by the Parliamentary Assembly of the Council of Europe at its 24th session on 25 October 1955;

Having regard to and taking into account the relevant international instruments in this field and, in particular, the 1930 Hague Protocol Relating to Certain Cases of Statelessness, the 1954 United Nations Convention Relating to the Status of Stateless Persons, the 1957 United Nations Convention on the Status of Married Women, the 1961 United Nations Convention on the Reduction of Statelessness, the 1966 International Covenant on Civil and Political Rights, the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, the 1973 Convention to reduce the number of cases of statelessness of the International Commission on Civil Status, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 United Nations Convention on the Rights of the Child;

Taking into account the importance of the principles and rules of the 1997 European Convention on Nationality (European *Treaty Series* n° 166) towards the avoidance and reduction of statelessness;

Realising the need for further measures, both at national and international levels, to avoid and reduce cases of statelessness;

Hoping that as many Member States as possible will soon sign and ratify the 1997 European Convention on Nationality,

1. Recommends governments of Member States to avoid and reduce statelessness and to this end that:

   1.1. They be guided by and act in conformity with the principles and rules which aim at avoiding and reducing statelessness and which are contained in the above mentioned international instruments;

   1.2. Laws and practices prevent the creation of and provide for the elimination of situations of statelessness;

   1.3. They promote the avoidance of statelessness through co-operation with all States;

   1.4. They apply in particular the following principles and provisions:

I. *Principles based on the European Convention on Nationality which have a special relevance to the avoidance and reduction of statelessness*

(*a*) Laws and administrative practices relating to the acquisition, retention, loss, recovery or certification of nationality should not contain distinctions which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

(*b*) Access to the nationality of a State should be possible whenever a person has a genuine and effective link with that State, in particular through birth, descent or residence.

(*c*) Nationals should not be arbitrarily deprived of their nationality. Nationals who are deprived of their nationality, renounce or otherwise lose their nationality should not thereafter become stateless.

(*d*) The acquisition of nationality by stateless persons should be facilitated and not subject to unreasonable conditions.

(*e*) States should endeavour to regulate matters relating to statelessness, where appropriate and in particular in cases of state succession, by international agreement.

(*f*) In the application and interpretation of national legislation, account should be taken of the consequences of the relevant corresponding provisions of the legislation and of the practice of other States concerned, in order to avoid statelessness.

II. *Provisions aiming at the avoidance and reduction of cases of statelessness*

A. *Avoiding and reducing statelessness at birth*

(*a*) Each State should provide for its nationality to be acquired *ex lege* by children one of whose parents possesses, at the time of birth of these children, its nationality.

Exceptions made with regard to children born abroad should not lead to situations of statelessness.

(*b*) Each State should ensure that its legislation provides for the acquisition of its nationality by children born on its territory who would otherwise be stateless.

B. *Facilitating the acquisition of nationality by stateless persons*

Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory, and in particular each State should:

(*a*) Reduce the required period of residence in relation to the normal period of residence required;

(*b*) Not require more than an adequate knowledge of one of its official languages, whenever this is provided for by the internal law of the state;

(*c*) Ensure that procedures be easily accessible, not subject to undue delay and available on payment of reduced fees;

(*d*) Ensure that offences, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a State.

C. *Avoiding statelessness as a consequence of loss of nationality*

(*a*) Each State should ensure that the renunciation of its nationality will not take place without the possession, actual acquisition or guarantee of acquisition of another nationality. Where another nationality is not acquired or possessed, States should provide that the renunciation is without effect.

(*b*) When a State requires persons to lose their previous nationality in order to acquire its nationality, this State should grant its nationality, even if the previous one is not immediately lost. The States concerned, if necessary, should agree on the modalities of the application of this provision.

(*c*) In order to avoid, as far as possible, situations of statelessness, a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account;

2. Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the States parties to the European Convention on Nationality which are not members of the Council of Europe.

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RECOMMENDATION REC(2006)6 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON INTERNALLY DISPLACED PERSONS

Adopted by the Committee of Ministers on 5 April 2006 at the 961st meeting of the Ministers' Deputies

Text: Council of Europe Recommendation Rec(2006)6

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that one of the core objectives of the Council of Europe is to preserve and to promote human rights to the benefit of everyone in Europe;

Considering that a large number of citizens of the Council of Europe member states can not fully benefit from their human rights as a consequence of the fact that they have been forced or obliged to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or man-made disasters, without crossing an internationally recognised state border;

Recalling the existence of the United Nations Guiding Principles on Internal Displacement (hereinafter the "UN guiding principles"), which address all phases of internal displacement and which have gained international recognition and authority;

Stressing its commitment to the spirit and provisions of the United Nations guiding principles and its willingness to implement them in the member states' national legislation and policy;

Anxious to promote the United Nations guiding principles in a European context and to develop some of these principles further on the basis of the existing standards of the Council of Europe;

Recognising that internally displaced persons have specific needs by virtue of their displacement;

Bearing in mind that, while internally displaced persons, despite being displaced, remain citizens of their country entitled to the full enjoyment of human rights and guarantees of international humanitarian law, international law does not provide for any specific binding instrument defining their rights;

Considering that the national authorities of the member states on the territory of which internal displacement is taking place are primarily responsible for the protection and assistance of the internally displaced persons, notwithstanding the rights and obligations of other states or appropriate international organisations under international law;

Affirming that member states affected by internal displacement should refrain from instrumental use of displaced persons for political aims;

Recalling that the arbitrary displacement of persons from their homes or place of habitual residence is prohibited, as can be inferred from the European Convention on Human Rights, which is an integral part of member states' domestic law;

Aware that mismanagement of internal displacement may not only lead to human rights violations but also feed into international migration and refugee movements across the continent;

Considering that neither this recommendation nor the United Nations guiding principles should prevent Council of Europe member states from introducing or maintaining more favourable standards for internally displaced persons,

Recommends that governments of member states be guided, when formulating their internal legislation and practice, and when faced with internal displacement, by the following principles:

1. The United Nations guiding principles and other relevant international instruments of human rights or humanitarian law apply to all internally displaced persons, including persons displaced from their homes or places of habitual residence due to natural or man-made disasters;

2. Internally displaced persons shall not be discriminated against because of their displacement. Member states should take adequate and effective measures to ensure equal treatment among internally displaced persons and between them and other citizens. This may entail the obligation to consider specific treatment tailored to meet internally displaced persons' needs;

3. Particular attention shall be paid to the protection of persons belonging to national minorities and to the protection and assistance requirements of the most vulnerable groups in accordance with relevant international law standards;

4. Protecting internally displaced persons and their rights as well as providing humanitarian assistance to them is a primary responsibility of the state concerned;

   Such responsibility entails requesting aid from other states or international organisations if the state concerned is not in a position to provide protection and assistance to its internally displaced persons;

   This responsibility also entails not to arbitrarily refuse offers from other states or international organisations to provide such aid;

5. Member states shall, in accordance with their obligations under Articles 2, 3 and 5 of the European Convention on Human Rights, take appropriate measures, on the one hand, to prevent acts that may violate internally displaced persons' right to life, to physical integrity and to liberty and security and, on the other, to effectively investigate alleged violations of these rights. This is of particular relevance in the organisation and maintenance of camps for internally displaced persons: in this regard, appropriate measures include those safeguarding the civilian nature of camps;

   Internally displaced persons shall not be sent back to areas where they would face a real risk of being subjected to treatment contrary to Articles 2 and 3 of the European Convention on Human Rights;

6. Member states shall, in accordance with Article 8 of the European Convention on Human Rights, take appropriate measures to facilitate the reunification of families which are separated by internal displacement. Such measures may include locating missing family members, notably those that have been taken hostage. Competent authorities should convey to relatives of an internally displaced person, upon their request, any information they may have on his/her whereabouts;

7. Internally displaced persons shall be provided with all documents necessary for the effective exercise of their rights as soon as possible following their displacement and without unreasonable conditions being imposed;

8. Internally displaced persons are entitled to the enjoyment of their property and possessions in accordance with human rights law. In particular, internally displaced persons have the right to repossess the property left behind following their displacement. If internally displaced persons are deprived of their property, such deprivation should give rise to adequate compensation;

9. Member states should take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature;

10. With a view to limiting the adverse consequences of internal displacement, member states should develop preventive measures such as strategic action plans, to be implemented in the event of crises which could lead to internal displacement;

11. Internally displaced persons should be properly informed, but also consulted to the extent possible, in respect of any decision affecting their situation prior to, during or after their displacement;

12. Internally displaced persons have the right to return voluntarily, in safety and in dignity, to their homes or places of habitual residence, or to resettle in another part of the country in accordance with the European Convention on Human Rights;

    Conditions for proper and sustainable integration of internally displaced persons following their displacement should be ensured;

13. In order to address existing gaps in international law as far as the treatment of internally displaced persons is concerned, member states should consider the elaboration of additional international instruments.

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EUROPEAN CONVENTION ON THE LEGAL STATUS OF MIGRANT WORKERS

Adopted in Strasbourg on 24 November 1977

Entry into force: 1 May 1983, in accordance with Article 34
Text: *European Treaty Series*, No. 93

The Member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress while respecting human rights and fundamental freedoms;

Considering that the legal status of migrant workers who are nationals of Council of Europe Member States should be regulated so as to ensure that as far as possible they are treated no less favourably than workers who are nationals of the receiving State in all aspects of living and working conditions;

Being resolved to facilitate the social advancement of migrant workers and members of their families;

Affirming that the rights and privileges which they grant to each other's nationals are conceded by virtue of the close association uniting the Member States of the Council of Europe by means of its Statute,

Have agreed as follows:

CHAPTER I

Article 1

Definition

1. For the purpose of this Convention, the term "migrant worker" shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment.
2. This Convention shall not apply to:
   (*a*) Frontier workers;
   (*b*) Artists, other entertainers and sportsmen engaged for a short period and members of a liberal profession;
   (*c*) Seamen;
   (*d*) Persons undergoing training;
   (e) Seasonal workers; seasonal migrant workers are those who, being nationals of a Contracting Party, are employed on the territory of another Contracting Party in an activity dependent on the rhythm of the seasons, on the basis of a contract for a specified period or for specified employment;
   (*f*) Workers, who are nationals of a Contracting Party, carrying out specific work in the territory of another Contracting Party on behalf of an undertaking having its registered office outside the territory of that Contracting Party.

CHAPTER II

Article 2

Forms of recruitment

1. The recruitment of prospective migrant workers may be carried out either by named or by unnamed request and in the latter case shall be effected through the intermediary of the official authority in the State

of origin if such an authority exists and, where appropriate, through the intermediary of the official authority of the receiving State.

2. The administrative costs of recruitment, introduction and placing, when these operations are carried out by an official authority, shall not be borne by the prospective migrant worker.

Article 3

Medical examinations and vocational test

1. Recruitment of prospective migrant workers may be preceded by a medical examination and a vocational test.
2. The medical examination and the vocational test are intended to establish whether the prospective migrant worker is physically and mentally fit and technically qualified for the job offered to him and to make certain that his state of health does not endanger public health.
3. Arrangements for the reimbursement of expenses connected with medical examination and vocational test shall be laid down when appropriate by bilateral agreements, so as to ensure that such expenses do not fall upon the prospective migrant worker.
4. A migrant worker to whom an individual offer of employment is made shall not be required, otherwise than on grounds of fraud, to undergo a vocational test except at the employer's request.

Article 4

Right of exit – Right to admission – Administrative formalities

1. Each Contracting Party shall guarantee the following rights to migrant workers:
   - The right to leave the territory of the Contracting Party of which they are nationals;
   - The right to admission to the territory of a Contracting Party in order to take up paid employment after being authorised to do so and obtaining the necessary papers.
2. These rights shall be subject to such limitations as are prescribed by legislation and are necessary for the protection of national security, public order, public health or morals.
3. The papers required of the migrant worker for emigration and immigration shall be issued as expeditiously as possible free of charge or on payment of an amount not exceeding their administrative cost.

Article 5

Formalities and procedure relating to the work contract

Every migrant worker accepted for employment shall be provided prior to departure for the receiving State with a contract of employment or a definite offer of employment, either of which may be drawn up in one or more of the languages in use in the State of origin and in one or more of the languages in use in the receiving State. The use of at least one language of the State of origin and one language of the receiving State shall be compulsory in the case of recruitment by an official authority or an officially recognised employment bureau.

Article 6

Information

1. The Contracting Parties shall exchange and provide for prospective migrants appropriate information on their residence, conditions of and opportunities for family reunion, the nature of the job, the possibility of a new work contract being concluded after the first has lapsed, the qualifications required, working and living conditions (including the cost of living), remuneration, social security, housing, food, the transfer of savings, travel, and on deductions made from wages in respect of contributions for social protection and social security, taxes and other charges. Information may also be provided on the cultural and religious conditions in the receiving State.

2. In the case of recruitment through an official authority of the receiving State, such information shall be provided, before his departure, in a language which the prospective migrant worker can understand, to enable him to take a decision in full knowledge of the facts. The translation, where necessary, of such information into a language that the prospective migrant worker can understand shall be provided as a general rule by the State of origin.

3. Each Contracting Party undertakes to adopt the appropriate steps to prevent misleading propaganda relating to emigration and immigration.

Article 7

Travel

1. Each Contracting Party undertakes to ensure, in the case of official collective recruitment, that the cost of travel to the receiving State shall never be borne by the migrant worker. The arrangements for payment shall be determined under bilateral agreements, which may also extend these measures to families and to workers recruited individually.

2. In the case of migrant workers and their families in transit through the territory of one Contracting Party en route to the receiving State, or on their return journey to the State of origin, all steps shall be taken by the competent authorities of the transit State to expedite their journey and prevent administrative delays and difficulties.

3. Each Contracting Party shall exempt from import duties and taxes at the time of entry into the receiving State and of the final return to the State of origin and in transit:

   (*a*) The personal effects and movable property of migrant workers and members of their family belonging to their household;

   (*b*) A reasonable quantity of hand-tools and portable equipment necessary for the occupation to be engaged in.

The exemptions referred to above shall be granted in accordance with the laws or regulations in force in the States concerned.

CHAPTER III

Article 8

Work permit

1. Each Contracting Party which allows a migrant worker to enter its territory to take up paid employment shall issue or renew a work permit for him (unless he is exempt from this requirement), subject to the conditions laid down in its legislation.

2. However, a work permit issued for the first time may not as a rule bind the worker to the same employer or the same locality for a period longer than one year.

3. In case of renewal of the migrant worker's work permit, this should as a general rule be for a period of at least one year, in so far as the current state and development of the employment situation permits.

Article 9

Residence permit

1. Where required by national legislation, each Contracting Party shall issue residence permits to migrant workers who have been authorised to take up paid employment on their territory under conditions laid down in this Convention.

2. The residence permit shall in accordance with the provisions of national legislation be issued and, if necessary, renewed for a period as a general rule at least as long as that of the work permit. When the work permit is valid indefinitely, the residence permit shall as a general rule be issued and, if necessary,

renewed for a period of at least one year. It shall be issued and renewed free of charge or for a sum covering administrative costs only.

3. The provisions of this Article shall also apply to members of the migrant worker's family who are authorised to join him in accordance with Article 12 of this Convention.

4. If a migrant worker is no longer in employment, either because he is temporarily incapable of work as a result of illness or accident or because he is involuntarily unemployed, this being duly confirmed by the competent authorities, he shall be allowed for the purpose of the application of Article 25 of this Convention to remain on the territory of the receiving State for a period which should not be less than five months. Nevertheless, no Contracting Party shall be bound, in the case provided for in the above sub-paragraph, to allow a migrant worker to remain for a period exceeding the period of payment of the unemployment allowance.

5. The residence permit, issued in accordance with the provisions of paragraphs 1 to 3 of this Article, may be withdrawn:

   (*a*) For reasons of national security, public policy or morals;

   (*b*) If the holder refuses, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for him by an official medical authority with a view to the protection of public health;

   (*c*) If a condition essential to its issue or validity is not fulfilled. Each Contracting Party nevertheless undertakes to grant to migrant workers whose residence permits have been withdrawn, an effective right to appeal, in accordance with the procedure for which provision is made in its legislation, to a judicial or administrative authority.

Article 10

Reception

1. After arrival in the receiving State, migrant workers and members of their families shall be given all appropriate information and advice as well as all necessary assistance for their settlement and adaptation.

2. For this purpose, migrant workers and members of their families shall be entitled to help and assistance from the social services of the receiving State or from bodies working in the public interest in the receiving State and to help from the consular authorities of their State or origin. Moreover, migrant workers shall be entitled, on the same basis as national workers, to help and assistance from the employment services. However, each Contracting Party shall endeavour to ensure that special social services are available, whenever the situation so demands, to facilitate or co-ordinate the reception of migrant workers and their families.

3. Each Contracting Party undertakes to ensure that migrant workers and members of their families can worship freely, in accordance with their faith; each Contracting Party shall facilitate such worship, within the limit of available means.

Article 11

Recovery of sums due in respect of maintenance

1. The status of migrant workers must not interfere with the recovery of sums due in respect of maintenance to persons in the State of origin to whom they have maintenance obligations arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation in respect of a child who is not legitimate.

2. Each Contracting Party shall take the steps necessary to ensure the recovery of sums due in respect of such maintenance, making use as far as possible of the form adopted by the Committee of Ministers of the Council of Europe.

3. As far as possible, each Contracting Party shall take steps to appoint a single national or regional authority to receive and dispatch applications for sums due in respect of maintenance provided for in paragraph 1 above.

4. This Article shall not affect existing or future bilateral or multilateral agreements.

Article 12

Family reunion

1. The spouse of a migrant worker who is lawfully employed in the territory of a Contracting Party and the unmarried children thereof, as long as they are considered to be minors by the relevant law of the receiving State, who are dependent on the migrant worker, are authorised on conditions analogous to those which this Convention applies to the admission of migrant workers and according to the admission procedure prescribed by such law or by international agreements to join the migrant worker in the territory of a Contracting Party, provided that the latter has available for the family housing considered as normal for national workers in the region where the migrant worker is employed. Each Contracting Party may make the giving of authorisation conditional upon a waiting period which shall not exceed twelve months.
2. Any State may, at any time, by declaration addressed to the Secretary General of the Council of Europe, which shall take effect one month after the date of receipt, make the family reunion referred to in paragraph 1 above further conditional upon the migrant worker having steady resources sufficient to meet the needs of his family.
3. Any State may, at any time, by declaration addressed to the Secretary General of the Council of Europe, which shall take effect one month after the date of its receipt, derogate temporarily from the obligation to give the authorisation provided for in paragraph 1 above, for one or more parts of its territory which it shall designate in its declaration, on the condition that these measures do not conflict with obligations under other international instruments. The declarations shall state the special reasons justifying the derogation with regard to receiving capacity.

Any State availing itself of this possibility of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and shall ensure that these measures are published as soon as possible. It shall also inform the Secretary General of the Council of Europe when such measures cease to operate and the provisions of the Convention are again being fully executed.

The derogation shall not, as a general rule, affect requests for family reunion submitted to the competent authorities, before the declaration is addressed to the Secretary General, by migrant workers already established in the part of the territory concerned.

Article 13

Housing

1. Each Contracting Party shall accord to migrant workers, with regard to access to housing and rents, treatment not less favourable than that accorded to its own nationals, insofar as this matter is covered by domestic laws and regulations.
2. Each Contracting Party shall ensure that the competent national authorities carry out inspections in appropriate cases in collaboration with the respective consular authorities, acting within their competence, to ensure that standards of fitness of accommodation are kept up for migrant workers as for its own nationals.
3. Each Contracting Party undertakes to protect migrant workers against exploitation in respect of rents, in accordance with its laws and regulations on the matter.
4. Each Contracting Party shall ensure, by the means available to the competent national authorities, that the housing of the migrant worker shall be suitable.

Article 14

Pretraining – Schooling – Linguistic training – Vocational training and retraining

1. Migrant workers and members of their families officially admitted to the territory of a Contracting Party shall be entitled, on the same basis and under the same conditions as national workers, to general education and vocation training and retraining and shall be granted access to higher education according to the general regulations governing admission to respective institutions in the receiving State.

2. To promote access to general and vocational schools and to vocational training centres, the receiving State shall facilitate the teaching of its language or, if there are several, one of its languages to migrant workers and members of their families.

3. For the purpose of the application of paragraphs 1 and 2 above, the granting of scholarships shall be left to the discretion of each Contracting Party which shall make efforts to grant the children of migrant workers living with their families in the receiving State – in accordance with the provisions of Article 12 of this Convention – the same facilities in this respect as the receiving State's nationals.

4. The workers' previous attainments, as well as diplomas and vocational qualifications acquired in the State of origin, shall be recognised by each Contracting Party in accordance with arrangements laid down in bilateral and multilateral agreements.

5. The Contracting Parties concerned, acting in close co-operation shall endeavour to ensure that the vocational training and retraining schemes, within the meaning of this Article, cater as far as possible for the needs of migrant workers with a view to their return to their State of origin.

Article 15

Teaching of the migrant worker's mother tongue

The Contracting Parties concerned shall take actions by common accord to arrange, so far as practicable, for the migrant worker's children, special courses for the teaching of the migrant worker's mother tongue, to facilitate, *inter alia*, their return to their State of origin.

Article 16

Conditions of work

1. In the matter of conditions of work, migrant workers authorised to take up employment shall enjoy treatment not less favourable than that which applies to national workers by virtue of legislative or administrative provisions, collective labour agreement or custom.

2. It shall not be possible to derogate by individual contract from the principle of equal treatment referred to in the foregoing paragraph.

Article 17

Transfer of savings

1. Each Contracting Party shall permit, according to the agreements laid down by its legislation, the transfer of all or such parts of the earnings and savings of migrant workers as the latter may wish to transfer.

   This provision shall apply also to the transfer of sums due by migrant workers in respect of maintenance. The transfer of sums due by migrant workers in respect of maintenance shall on no account be hindered or prevented.

2. Each Contracting Party shall permit, under bilateral agreements or by other means, the transfer of such sums as remain due to migrant workers when they leave the territory of the receiving State.

Article 18

Social Security

1. Each Contracting Party undertakes to grant within its territory, to migrant workers and members of their families, equality of treatment with its own nationals, in the matter of social security, subject to conditions required by national legislation and by bilateral or multilateral agreements already concluded or to be concluded between the Contracting Parties concerned.

2. The Contracting Parties shall moreover endeavour to secure to migrant workers and members of their families the conservation of rights in course of acquisition and acquired rights, as well as provision of benefits abroad, through bilateral and multilateral agreements.

Article 19

Social and Medical Assistance

Each Contracting Party undertakes to grant within its territory, to migrant workers and members of their families who are lawfully present in its territory, social and medical assistance on the same basis as nationals in accordance with the obligations it has assumed by virtue of other international agreements and in particular of the European Convention on Social and Medical Assistance of 1953.

Article 20

Industrial accidents and occupational diseases – Industrial hygiene

1. With regard to the prevention of industrial accidents and occupational diseases and to industrial hygiene, migrant workers shall enjoy the same rights and protection as national workers, in application of the laws of a Contracting Party and collective agreements and having regard to their particular situation.
2. A migrant worker who is victim of an industrial accident or who has contracted an occupational disease in the territory of the receiving State shall benefit from occupational rehabilitation on the same basis as national workers.

Article 21

Inspection of working conditions

Each Contracting Party shall inspect or provide for inspection of the conditions of work of migrant workers in the same manner as for national workers. Such inspection shall be carried out by the competent bodies or institutions of the receiving State and by any other authority authorised by the receiving State.

Article 22

Death

Each Contracting Party shall take care, within the framework of its laws and, if need be, within the framework of bilateral agreements, that steps are taken to provide all help and assistance necessary for the transport to the State of origin of the bodies of migrant workers deceased as the result of an industrial accident.

Article 23

Taxation on earnings

1. In the matter of earnings and without prejudice to the provisions on double taxation contained in agreements already concluded or which may in future be concluded between Contracting Parties, migrant workers shall not be liable, in the territory of a Contracting Party, to duties, charges, taxes or contributions of any description whatsoever either higher or more burdensome than those imposed on nationals in similar circumstances. In particular, they shall be entitled to deductions or exemptions from taxes or charges and to all allowances, including allowance for dependants.
2. The Contracting Parties shall decide between themselves, by bilateral or multilateral agreements on double taxation, what measures might be taken to avoid double taxation on the earnings of migrant workers.

Article 24

Expiry of contract and discharge

1. On the expiry of a work contract concluded for a special period at the end of the period agreed on and on the case of anticipated cancellation of such a contract or cancellation of a work contract for an unspecified period, migrant workers shall be accorded treatment not less favourable than that accorded to national workers under the provisions of national legislation or collective labour agreements.

2 In the event of individual or collective dismissal, migrant workers shall receive the treatment applicable to national workers under national legislation or collective labour agreements, as regards the form and period of notice, the compensation provided for in legislation or agreements or such as may be due in cases of unwarranted cancellation of their work contracts.

Article 25

Re-employment

1. If a migrant worker loses his job for reasons beyond his control, such as redundancy or prolonged illness, the competent authority of the receiving State shall facilitate his re-employment in accordance with the laws and regulations of that State.
2. To this end the receiving State shall promote the measures necessary to ensure, as far as possible, the vocational retraining and occupational rehabilitation of the migrant worker in question, provided that he intends to continue in employment in the State concerned afterwards.

Article 26

Right of access to the courts and administrative authorities in the receiving State

1. Each Contracting Party shall secure to migrant workers treatment not less favourable than that of its own nationals in respect of legal proceedings. Migrant workers shall be entitled, under the same conditions as nationals, to full legal and judicial protection of their persons and property and of their rights and interests; in particular, they shall have, in the same manner as nationals, the right of access to the competent courts and administrative authorities, in accordance with the law of the receiving State, and the right to obtain the assistance of any person of their choice who is qualified by the law of that State, for instance in disputes with employers, members of their families or third parties. The rules of private international law of the receiving State shall not be affected by this Article.
2. Each Contracting Party shall provide migrant workers with legal assistance on the same conditions as for their own nationals and, in the case of civil or criminal proceedings, the possibility of obtaining the assistance of an interpreter where they cannot understand or speak the language used in court.

Article 27

Use of employment services

Each Contracting Party recognises the right of migrant workers and of the members of their families officially admitted to its territory to make use of employment services under the same conditions as national workers subject to the legal provisions and regulations and administrative practice, including conditions of access, in force in that State.

Article 28

Exercise of the right to organise

Each Contracting Party shall allow to migrant workers the right to organise for the protection of their economic and social interests on the conditions provided for by national legislation for its own nationals.

Article 29

Participation in the affairs of the undertaking

Each Contracting Party shall facilitate as far as possible the participation of migrant workers in the affairs of the undertaking on the same conditions as national workers.

CHAPTER IV

Article 30

Return home

1. Each Contracting Party shall, as far as possible, take appropriate measures to assist migrant workers and their families on the occasion of their final return to their State of origin, and in particular the steps

referred to in paragraphs 2 and 3 of Article 7 of this Convention. The provision of financial assistance shall be left to the discretion of each Contracting Party.

2. To enable migrant workers to know, before they set out on their return journey, the conditions on which they will be able to resettle in their State of origin, this State shall communicate to the receiving State, which shall keep available for those who request it, information regarding in particular:
   - Possibilities and conditions of employment in the State of origin;
   - Financial aid granted for economic reintegration;
   - The maintenance of social security rights acquired abroad;
   - Steps to be taken to facilitate the finding of accommodation;
   - Equivalence accorded to occupational qualifications obtained abroad and any tests to be passed to secure their official recognition;
   - Equivalence accorded to educational qualification, so that migrant workers' children can be admitted to schools without down-grading.

CHAPTER V

Article 31

Conservation of acquired rights

No provision of this Convention may be interpreted as justifying less favourable treatment than that enjoyed by migrant workers under the national legislation of the receiving State or under bilateral and multilateral agreements to which that State is a Contracting Party.

Article 32

Relations between this Convention and the laws of the Contracting Parties or international agreements

The provisions of this Convention shall not prejudice the provisions of the laws of the Contracting Parties or of any bilateral or multilateral treaties, conventions, agreements or arrangements, as well as the steps taken to implement them, which are already in force, or may come into force, and under which more favourable treatment has been, or would be, accorded to the persons protected by the Convention.

Article 33

Application of the Convention

1. A Consultative Committee shall be set up within a year of the entry into force of this Convention.
2. Each Contracting Party shall appoint a representative to the Consultative Committee. Any other Member State of the Council of Europe may be represented by an observer with the right to speak.
3. The Consultative Committee shall examine any proposals submitted to it by one of the Contracting Parties with a view to facilitating or improving the application of the Convention, as well as any proposal to amend it.
4. The opinions and recommendations of the Consultative Committee shall be adopted by a majority of the members of the Committee; however, proposals to amend the Convention shall be adopted unanimously by the members of the Committee.
5. The opinions, recommendations and proposals of the Consultative Committee referred to above shall be addressed to the Committee of Ministers of the Council of Europe, which shall decide on the action to be taken.

6. The Consultative Committee shall be convened by the Secretary General of the Council of Europe and shall meet, as a general rule, at least once every two years and, in addition, whenever at least two Contracting Parties or the Committee of Ministers so requests. The committee shall also meet at the request of one Contracting Party whenever the provisions of paragraph 3 of Article 12 are applied.
7. The Consultative Committee shall draw up periodically, for the attention of the Committee of Ministers, a report containing information regarding the laws and regulations in force in the territory of the Contracting Parties in respect of matters provided for in this Convention.

CHAPTER VI

Article 34

Signature, ratification and entry into force

1. This Convention shall be open to signature by the Member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force on the first day of the third month following the date of the deposit of the fifth instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, approving or accepting subsequently, the Convention shall enter into force on the first day of the third month following the date of the deposit of its instrument of ratification, acceptance or approval.

Article 35

Territorial scope

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration to the Secretary General of the Council of Europe, extend the application of this Convention to all or any of the territories for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
2. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn. Such withdrawal shall take effect six months after receipt by the Secretary General of the Council of Europe of the declaration of withdrawal.

Article 36

Reservations

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, make one or more reservations which may relate to no more than nine articles of Chapters II to IV inclusive, other than Articles 4, 8, 9, 12, 16, 17, 20, 25, 26.
2. Any Contracting Party may, at any time, wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

Article 37

Denunciation of the Convention

1. Each Contracting Party may denounce this Convention by notification addressed to the Secretary General of the Council of Europe, which shall take effect six months after the date of its receipt.
2. No denunciation may be made within five years of the date of the entry into force of the Convention in respect of the Contracting Party concerned.

3. Each Contracting Party which ceases to be a member of the Council of Europe shall cease to be a Party to this Convention six months after the date on which it loses its quality as a member of the Council of Europe.

Article 38

Notifications

The Secretary General of the Council of Europe shall notify the Member States of the Council of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) Any notification received in respect of paragraphs 2 and 3 of Article 12;

(*d*) Any date of entry into force of this Convention in accordance with Article 34 thereof;

(*e*) Any declaration received in pursuance of the provisions of Article 35;

(*f*) Any reservation made in pursuance of the provisions of paragraph 1 of Article 36;

(*g*) Withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 36;

(*h*) Any notification received in pursuance of the provisions of Article 37 and the date on which denunciation takes place.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, this 24th day of November 1977, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

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CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, AS AMENDED BY PROTOCOL NO. 11

Adopted in Rome on 4 November 1950

Entry into force: 3 September 1953, in accordance with Article 59
Text: European *Treaty Series*, No. 5

The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol No. 10 (ETS No. 146) has lost its purpose.

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1

Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I

RIGHTS AND FREEDOMS

Article 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

   (*a*) In defence of any person from unlawful violence;

(*b*) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) In action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:

(*a*) Any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(*b*) Any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(*c*) Any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(*d*) Any work or service which forms part of normal civic obligations.

Article 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(*a*) The lawful detention of a person after conviction by a competent court;

(*b*) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(*c*) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(*d*) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(*e*) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(*f*) The lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
   (*a*) To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   (*b*) To have adequate time and facilities for the preparation of his defence;
   (*c*) To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   (*d*) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (*e*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II

EUROPEAN COURT OF HUMAN RIGHTS

Article 19

Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as “the Court”. It shall function on a permanent basis.

Article 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21

Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22

Election of judges

1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23

Terms of office

1. The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
3. In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The terms of office of judges shall expire when they reach the age of 70.
7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24

Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25

Registry and legal secretaries

The Court shall have a registry, the functions and Organization of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26

Plenary Court

The plenary Court shall

(*a*) Elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

(*b*) Set up Chambers, constituted for a fixed period of time;

(*c*) Elect the Presidents of the Chambers of the Court; they may be re-elected;

(*d*) Adopt the rules of the Court, and

(*e*) Elect the Registrar and one or more Deputy Registrars.

Article 27

Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
3. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28

Declarations of inadmissibility by Committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29

Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
3. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30

Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31

Powers of the Grand Chamber

The Grand Chamber shall

1 (*a*) Determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and

(*b*) Consider requests for advisory opinions submitted under Article 47.

Article 32

Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33

Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34

Individual applications

The Court may receive applications from any person, non-governmental Organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35

Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that:

   (*a*) Is anonymous; or

   (*b*) Is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36

Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37

Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:

   (*a*) The applicant does not intend to pursue his application; or

   (*b*) The matter has been resolved; or

   (*c*) For any other reason established by the Court, it is no longer justified to continue the examination of the application.

   However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38

Examination of the case and friendly settlement proceedings

1. If the Court declares the application admissible, it shall:

   (*a*) Pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

   (*b*) Place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.

2. Proceedings conducted under paragraph 1 b shall be confidential.

Article 39

Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40

Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41

Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42

Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43

Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44

Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final:
   (*a*) When the parties declare that they will not request that the case be referred to the Grand Chamber; or
   (*b*) Three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
   (*c*) When the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

Article 45

Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47

Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the

Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48

Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49

Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50

Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51

Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III

MISCELLANEOUS PROVISIONS

Article 52

Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53

Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54

Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55

Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56

Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental Organizations or groups of individuals as provided by Article 34 of the Convention.

Article 57

Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58

Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59

Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The present Convention shall come into force after the deposit of ten instruments of ratification.
3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

DONE at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

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PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, AS AMENDED BY PROTOCOL NO. 11

Adopted in Paris on 20 March 1952

Entry into force: 18 May 1954, in accordance with Article 6
Text*: European Treaty Series*, No. 9

Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as of its entry into force on 1 November 1998.

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 4

Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

Article 5

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 6

Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

DONE at Paris on the 20th day of March 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

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PROTOCOL NO. 4 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, SECURING CERTAIN RIGHTS AND FREEDOMS OTHER THAN THOSE ALREADY INCLUDED IN THE CONVENTION AND IN THE FIRST PROTOCOL THERETO, AS AMENDED BY PROTOCOL NO. 11

Adopted in Strasbourg on 16 September 1963

Entry into force: 2 May 1968, in accordance with Article 7
Text: *European Treaty Series*, No.46

Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as from its entry into force on 1 November 1998.

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

Article 1

Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2

Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

Article 4

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Article 5

Territorial application

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.
2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.
3. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.
5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental Organizations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

Article 6

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 7

Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.
2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all Members of the names of those who have ratified.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory states.

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PROTOCOL NO. 6 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONCERNING THE ABOLITION OF THE DEATH PENALTY, AS AMENDED BY PROTOCOL NO. 11

Adopted in Strasbourg on 28 April 1983

Entry into force: 1 March 1985, in accordance with Article 8
Text: *European Treaty Series*, No. 114

Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as from its entry into force on 1 November 1998.

The Member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several Member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

Article 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2

Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

Article 6

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7

Signature and ratification

The Protocol shall be open for signature by the Member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A Member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8

Entry into force

1. This Protocol shall enter into force on the first day of the month following the date on which five Member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
2. In respect of any Member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

Article 9

Depositary functions

The Secretary General of the Council of Europe shall notify the Member States of the Council of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) Any date of entry into force of this Protocol in accordance with Articles 5 and 8;

(*d*) Any other act, notification or communication relating to this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe.

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PROTOCOL NO. 7 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, AS AMENDED BY PROTOCOL NO. 11

Adopted in Strasbourg on 22 November 1984

Entry into force: 1 November 1988, in accordance with Article 9
Text: *European Treaty Series*, No. 117

Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as from its entry into force on 1 November 1998.

The Member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

   (*a*) To submit reasons against his expulsion,

   (*b*) To have his case reviewed, and

   (*c*) To be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2

Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4

Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.

Article 5

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.
4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.
6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental Organizations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

Article 7

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8

Signature and ratification

This Protocol shall be open for signature by Member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A Member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven Member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.
2. In respect of any Member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 10

Depositary functions

The Secretary General of the Council of Europe shall notify all the Member States of the Council of Europe of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) Any date of entry into force of this Protocol in accordance with Articles 6 and 9;

(*d*) Any other act, notification or declaration relating to this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe.

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PROTOCOL NO. 12 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Adopted in Rome on 4 November 2000

Entry into force: 1 April 2005, in accordance with Article 5
Text*: European Treaty Series*, No. 177

The Member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

Article 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.
4. A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental Organizations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

Article 3

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 4

Signature and ratification

This Protocol shall be open for signature by Member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A Member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 5

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten Member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.
2. In respect of any Member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 6

Depositary functions

The Secretary General of the Council of Europe shall notify all the Member States of the Council of Europe of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) Any date of entry into force of this Protocol in accordance with Articles 2 and 5;

(*d*) Any other act, notification or communication relating to this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe.

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PROTOCOL NO. 13 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, CONCERNING THE ABOLITION OF THE DEATH PENALTY IN ALL CIRCUMSTANCES

Adopted in Vilnius on 3 May 2002

Entry into force: 1 July 2003, in accordance with Article 7
Text: *European Treaty Series*, No. 187

The Member States of the Council of Europe signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

Article 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 4

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 5

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 6

Signature and ratification

This Protocol shall be open for signature by Member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A Member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 7

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten Member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.
2. In respect of any Member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 8

Depositary functions

The Secretary General of the Council of Europe shall notify all the Member States of the Council of Europe of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) Any date of entry into force of this Protocol in accordance with Articles 4 and 7;

(*d*) Any other act, notification or communication relating to this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Vilnius, this 3 May 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe.

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PROTOCOL NO. 14 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, AMENDING THE CONTROL SYSTEM OF THE CONVENTION

Adopted in Strasbourg on 13 May 2004

Entry into force: In accordance with Article 19
Text: *European Treaty Series*, No. 194

PREAMBLE

The Member States of the Council of Europe, signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Having regard to Resolution No. 1 and the Declaration adopted at the European Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000;

Having regard to the Declarations adopted by the Committee of Ministers on 8 November 2001, 7 November 2002 and 15 May 2003, at their 109th, 111th and 112th Sessions, respectively;

Having regard to Opinion No. 251 (2004) adopted by the Parliamentary Assembly of the Council of Europe on 28 April 2004;

Considering the urgent need to amend certain provisions of the Convention in order to maintain and improve the efficiency of the control system for the long term, mainly in the light of the continuing increase in the workload of the European Court of Human Rights and the Committee of Ministers of the Council of Europe;

Considering, in particular, the need to ensure that the Court can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

Article 1

Paragraph 2 of Article 22 of the Convention shall be deleted.

Article 2

Article 23 of the Convention shall be amended to read as follows:

"Article 23

Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.
2. The terms of office of judges shall expire when they reach the age of 70.
3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions."

Article 3

Article 24 of the Convention shall be deleted.

Article 4

Article 25 of the Convention shall become Article 24 and its text shall be amended to read as follows:

"Article 24

Registry and rapporteurs

1. The Court shall have a registry, the functions and Organization of which shall be laid down in the rules of the Court.
2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry."

Article 5

Article 26 of the Convention shall become Article 25 ("Plenary Court") and its text shall be amended as follows:

1. At the end of paragraph d, the comma shall be replaced by a semi-colon and the word "and" shall be deleted.
2. At the end of paragraph e, the full stop shall be replaced by a semi-colon.
3. A new paragraph f shall be added which shall read as follows:

   f "Make any request under Article 26, paragraph 2."

Article 6

Article 27 of the Convention shall become Article 26 and its text shall be amended to read as follows:

"Article 26

Single-judge formation, committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned."

Article 7

After the new Article 26, a new Article 27 shall be inserted into the Convention, which shall read as follows:

"Article 27

Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
2. The decision shall be final.
3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination."

Article 8

Article 28 of the Convention shall be amended to read as follows:

"Article 28

Competence of committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
   (*a*) Declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
   (*b*) Declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
2. Decisions and judgments under paragraph 1 shall be final.
3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b."

Article 9

Article 29 of the Convention shall be amended as follows:

1. Paragraph 1 shall be amended to read as follows: "If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately."
2. At the end of paragraph 2 a new sentence shall be added which shall read as follows: "The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise."
3. Paragraph 3 shall be deleted.

Article 10

Article 31 of the Convention shall be amended as follows:

1. At the end of paragraph a, the word "and" shall be deleted.
2. Paragraph b shall become paragraph c and a new paragraph b shall be inserted and shall read as follows:
   (*b*) "Decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and".

Article 11

Article 32 of the Convention shall be amended as follows:

At the end of paragraph 1, a comma and the number 46 shall be inserted after the number 34.

Article 12

Paragraph 3 of Article 35 of the Convention shall be amended to read as follows:

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(*a*) The application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

(*b*) The applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

Article 13

A new paragraph 3 shall be added at the end of Article 36 of the Convention, which shall read as follows:

"3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings."

Article 14

Article 38 of the Convention shall be amended to read as follows:

"Article 38

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

Article 15

Article 39 of the Convention shall be amended to read as follows:

"Article 39

Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
2. Proceedings conducted under paragraph 1 shall be confidential.
3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision."

Article 16

Article 46 of the Convention shall be amended to read as follows:

"Article 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

Article 17

Article 59 of the Convention shall be amended as follows:

1. A new paragraph 2 shall be inserted which shall read as follows:

"2. The European Union may accede to this Convention."

2. Paragraphs 2, 3 and 4 shall become paragraphs 3, 4 and 5 respectively.

Final and transitional provisions

Article 18

1. This Protocol shall be open for signature by Member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by

(*a*) Signature without reservation as to ratification, acceptance or approval; or

(*b*) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 18.

Article 20

1. From the date of the entry into force of this Protocol, its provisions shall apply to all applications pending before the Court as well as to all judgments whose execution is under supervision by the Committee of Ministers.

2. The new admissibility criterion inserted by Article 12 of this Protocol in Article 35, paragraph 3 b of the Convention, shall not apply to applications declared admissible before the entry into force of the Protocol. In the two years following the entry into force of this Protocol, the new admissibility criterion may only be applied by Chambers and the Grand Chamber of the Court.

Article 21

The term of office of judges serving their first term of office on the date of entry into force of this Protocol shall be extended *ipso jure* so as to amount to a total period of nine years. The other judges shall complete their term of office, which shall be extended *ipso jure* by two years.

Article 22

The Secretary General of the Council of Europe shall notify the Member States of the Council of Europe of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) The date of entry into force of this Protocol in accordance with Article 19; and

(*d*) Any other act, notification or communication relating to this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 13th day of May 2004, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe.

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EUROPEAN SOCIAL CHARTER

Adopted in Turin on 18 October 1961

Entry into force: 26 February 1965, in accordance with Article 35
Text: *European Treaty Series*, No. 35

PREAMBLE

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950, and the Protocol thereto signed at Paris on 20th March 1952, the Member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of both their urban and rural populations by means of appropriate institutions and action,

Have agreed as follows:

PART I

The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international Organizations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to vocational training, rehabilitation and resettlement, whatever the origin and nature of their disability.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
18. The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Contracting Party and their families have the right to protection and assistance in the territory of any other Contracting Party.

Part II

The Contracting Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

Article 1

The right to work

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. To accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. To protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. To establish or maintain free employment services for all workers;
4. To provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2

The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

1. To provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. To provide for public holidays with pay;
3. To provide for a minimum of two weeks annual holiday with pay;
4. To provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;
5. To ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

Article 3

The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. To issue safety and health regulations;
2. To provide for the enforcement of such regulations by measures of supervision;
3. To consult, as appropriate, employers' and workers' Organizations on measures intended to improve industrial safety and health.

Article 4

The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. To recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. To recognise the right of men and women workers to equal pay for work of equal value;
4. To recognise the right of all workers to a reasonable period of notice for termination of employment;
5. To permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5

The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international Organizations for the protection of their economic and social interests and to join those Organizations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6

The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting Parties undertake:

1. To promote joint consultation between workers and employers;
2. To promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' Organizations and workers' Organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. To promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. The right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7

The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

1. To provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. To provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;
3. To provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. To provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. To recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6 To provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. To provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
8. To provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. To provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. To ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8

The right of employed women to protection

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

1. To provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks;
2. To consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;
3. To provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. (*a*) To regulate the employment of women workers on night work in industrial employment;
   (*b*) To prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

Article 9

The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including school children, and to adults.

Article 10

The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Contracting Parties undertake:

1. To provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' Organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. To provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. To provide or promote, as necessary:
   (*a*) Adequate and readily available training facilities for adult workers;
   (*b*) Special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment;
4. To encourage the full utilisation of the facilities provided by appropriate measures such as:
   (*a*) Reducing or abolishing any fees or charges;
   (*b*) Granting financial assistance in appropriate cases;
   (*c*) Including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
   (*d*) Ensuring, through adequate supervision, in consultation with the employers' and workers' Organizations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11

The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private Organizations, to take appropriate measures designed *inter alia*:

1. To remove as far as possible the causes of ill-health;
2. To provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. To prevent as far as possible epidemic, endemic and other diseases.

Article 12

The right to social security

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1. To establish or maintain a system of social security;
2. To maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 Concerning Minimum Standards of Social Security;
3. To endeavour to raise progressively the system of social security to a higher level;
4. To take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
   (*a*) Equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;

(*b*) The granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties.

Article 13

The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

1. To ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. To ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. To provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. To apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.

Article 14

The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Contracting Parties undertake:

1. To promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. To encourage the participation of individuals and voluntary or other Organizations in the establishment and maintenance of such services.

Article 15

The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:

1. To take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;
2. To take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment.

Article 16

The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

Article 17

The right of mothers and children to social and economic protection

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

Article 18

The right to engage in a gainful occupation in the territory of other Contracting Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake:

1. To apply existing regulations in a spirit of liberality;
2. To simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. To liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:
4. The right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties.

Article 19

The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

1. To maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. To adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. To promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. To secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

   (*a*) Remuneration and other employment and working conditions;

   (*b*) Membership of trade unions and enjoyment of the benefits of collective bargaining;

   (*c*) Accommodation;
5. To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. To facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. To secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9. To permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10. To extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply.

Part III

Article 20

Undertakings

1. Each of the Contracting Parties undertakes:

   (*a*) To consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

   (*b*) To consider itself bound by at least five of the following articles of Part II of this Charter: Articles 1, 5, 6, 12, 13, 16 and 19;

   (*c*) In addition to the articles selected by it in accordance with the preceding sub-paragraph, to consider itself bound by such a number of articles or numbered paragraphs of Part II of the Charter as it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than 10 articles or 45 numbered paragraphs.

2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification or approval of the Contracting Party concerned is deposited.

3. Any Contracting Party may, at a later date, declare by notification to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification or approval, and shall have the same effect as from the thirtieth day after the date of the notification.

4. The Secretary General shall communicate to all the signatory governments and to the Director General of the International Labour Office any notification which he shall have received pursuant to this part of the Charter.

5. Each Contracting Party shall maintain a system of labour inspection appropriate to national conditions.

Part IV

Article 21

Reports concerning accepted provisions

The Contracting Parties shall send to the Secretary General of the Council of Europe a report at two yearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted.

Article 22

Reports concerning provisions which are not accepted

The Contracting Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

Article 23

Communication of copies

1. Each Contracting Party shall communicate copies of its reports referred to in Articles 21 and 22 to such of its national Organizations as are members of the international Organizations of employers and trade unions to be invited under Article 27, paragraph 2, to be represented at meetings of the Sub-committee of the Governmental Social Committee.
2. The Contracting Parties shall forward to the Secretary General any comments on the said reports received from these national Organizations, if so requested by them.

Article 24

Examination of the reports

The reports sent to the Secretary General in accordance with Articles 21 and 22 shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary General in accordance with paragraph 2 of Article 23.

Article 25

Committee of Experts

1. The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in international social questions, nominated by the Contracting Parties.
2. The members of the committee shall be appointed for a period of six years. They may be reappointed. However, of the members first appointed, the terms of office of two members shall expire at the end of four years.
3. The members whose terms of office are to expire at the end of the initial period of four years shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.
4. A member of the Committee of Experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 26

Participation of the International Labour Organization

The International Labour Organization shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Article 27

Sub-committee of the Governmental Social Committee

1. The reports of the Contracting Parties and the conclusions of the Committee of Experts shall be submitted for examination to a sub-committee of the Governmental Social Committee of the Council of Europe.
2. The sub-committee shall be composed of one representative of each of the Contracting Parties. It shall invite no more than two international Organizations of employers and no more than two international trade union Organizations as it may designate to be represented as observers in a consultative capacity at its meetings. Moreover, it may consult no more than two representatives of international non-governmental Organizations having consultative status with the Council of Europe, in respect of questions with which the Organizations are particularly qualified to deal, such as social welfare, and the economic and social protection of the family.
3. The sub-committee shall present to the Committee of Ministers a report containing its conclusions and append the report of the Committee of Experts.

Article 28

Consultative Assembly

The Secretary General of the Council of Europe shall transmit to the Consultative Assembly the conclusions of the Committee of Experts. The Consultative Assembly shall communicate its views on these conclusions to the Committee of Ministers.

Article 29

Committee of Ministers

By a majority of two thirds of the members entitled to sit on the Committee, the Committee of Ministers may, on the basis of the report of the sub-committee, and after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations.

PART V

Article 30

Derogations in time of war or public emergency

1. In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. Any Contracting Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.
3. The Secretary General shall in turn inform other Contracting Parties and the Director General of the International Labour Office of all communications received in accordance with paragraph 2 of this article.

Article 31

Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.
2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article 32

Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article 33

Implementation by collective agreements

1. In Member States where the provisions of paragraphs 1, 2, 3, 4 and 5 of Article 2, paragraphs 4, 6 and 7 of Article 7 and paragraphs 1, 2, 3 and 4 of Article 10 of Part II of this Charter are matters normally left to

agreements between employers or employers' Organizations and workers' Organizations, or are normally carried out otherwise than by law, the undertakings of those paragraphs may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.

2. In Member States where these provisions are normally the subject of legislation, the undertakings concerned may likewise be given, and compliance with them shall be regarded as effective if the provisions are applied by law to the great majority of the workers concerned.

Article 34

Territorial application

1. This Charter shall apply to the metropolitan territory of each Contracting Party. Each signatory government may, at the time of signature or of the deposit of its instrument of ratification or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.
2. Any Contracting Party may, at the time of ratification or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.
3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary General shall have received notification of such declaration.
4. Any Contracting Party may declare at a later date, by notification addressed to the Secretary General of the Council of Europe, that, in respect of one or more of the territories to which the Charter has been extended in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the thirtieth day after the date of the notification.
5. The Secretary General shall communicate to the other signatory governments and to the Director General of the International Labour Office any notification transmitted to him in accordance with this article.

Article 35

Signature, ratification and entry into force

1. This Charter shall be open for signature by the members of the Council of Europe. It shall be ratified or approved. Instruments of ratification or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification or approval.
3. In respect of any signatory government ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification or approval.
4. The Secretary General shall notify all the members of the Council of Europe and the Director General of the International Labour Office of the entry into force of the Charter, the names of the Contracting Parties which have ratified or approved it and the subsequent deposit of any instruments of ratification or approval.

Article 36

Amendments

Any member of the Council of Europe may propose amendments to this Charter in a communication addressed to the Secretary General of the Council of Europe. The Secretary General shall transmit to the other

members of the Council of Europe any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as from the thirtieth day after all the Contracting Parties have informed the Secretary General of their acceptance. The Secretary General shall notify all the members of the Council of Europe and the Director General of the International Labour Office of the entry into force of such amendments.

Article 37

Denunciation

1. Any Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any successive period of two years, and, in each case, after giving six months notice to the Secretary General of the Council of Europe who shall inform the other Parties and the Director General of the International Labour Office accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other Contracting Parties provided that at all times there are not less than five such Contracting Parties.
2. Any Contracting Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Contracting Party is bound shall never be less than 10 in the former case and 45 in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Contracting Party among those to which special reference is made in Article 20, paragraph 1, sub-paragraph b.
3. Any Contracting Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter, under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with paragraph 2 of Article 34.

Article 38

Appendix

The appendix to this Charter shall form an integral part of it.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Charter.

DONE at Turin, this 18th day of October 1961, in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the Signatories.

APPENDIX TO THE SOCIAL CHARTER

Scope of the Social Charter in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

   This interpretation would not prejudice the extension of similar facilities to other persons by any of the Contracting Parties.

2. Each Contracting Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28th July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Contracting Parties and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13th December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Contracting Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article 31.

Article 7, paragraph 8

It is understood that a Contracting Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under 18 years of age shall not be employed in night work.

Article 12, paragraph 4

The words “and subject to the conditions laid down in such agreements” in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution a Contracting Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Contracting Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Social Charter in respect of this paragraph provided that they grant to nationals of other Contracting Parties a treatment which is in conformity with the provisions of the said Convention.

Article 19, paragraph 6

For the purpose of this provision, the term "family of a foreign worker" is understood to mean at least his wife and dependent children under the age of 21 years.

PART III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article 20, paragraph 1

It is understood that the "numbered paragraphs" may include articles consisting of only one paragraph.

PART V

Article 30

The term "in time of war or other public emergency" shall be so understood as to cover also the threat of war.

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ADDITIONAL PROTOCOL TO THE EUROPEAN SOCIAL CHARTER PROVIDING FOR A SYSTEM OF COLLECTIVE COMPLAINTS

Adopted in Strasbourg on 9 November 1995

Entry into force: 1 July 1998, in accordance with Article 14
Text: *European Treaty Series*, No. 158

PREAMBLE

The Member States of the Council of Europe, signatories to this Protocol to the European Social Charter, opened for signature in Turin on 18 October 1961 (hereinafter referred to as "the Charter");

Resolved to take new measures to improve the effective enforcement of the social rights guaranteed by the Charter;

Considering that this aim could be achieved in particular by the establishment of a collective complaints procedure, which, *inter alia*, would strengthen the participation of management and labour and of non-governmental Organizations,

Have agreed as follows:

Article 1

The Contracting Parties to this Protocol recognise the right of the following Organizations to submit complaints alleging unsatisfactory application of the Charter:

(*a*) International Organizations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter;

(*b*) Other international non-governmental Organizations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;

(*c*) Representative national Organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

Article 2

1. Any Contracting State may also, when it expresses its consent to be bound by this Protocol, in accordance with the provisions of Article 13, or at any moment thereafter, declare that it recognises the right of any other representative national non-governmental Organization within its jurisdiction which has particular competence in the matters governed by the Charter, to lodge complaints against it.
2. Such declarations may be made for a specific period.
3. The declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the Contracting Parties and publish them.

Article 3

The international non-governmental Organizations and the national non-governmental Organizations referred to in Article 1.b and Article 2 respectively may submit complaints in accordance with the procedure prescribed by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence.

Article 4

The complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision.

Article 5

Any complaint shall be addressed to the Secretary General who shall acknowledge receipt of it, notify it to the Contracting Party concerned and immediately transmit it to the Committee of Independent Experts.

Article 6

The Committee of Independent Experts may request the Contracting Party concerned and the Organization which lodged the complaint to submit written information and observations on the admissibility of the complaint within such time-limit as it shall prescribe.

Article 7

1. If it decides that a complaint is admissible, the Committee of Independent Experts shall notify the Contracting Parties to the Charter through the Secretary General. It shall request the Contracting Party concerned and the Organization which lodged the complaint to submit, within such time-limit as it shall prescribe, all relevant written explanations or information, and the other Contracting Parties to this Protocol, the comments they wish to submit, within the same time-limit.
2. If the complaint has been lodged by a national Organization of employers or a national trade union or by another national or international non-governmental Organization, the Committee of Independent Experts shall notify the international Organizations of employers or trade unions referred to in paragraph 2 of Article 27 of the Charter, through the Secretary General, and invite them to submit observations within such time-limit as it shall prescribe.
3. On the basis of the explanations, information or observations submitted under paragraphs 1 and 2 above, the Contracting Party concerned and the Organization which lodged the complaint may submit any additional written information or observations within such time-limit as the Committee of Independent Experts shall prescribe.
4. In the course of the examination of the complaint, the Committee of Independent Experts may organise a hearing with the representatives of the parties.

Article 8

1. The Committee of Independent Experts shall draw up a report in which it shall describe the steps taken by it to examine the complaint and present its conclusions as to whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the complaint.
2. The report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the Organization that lodged the complaint and to the Contracting Parties to the Charter, which shall not be at liberty to publish it.

   It shall be transmitted to the Parliamentary Assembly and made public at the same time as the resolution referred to in Article 9 or no later than four months after it has been transmitted to the Committee of Ministers.

Article 9

1. On the basis of the report of the Committee of Independent Experts, the Committee of Ministers shall adopt a resolution by a majority of those voting. If the Committee of Independent Experts finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned. In both cases, entitlement to voting shall be limited to the Contracting Parties to the Charter.
2. At the request of the Contracting Party concerned, the Committee of Ministers may decide, where the report of the Committee of Independent Experts raises new issues, by a two-thirds majority of the Contracting Parties to the Charter, to consult the Governmental Committee.

Article 10

The Contracting Party concerned shall provide information on the measures it has taken to give effect to the Committee of Ministers' recommendation, in the next report which it submits to the Secretary General under Article 21 of the Charter.

Article 11

Articles 1 to 10 of this Protocol shall apply also to the articles of Part II of the first Additional Protocol to the Charter in respect of the States Parties to that Protocol, to the extent that these articles have been accepted.

Article 12

The States Parties to this Protocol consider that the first paragraph of the appendix to the Charter, relating to Part III, reads as follows:

"It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof and in the provisions of this Protocol."

Article 13

1. This Protocol shall be open for signature by Member States of the Council of Europe signatories to the Charter, which may express their consent to be bound by:

   (*a*) Signature without reservation as to ratification, acceptance or approval; or

   (*b*) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 A Member State of the Council of Europe may not express its consent to be bound by this Protocol without previously or simultaneously ratifying the Charter.

3. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 14

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date on which five Member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 13.

2. In respect of any Member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 15

1. Any Party may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of such notification by the Secretary General.

Article 16

The Secretary General of the Council of Europe shall notify all the Member States of the Council of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) The date of entry into force of this Protocol in accordance with Article 14;

(*d*) Any other act, notification or declaration relating to this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 9th day of November 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe.

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EUROPEAN SOCIAL CHARTER (REVISED)

Adopted in Strasbourg on 3 May 1996

Entry into force: 1 July 1999, in accordance with article K
Text: *European Treaty Series*, No. 163

PREAMBLE

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the Member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the Member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

PART I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international Organizations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, have the right to a special protection.

9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to independence, social integration and participation in the life of the community.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Children and young persons have the right to appropriate social, legal and economic protection.
18. The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.
20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.
21. Workers have the right to be informed and to be consulted within the undertaking.
22. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.
23. Every elderly person has the right to social protection.
24. All workers have the right to protection in cases of termination of employment.
25. All workers have the right to protection of their claims in the event of the insolvency of their employer.
26. All workers have the right to dignity at work.
27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.
28. Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.
29. All workers have the right to be informed and consulted in collective redundancy procedures.
30. Everyone has the right to protection against poverty and social exclusion.
31. Everyone has the right to housing.

Part II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

Article 1

The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. To accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. To protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. To establish or maintain free employment services for all workers;
4. To provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2

The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. To provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. To provide for public holidays with pay;
3. To provide for a minimum of four weeks' annual holiday with pay;
4. To eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. To ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. To ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. To ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3

The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' Organizations:

1. To formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. To issue safety and health regulations;
3. To provide for the enforcement of such regulations by measures of supervision;
4. To promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Article 4

The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. To recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. To recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. To recognise the right of men and women workers to equal pay for work of equal value;
4. To recognise the right of all workers to a reasonable period of notice for termination of employment;
5. To permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5

The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international Organizations for the protection of their economic and social interests and to join those Organizations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6

The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. To promote joint consultation between workers and employers;
2. To promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' Organizations and workers' Organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. To promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
4. The right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7

The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. To provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. To provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;

3. To provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. To provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. To recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. To provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. To provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
8. To provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. To provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. To ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8

The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. To provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. To consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. To provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. To regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
5. To prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 9

The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

Article 10

The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. To provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' Organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

2. To provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

3. To provide or promote, as necessary:

   (*a*) Adequate and readily available training facilities for adult workers;

   (*b*) Special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;

4. To provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

5. To encourage the full utilisation of the facilities provided by appropriate measures such as:

   (*a*) Reducing or abolishing any fees or charges;

   (*b*) Granting financial assistance in appropriate cases;

   (*c*) Including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

   (*d*) Ensuring, through adequate supervision, in consultation with the employers' and workers' Organizations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11

The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private Organizations, to take appropriate measures designed *inter alia*:

1. To remove as far as possible the causes of ill-health;

2. To provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3. To prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 12

The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. To establish or maintain a system of social security;

2. To maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

3. To endeavour to raise progressively the system of social security to a higher level;

4. To take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

   (*a*) Equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

   (*b*) The granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13

The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. To ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. To ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. To provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. To apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14

The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. To promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. To encourage the participation of individuals and voluntary or other Organizations in the establishment and maintenance of such services.

Article 15

The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. To take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
2. To promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
3. To promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Article 16

The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17

The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private Organizations, to take all appropriate and necessary measures designed:

1. (*a*) To ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

   (*b*) To protect children and young persons against negligence, violence or exploitation;

   (*c*) To provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2. To provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 18

The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. To apply existing regulations in a spirit of liberality;

2. To simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

3. To liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:

4. The right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19

The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. To maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2. To adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3. To promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4. To secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

   (*a*) Remuneration and other employment and working conditions;

   (*b*) Membership of trade unions and enjoyment of the benefits of collective bargaining;

   (*c*) Accommodation;

5. To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. To facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. To secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. To secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. To permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. To extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
11. To promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. To promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Article 20

The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

(*a*) Access to employment, protection against dismissal and occupational reintegration;

(*b*) Vocational guidance, training, retraining and rehabilitation;

(*c*) Terms of employment and working conditions, including remuneration;

(*d*) Career development, including promotion.

Article 21

The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

(*a*) To be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

(*b*) To be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Article 22

The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to

adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

(*a*) To the determination and the improvement of the working conditions, work Organization and working environment;

(*b*) To the protection of health and safety within the undertaking;

(*c*) To the Organization of social and socio-cultural services and facilities within the undertaking;

(*d*) To the supervision of the observance of regulations on these matters.

Article 23

The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private Organizations, appropriate measures designed in particular:

1. To enable elderly persons to remain full members of society for as long as possible, by means of:

   (*a*) Adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

   (*b*) Provision of information about services and facilities available for elderly persons and their opportunities to make use of them;

2. To enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

   (*a*) Provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

   (*b*) The health care and the services necessitated by their state;

3. To guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 24

The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

(*a*) The right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

(*b*) The right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25

The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 26

The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' Organizations:

1. To promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. To promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 27

The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. To take appropriate measures:
   (*a*) To enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
   (*b*) To take account of their needs in terms of conditions of employment and social security;
   (*c*) To develop or promote services, public or private, in particular child day-care services and other childcare arrangements;
2. To provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. To ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 28

The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

(*a*) They enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;

(*b*) They are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29

The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Article 30

The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

(*a*) To take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

(*b*) To review these measures with a view to their adaptation if necessary.

Article 31

The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. To promote access to housing of an adequate standard;
2. To prevent and reduce homelessness with a view to its gradual elimination;
3. To make the price of housing accessible to those without adequate resources.

PART III

Article A

Undertakings

1. Subject to the provisions of Article B below, each of the Parties undertakes:

   (*a*) To consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

   (*b*) To consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;

   (*c*) To consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.

2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.

3. Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.

4. Each Party shall maintain a system of labour inspection appropriate to national conditions.

Article B

Links with the European Social Charter and the 1988 Additional Protocol

1. No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may ratify, accept or approve this Charter without considering itself bound by at least the provisions

corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.

2. Acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments.

Part IV

Article C

Supervision of the implementation of the undertakings contained in this Charter

The implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter.

Article D

Collective complaints

1. The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.

2. Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligations under this Charter following the procedure provided for in the said Protocol.

Part V

Article E

Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Article F

Derogations in time of war or public emergency

1. In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

Article G

Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as

are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article H

Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article I

Implementation of the undertakings given

1. Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

   (*a*) Laws or regulations;

   (*b*) Agreements between employers or employers' Organizations and workers' Organizations;

   (*c*) A combination of those two methods;

   (*d*) Other appropriate means.

2. Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.

Article J

Amendments

1. Any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter as well as any amendment to Parts III to VI, proposed by a Party or by the Governmental Committee, shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter.

2. Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Governmental Committee which shall submit the text adopted to the Committee of Ministers for approval after consultation with the Parliamentary Assembly. After its approval by the Committee of Ministers this text shall be forwarded to the Parties for acceptance.

3. Any amendment to Part I and to Part II of this Charter shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties have informed the Secretary General that they have accepted it.

   In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.

4. Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

PART VI

Article K

Signature, ratification and entry into force

1. This Charter shall be open for signature by the Member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three Member States of the Council of Europe have expressed their consent to be bound by this Charter in accordance with the preceding paragraph.
3. In respect of any Member State which subsequently expresses its consent to be bound by this Charter, it shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article L

Territorial application

1. This Charter shall apply to the metropolitan territory of each Party. Each signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.
2. Any signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.
3. The Charter shall extend its application to the territory or territories named in the aforesaid declaration as from the first day of the month following the expiration of a period of one month after the date of receipt of the notification of such declaration by the Secretary General.
4. Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe that, in respect of one or more of the territories to which the Charter has been applied in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of receipt of such notification by the Secretary General.

Article M

Denunciation

1. Any Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any subsequent period of two years, and in either case after giving six months' notice to the Secretary General of the Council of Europe who shall inform the other Parties accordingly.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Party is bound shall never be less than sixteen in the former case and sixty-three in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Party among those to which special reference is made in Article A, paragraph 1, sub-paragraph b.

3. Any Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter under the conditions specified in paragraph 1 of this article in respect of any territory to which the said Charter is applicable, by virtue of a declaration made in accordance with paragraph 2 of Article L.

Article N

Appendix

The appendix to this Charter shall form an integral part of it.

Article O

Notifications

The Secretary General of the Council of Europe shall notify the Member States of the Council and the Director General of the International Labour Office of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) Any date of entry into force of this Charter in accordance with Article K;

(*d*) Any declaration made in application of Articles A, paragraphs 2 and 3, D, paragraphs 1 and 2, F, paragraph 2, L, paragraphs 1, 2, 3 and 4;

(*e*) Any amendment in accordance with Article J;

(*f*) Any denunciation in accordance with Article M;

(*g*) Any other act, notification or communication relating to this Charter.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this revised Charter.

DONE at Strasbourg, this 3rd day of May 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe and to the Director General of the International Labour Office.

Appendix to the Revised European Social Charter
Scope of the Revised European Social Charter in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

   This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.

2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.

3. Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 2, paragraph 6

Parties may provide that this provision shall not apply:

(*a*) To workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;

(*b*) Where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 3, paragraph 4

It is understood that for the purposes of this provision the functions, Organization and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 7, paragraph 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

Article 7, paragraph 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

Article 8, paragraph 2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

(*a*) If an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;

(*b*) If the undertaking concerned ceases to operate;

(*c*) If the period prescribed in the employment contract has expired.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

Article 16

It is understood that the protection afforded in this provision covers single-parent families.

Article 17

It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

Article 19, paragraph 6

For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

Article 20

1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.

2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.

3. This article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.

4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.

3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.

4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.

5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Article 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.

2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Article 23, paragraph 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly person's physical, psychological and intellectual capacities.

Article 24

1. It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.

2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:

   (*a*) Workers engaged under a contract of employment for a specified period of time or a specified task;

   (*b*) Workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;

   (*c*) Workers engaged on a casual basis for a short period.

3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:

   (*a*) Trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;

   (*b*) Seeking office as, acting or having acted in the capacity of a workers' representative;

   (*c*) The filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

   (*d*) Race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

   (*e*) Maternity or parental leave;

   (*f*) Temporary absence from work due to illness or injury.

4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 25

1. It is understood that the competent national authority may, by way of exemption and after consulting Organizations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.

2. It is understood that the definition of the term "insolvency" must be determined by national law and practice.

3. The workers' claims covered by this provision shall include at least:

   (*a*) The workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;

   (*b*) The workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;

   (*c*) The workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.

4. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Article 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms "dependent children" and "other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

PART III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article A, paragraph 1

It is understood that the numbered paragraphs may include articles consisting of only one paragraph.

Article B, paragraph 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of:

(*a*) Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter;

(*b*) Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter;

(*c*) Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the Charter;

(*d*) Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter.

PART V

Article E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

Article F

The terms “in time of war or other public emergency” shall be so understood as to cover also the *threat* of war.

Article I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned.

Article J

The term “amendment” shall be extended so as to cover also the addition of new articles to the Charter.

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FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Adopted in Strasbourg on 1 February 1995

Entry into force: 1 February 1998, in accordance with Article 28
Text: *European Treaty Series*, No. 157

The Member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the Member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the Member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

SECTION I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

SECTION II

Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, Organizations and associations.

Article 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in

the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

2. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.

3. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2. The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental Organizations, both at the national and international levels.

Article 18

1. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.
2. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

SECTION III

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

SECTION IV

Article 24

1. The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
2. The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

1. Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.
2. Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
3. The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

1. In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
2. The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

SECTION V

Article 27

This framework Convention shall be open for signature by the Member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

1. This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve Member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.

2. In respect of any Member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

1. After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.
2. In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 30

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

1. Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 32

The Secretary General of the Council of Europe shall notify the Member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance, approval or accession;

(*c*) Any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;

(*d*) Any other act, notification or communication relating to this framework Convention.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this framework Convention.

DONE at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

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EUROPEAN CONVENTION ON EXTRADITION

Adopted in Paris on 13 December 1957

Entry into force: 18 April 1960, in accordance with Article 29
Text: *European Treaty Series*, No. 24

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that this purpose can be attained by the conclusion of agreements and by common action in legal matters;

Considering that the acceptance of uniform rules with regard to extradition is likely to assist this work of unification,

Have agreed as follows:

Article 1

Obligation to extradite

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

Article 2

Extraditable offences

1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.
3. Any Contracting Party whose law does not allow extradition for certain of the offences referred to in paragraph 1 of this article may, in so far as it is concerned, exclude such offences from the application of this Convention.
4. Any Contracting Party which wishes to avail itself of the right provided for in paragraph 3 of this article shall, at the time of deposit of its instrument of ratification or accession, transmit to the Secretary General of the Council of Europe either a list of the offences for which extradition is allowed or a list of those for which it is excluded and shall at the same time indicate the legal provisions which allow or exclude extradition. The Secretary General of the Council shall forward these lists to the other signatories.
5. If extradition is subsequently excluded in respect of other offences by the law of a Contracting Party, that Party shall notify the Secretary General. The Secretary General shall inform the other signatories. Such notification shall not take effect until three months from the date of its receipt by the Secretary General.
6. Any Party which avails itself of the right provided for in paragraphs 4 or 5 of this article may at any time apply this Convention to offences which have been excluded from it. It shall inform the Secretary General of the Council of such changes, and the Secretary General shall inform the other signatories.
7. Any Party may apply reciprocity in respect of any offences excluded from the application of the Convention under this article.

Article 3

Political offences

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
3. The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
4. This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character.

Article 4

Military offences

Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Convention.

Article 5

Fiscal offences

Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.

Article 6

Extradition of nationals

1. (*a*) A Contracting Party shall have the right to refuse extradition of its nationals.

   (*b*) Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention.

   (*c*) Nationality shall be determined as at the time of the decision concerning extradition. If, however, the person claimed is first recognised as a national of the requested Party during the period between the time of the decision and the time contemplated for the surrender, the requested Party may avail itself of the provision contained in sub-paragraph a of this article.
2. If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The requesting Party shall be informed of the result of its request.

Article 7

Place of commission

1. The requested Party may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.
2. When the offence for which extradition is requested has been committed outside the territory of the requesting Party, extradition may only be refused if the law of the requested Party does not allow prosecution for the same category of offence when committed outside the latter Party's territory or does not allow extradition for the offence concerned.

Article 8

Pending proceedings for the same offences

The requested Party may refuse to extradite the person claimed if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which extradition is requested.

Article 9

Non bis in idem

Extradition shall not be granted if final judgment has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences.

Article 10

Lapse of time

Extradition shall not be granted when the person claimed has, according to the law of either the requesting or the requested Party, become immune by reason of lapse of time from prosecution or punishment.

Article 11

Capital punishment

If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out.

Article 12

The request and supporting documents

1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.
2. The request shall be supported by:
   (*a*) The original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
   (*b*) A statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
   (*c*) A copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality.

Article 13

Supplementary information

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.

Article 14

Rule of speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

   (*a*) When the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;

   (*b*) When that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

2. The requesting Party may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

3. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 15

Re-extradition to a third state

Except as provided for in Article 14, paragraph 1.b, the requesting Party shall not, without the consent of the requested Party, surrender to another Party or to a third State a person surrendered to the requesting Party and sought by the said other Party or third State in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 12, paragraph 2.

Article 16

Provisional arrest

1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

2. The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 17

Conflicting requests

If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 18

Surrender of the person to be extradited

1. The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.
2. Reasons shall be given for any complete or partial rejection.
3. If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
4. Subject to the provisions of paragraph 5 of this article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him for the same offence.
5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this article shall apply.

Article 19

Postponed or conditional surrender

1. The requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that Party or, if he has already been convicted, in order that he may serve his sentence in the territory of that Party for an offence other than that for which extradition is requested.
2. The requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the requesting Party in accordance with conditions to be determined by mutual agreement between the Parties.

Article 20

Handing over of property

1. The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:

   (*a*) Which may be required as evidence, or

   (*b*) Which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.
2. The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.
3. When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.
4. Any rights which the requested Party or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the requested Party as soon as possible after the trial.

Article 21

Transit

1. Transit through the territory of one of the Contracting Parties shall be granted on submission of a request by the means mentioned in Article 12, paragraph 1, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of this Convention.
2. Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.
3. Subject to the provisions of paragraph 4 of this article, it shall be necessary to produce the documents mentioned in Article 12, paragraph 2.
4. If air transport is used, the following provisions shall apply:
   (*a*) When it is not intended to land, the requesting Party shall notify the Party over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 12, paragraph 2.a exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 16, and the requesting Party shall submit a formal request for transit;
   (*b*) When it is intended to land, the requesting Party shall submit a formal request for transit.
5. A Party may, however, at the time of signature or of the deposit of its instrument of ratification of, or accession to, this Convention, declare that it will only grant transit of a person on some or all of the conditions on which it grants extradition. In that event, reciprocity may be applied.
6. The transit of the extradited person shall not be carried out through any territory where there is reason to believe that his life or his freedom may be threatened by reason of his race, religion, nationality or political opinion.

Article 22

Procedure

Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party.

Article 23

Language to be used

The documents to be produced shall be in the language of the requesting or requested Party. The requested Party may require a translation into one of the official languages of the Council of Europe to be chosen by it.

Article 24

Expenses

1. Expenses incurred in the territory of the requested Party by reason of extradition shall be borne by that Party.
2. Expenses incurred by reason of transit through the territory of a Party requested to grant transit shall be borne by the requesting Party.
3. In the event of extradition from a non-metropolitan territory of the requested Party, the expenses occasioned by travel between that territory and the metropolitan territory of the requesting Party shall be borne by the latter. The same rule shall apply to expenses occasioned by travel between the non-metropolitan territory of the requested Party and its metropolitan territory.

Article 25

Definition of "detention order"

For the purposes of this Convention, the expression "detention order" means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence.

Article 26

Reservations

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
2. Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
3. A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

Article 27

Territorial application

1. This Convention shall apply to the metropolitan territories of the Contracting Parties.
2. In respect of France, it shall also apply to Algeria and to the overseas Departments and, in respect of the United Kingdom of Great Britain and Northern Ireland, to the Channel Islands and to the Isle of Man.
3. The Federal Republic of Germany may extend the application of this Convention to the *Land* of Berlin by notice addressed to the Secretary General of the Council of Europe, who shall notify the other Parties of such declaration.
4. By direct arrangement between two or more Contracting Parties, the application of this Convention may be extended, subject to the conditions laid down in the arrangement, to any territory of such Parties, other than the territories mentioned in paragraphs 1, 2 and 3 of this article, for whose international relations any such Party is responsible.

Article 28

Relations between this Convention and bilateral Agreements

1. This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.
2. The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
3. Where, as between two or more Contracting Parties, extradition takes place on the basis of a uniform law, the Parties shall be free to regulate their mutual relations in respect of extradition exclusively in accordance with such a system notwithstanding the provisions of this Convention. The same principle shall apply as between two or more Contracting Parties each of which has in force a law providing for the execution in its territory of warrants of arrest issued in the territory of the other Party or Parties. Contracting Parties which exclude or may in the future exclude the application of this Convention as between themselves in accordance with this paragraph shall notify the Secretary General of the Council of Europe accordingly. The Secretary General shall inform the other Contracting Parties of any notification received in accordance with this paragraph.

Article 29

Signature, ratification and entry into force

1. This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
2. The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
3. As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

Article 30

Accession

1. The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation receives the unanimous agreement of the members of the Council who have ratified the Convention.
2. Accession shall be by deposit with the Secretary General of the Council of an instrument of accession, which shall take effect 90 days after the date of its deposit.

Article 31

Denunciation

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

Article 32

Notifications

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

(*a*) The deposit of any instrument of ratification or accession;

(*b*) The date of entry into force of this Convention;

(*c*) Any declaration made in accordance with the provisions of Article 6, paragraph 1, and of Article 21, paragraph 5;

(*d*) Any reservation made in accordance with Article 26, paragraph 1;

(*e*) The withdrawal of any reservation in accordance with Article 26, paragraph 2;

(*f*) Any notification of denunciation received in accordance with the provisions of Article 31 and by the date on which such denunciation will take effect.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Paris, this 13th day of December 1957, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory governments.

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ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON EXTRADITION

Adopted in Strasbourg on 15 October 1975

Entry into force: 20 August 1979, in accordance with Article 3
Text: *European Treaty Series*, No. 86

The Member States of the Council of Europe, signatory to this Protocol,

Having regard to the provisions of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention") and in particular Articles 3 and 9 thereof;

Considering that it is desirable to supplement these Articles with a view to strengthening the protection of humanity and of individuals,

Have agreed as follows:

CHAPTER I

Article 1

For the application of Article 3 of the Convention, political offences shall not be considered to include the following:

(*a*) The crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;

(*b*) The violations specified in Article 50 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 51 of the 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea, Article 130 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War and Article 147 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War;

(*c*) Any comparable violations of the laws of war having effect at the time when this Protocol enters into force and of customs of war existing at that time, which are not already provided for in the above-mentioned provisions of the Geneva Conventions.

CHAPTER II

Article 2

1. Article 9 of the Convention shall be supplemented by the following text, the original Article 9 of the Convention becoming paragraph 1 and the under-mentioned provisions becoming paragraphs 2, 3 and 4:

"2. The extradition of a person against whom a final judgment has been rendered in a third State, Contracting Party to the Convention, for the offence or offences in respect of which the claim was made, shall not be granted:

(*a*) If the afore-mentioned judgment resulted in his acquittal;

(*b*) If the term of imprisonment or other measure to which he was sentenced:

(i) Has been completely enforced;

(ii) Has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty;

(*c*) If the court convicted the offender without imposing a sanction.

3. However, in the cases referred to in paragraph 2, extradition may be granted:

   (*a*) If the offence in respect of which judgment has been rendered was committed against a person, an institution or any thing having public status in the requesting State;

   (*b*) If the person on whom judgment was passed had himself a public status in the requesting State;

   (*c*) If the offence in respect of which judgment was passed was committed completely or partly in the territory of the requesting State or in a place treated as its territory.

4. The provisions of paragraphs 2 and 3 shall not prevent the application of wider domestic provisions relating to the effect of *ne bis in idem* attached to foreign criminal judgments."

CHAPTER III

Article 3

1. This Protocol shall be open to signature by the Member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
4. A Member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 4

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 5

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 8 of this Protocol.

Article 6

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it does not accept one or the other of Chapters I or II.
2. Any Contracting Party may withdraw a declaration it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
3. No reservation may be made to the provisions of this Protocol.

Article 7

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 8

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
3. Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 9

The Secretary General of the Council of Europe shall notify the Member States of the Council and any State which has acceded to the Convention of:

(*a*) Any signature;

(*b*) Any deposit of an instrument of ratification, acceptance, approval or accession;

(*c*) Any date of entry into force of this Protocol in accordance with Article 3 thereof;

(*d*) Any declaration received in pursuance of the provisions of Article 5 and any withdrawal of such a declaration;

(*e*) Any declaration made in pursuance of the provisions of Article 6, paragraph 1;

(*f*) The withdrawal of any declaration carried out in pursuance of the provisions of Article 6, paragraph 2;

(*g*) Any notification received in pursuance of the provisions of Article 8 and the date on which denunciation takes effect.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 15th day of October 1975, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

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SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON EXTRADITION

Adopted in Strasbourg on 17 March 1978

Entry into force: 5 June 1983, in accordance with Article 6
Text: *European Treaty Series*, No. 98

The Member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

CHAPTER I

Article 1

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:

"This right shall also apply to offences which are subject only to pecuniary sanctions."

CHAPTER II

Article 2

Article 5 of the Convention shall be replaced by the following provisions:

"Fiscal offences

1. For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
2. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party."

CHAPTER III

Article 3

The Convention shall be supplemented by the following provisions:

"Judgments *in absentia*

When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him *in absentia*, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.

2. When the requested Party informs the person whose extradition has been requested of the judgment rendered against him *in absentia*, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State".

Chapter IV

Article 4

The Convention shall be supplemented by the following provisions:

"Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law."

Chapter V

Article 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

"The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties."

Chapter VI

Article 6

1. This Protocol shall be open to signature by the Member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
4. A Member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 7

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 8

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

Article 9

1. Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:

   (*a*) Not to accept Chapter I;

   (*b*) Not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;

   (*c*) Not to accept Chapter III, or to accept only paragraph 1 of Article 3;

   (*d*) Not to accept Chapter IV;

   (*e*) Not to accept Chapter V.
3. Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim, the application of that provision in so far as it has itself accepted it.
5. No other reservation may be made to the provisions of this Protocol.

Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
3. Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

The Secretary General of the Council of Europe shall notify the Member States of the Council and any State which has acceded to the Convention of:

(*a*) Any signature of this Protocol;

(*b*) Any deposit of an instrument of ratification, acceptance, approval or accession;

(*c*) Any date of entry into force of this Protocol in accordance with Articles 6 and 7;

(*d*) Any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;

(*e*) Any declaration received in pursuance of the provisions of paragraph 1 of Article 9;

(*f*) Any reservation made in pursuance of the provisions of paragraph 2 of Article 9;

(*g*) The withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;

(*h*) Any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

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EUROPEAN CONVENTION ON CONSULAR FUNCTIONS

Adopted in Paris on 11 December 1967

Entry into force: In accordance with Article 50
Text: *European Treaty Series*, No. 61

PREAMBLE

The Member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in order to protect and promote the ideals and principles that are their common heritage and to facilitate their economic and social progress, and that this aim can in particular be attained by the conclusion of international conventions;

Taking note of the fact that consular relations, privileges and immunities are dealt with in the Vienna Convention on Consular Relations signed on 24th April 1963, and in other conventions;

Being convinced that the conclusion of a European Convention on Consular Functions will further the process of European unification and co-operation;

Affirming that the questions not regulated by the present Convention continue to be governed by customary international law;

Whereas it has been found possible to establish special rules in this field, concerning the consular officers of the Contracting Parties, solely by virtue of the close co-operation between them,

Have agreed as follows:

CHAPTER I

DEFINITIONS

Article 1

For the purposes of the present Convention,

(*a*) "Consular officer" means any person entrusted by the sending State with, and admitted by the receiving State to, the exercise of consular functions;

(*b*) "Sending State" means the Contracting Party by whom a consular officer is appointed;

(*c*) "Receiving State" means a Contracting Party within whose territory a consular officer performs his functions;

(*d*) "National" means, in relation to the sending State, any person who is regarded as a national by the law of that State, including, where the context so permits, any legal person;

(*e*) "Consular post" means any consulate-general, consulate, vice-consulate or consular agency;

(*f*) "Consular district" means the area assigned to a consular post for the exercise of consular functions;

(*g*) "Vessel of the sending State" means any seagoing vessel, other than a warship, which possesses the nationality of the sending State under the law of that State.

CHAPTER II

GENERAL CONSULAR FUNCTIONS

Article 2

1. A consular officer shall be entitled to protect the nationals of the sending State and to defend their rights and interests.

2. He shall likewise be entitled to further the interests of the sending State, including its interests in relation to commercial, economic, social, professional, touristic, artistic, scientific, educational and maritime matters and civil aviation, and to promote and develop co-operation between the sending and the receiving States in these and other fields.

3. Upon notification to the receiving State, any Contracting Party is entitled to entrust the protection of its nationals and the defence of their rights and interests to consular officers of another Contracting Party.

Article 3

1. In the exercise of his consular functions, a consular officer shall be entitled to apply:

   (*a*) To the competent authorities, administrative and judicial, of his district;

   (*b*) In matters relevant to his district, to the competent central authorities, administrative and judicial, of the receiving State to the extent that this is permitted by the practice of that State.

2. In the case of any written communication to these authorities, the authority concerned may require that a translation should be made into one of the official languages of the receiving State.

Article 4

With a view to the protection of the rights and interests of the nationals of the sending State, a consular officer shall be entitled:

(*a*) Subject to the provisions of Article 6 to have access to, communicate with, interview and advise, any such national;

(*b*) To seek information on any incident affecting the interests of any such national;

(*c*) To assist any such national in his relations with the administrative authorities referred to in Article 3;

(*d*) To assist him, provided that there is nothing contrary thereto in the law of the receiving State, in proceedings before the judicial authorities referred to in Article 3;

(e) To arrange legal representation for him if necessary;

(*f*) To suggest an interpreter to assist any such national before the authorities referred to in Article 3, or, with the consent of the said authorities, act as interpreter on behalf of any such national.

Article 5

A national of the sending State shall at all times be entitled to communicate with the appropriate consular officer subject to the provisions of Article 6, and, unless he is under arrest or detention, to have access to him at his consular post.

Article 6

1. A consular officer shall be informed without delay by the competent authorities of the receiving State when, within his district, any national of the sending State is subjected by the said authorities to any measure depriving him of his liberty.

2. All communications between a consular officer and a national of the sending State who is arrested or detained otherwise than in pursuance of a final judgment of a court or of a final administrative decision, shall be forwarded without delay by the competent authorities. A consular officer shall be entitled to visit him and to interview him. The rights referred to in the present paragraph shall be exercised in conformity with the law of the receiving State, provided, however, that the said law enables full effect to be given to the purposes for which the rights accorded under this paragraph are intended.

3. All communications between a consular officer and a national of the sending State who is detained in an institution within his district in pursuance of a final judgment of a court or of a final administrative decision, shall be forwarded without delay having regard to the regulations of that institution. Subject to that limitation, a consular officer shall have the right, after having informed the competent authority, to visit such national and to interview him, including interviews in private.

Article 7

A consular officer shall be entitled to:

(*a*) Register nationals of the sending State;

(*b*) Issue and renew to nationals of the sending State and to any other persons entitled to receive them:

(i) Identity documents;

(ii) Passports or other travel documents;

(*c*) Grant and renew visas for entry into the sending State.

Article 8

A consular officer shall be entitled to:

(*a*) Carry out all formalities connected with compulsory national service including the military obligations of nationals of the sending State, issue notices for their attention, and send them individual calling-up papers or any other papers relating to such obligations;

(*b*) Send individual notifications to nationals of the sending State in connection with referendums and elections, national and local, and to receive ballot papers of his nationals qualified to participate in the said referendums and elections.

Article 9

A consular officer shall be entitled in civil and commercial matters to serve judicial documents, transmit extra-judicial documents or take evidence on behalf of the courts of the sending State, in accordance with international agreements in force or, in the absence of such agreements, if no objection is raised by the receiving State.

Article 10

A consular officer may issue certificates of origin or of immediate source of goods and other similar documents.

Article 11

A consular officer may receive for safe custody such sums of money, documents and objects of all kinds as may be delivered to him by, or on behalf of, nationals of the sending State.

Article 12

1. A consular officer shall be entitled to receive such declarations as may be required by the law of the sending State, particularly as regards nationality.
2. He shall likewise be entitled, to the extent that there is nothing contrary thereto in the law of the receiving State, to legalise or certify signatures, authenticate or certify documents, and translate these documents in particular for the purpose of their production before an authority in the receiving State.

Article 13

1. A consular officer shall be entitled to:

(*a*) Draw up or record documents on the birth or death of nationals of the sending State or any other documents concerning the civil status of such nationals;

(*b*) Celebrate a marriage, provided that at least one of the parties is a national of the sending State, that neither of them is a national of the receiving State and that there is nothing in the law of the receiving State which would prevent the celebration of the marriage by the consular officer.

2. The issue of the documents referred to in paragraph 1.(a) shall not involve exemption from any obligation imposed by the law of the receiving State.

Article 14

1. Provided that there is nothing contrary thereto in the law of the receiving State and without prejudice to any action which the competent authorities of that State may take to this effect, a consular officer shall be entitled to safeguard the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly to arrange for matters of guardianship and trusteeship.
2. When such guardianship or trusteeship is to be arranged by the authorities of the receiving State, a consular officer shall be entitled to:

   (*a*) Propose to those authorities a person suitable to be appointed guardian or trustee;

   (*b*) Concern himself with the interests of such minors and other persons lacking full capacity.
3. If it should come to the knowledge of the competent local authorities of the receiving State that a national of the sending State, in respect of whom guardianship or trusteeship is to be arranged, is in the receiving State, they shall inform the appropriate consular officer accordingly. The consular officer shall similarly inform the said authorities if such information should reach him through any other channel.

Article 15

1. A consular officer shall be entitled to draw up or receive in notarial form or in such similar form as may be laid down by the law of the sending State:

   (*a*) Acts and contracts concerning exclusively nationals of the sending State;

   (*b*) Contracts of marriage provided that at least one of the parties is a national of the sending State;

   (*c*) Acts and contracts notwithstanding that none of the parties concerned is a national of the sending State, provided that such acts and contracts relate to property situated within that State or are intended to have effect within that State.
2. The acts and contracts referred to in the preceding paragraph shall have judicial effect in the receiving State only to the extent that there is nothing contrary thereto under the law of that State.
3. When the law of the sending State requires the administration of an oath or affirmation, a consular officer shall be entitled to administer such oath or affirmation.

Article 16

1. A consular officer may advise nationals of the sending State in regard to their rights and duties under the law of the receiving State relating to social security and social and medical assistance, and assist them in this connection.
2. He may, in particular, when the beneficiary is not duly represented in the receiving State receive, in accordance with the law of that State, payment of pensions or allowances due to nationals of the sending State, and pass them on to the entitled persons, in conformity with the law of the sending State and with international agreements in force, especially in the field of social security.

CHAPTER III

ESTATES

Article 17

1. The competent authorities of the receiving State shall inform the appropriate consular officer as soon as they have knowledge:

   (*a*) Of the death within his district of any national of the sending State;

   (*b*) Of the existence in the district of an estate with regard to which the consular officer may have a right to represent interests under the provisions of this chapter.

2. The consular officer, if he is the first to have knowledge of such a death or the existence of such an estate shall similarly inform the competent authorities of the receiving State and, should the eventuality arise, other consular officers concerned.

Article 18

If a national of the sending State dies in the receiving State without being either domiciled or ordinarily resident there, the consular officer within whose district such national has died shall be permitted, for the purpose of safeguarding the money and effects in the personal possession of the deceased, to take immediate custody thereof, subject to the right of the administrative or judicial authorities of the receiving State to take custody of such money and effects in any case where the interests of justice so require. The preservation or disposal of such money or effects shall be subject to the law of the receiving State.

Article 19

If, in the receiving State, it is permitted to receive and distribute an estate of small value without first obtaining a grant of representation, a consular officer shall be entitled to receive and distribute such an estate of a national of the sending State.

Article 20

1. In any case where a deceased person leaves property in the receiving State and a national of the sending State who is not resident in the receiving State and is not legally represented there has or may have an interest in such property, the consular officer in whose district the estate is being administered or otherwise dealt with in conformity with the law of the receiving State, or, failing this, in whose district the property is situated, shall have the right to represent such national as regards his interests in the estate or property as if power of attorney had been conferred by him upon the consular officer.
2. The provisions of the foregoing paragraph shall, provided that this is consistent with the law of the receiving State, also apply when a national of the sending State who is resident in the receiving State is incapable of exercising his rights.
3. The presumed power of attorney of the consular officer shall cease to be operative as from the date when the consular officer is informed that such national is defending his interests in the receiving State either in person or through a duly appointed representative.
4. If, however, a grant has been made to the consular officer in accordance with Article 23, the presumed power of attorney shall cease to be operative as from the date when at the request of the national or his representative, or otherwise, the grant is terminated.

Article 21

1. When a consular officer exercises the right of representation provided for by Article 20, he may intervene with a view to the protection and preservation of the interests of the person whom he is entitled to represent, subject to the provisions of paragraph 1 of Article 23. He may, for example, request the administrative or judicial authorities of the receiving State to place the property under seal and subsequently to remove the seals and make the inventory.
2. Where Article 20 does not apply, the consular officer of the State of which the deceased was a national may, provided that this is consistent with the law of the receiving State, intervene, to the same extent and subject to the provisions in paragraph 1 of Article 23, with a view to the protection and preservation of the property. He may likewise intervene when the executors are not present or represented.

Article 22

When a consular officer exercises the right of representation provided for by Article 20, he may, subject to the provisions of paragraph 2 of Article 23, and provided that this is consistent with the law of the receiving State, also take into his control and administer the estate to the same extent as if a power of attorney had been conferred upon him by the national, unless another person, having equal or greater rights, has already taken the necessary steps for this purpose.

Article 23

1. If, under the law of the receiving State, a grant of representation or order of a court is necessary to enable the consular officer to protect and preserve the estate, any grant or order which would have been made in

favour of the duly appointed attorney of the person whose interests are represented by the consular officer shall be made in favour of the consular officer on his application. On *prima facie* evidence of the necessity for the immediate protection and preservation of the estate and of the existence of persons with an interest therein which the consular officer has a right to represent, the court may make a grant or order to the consular officer provisionally, limited to the protection and preservation of the estate until such time as a further grant or order is made.

2. If, under the law of the receiving State, a grant of representation is necessary to enable the consular officer to take control of and to administer the estate, the consular officer shall be entitled to request and obtain a grant of representation in the same way as the duly appointed attorney of the person whose interests he represents.

3. The court may postpone the making of a grant to a consular officer for such time as it deems necessary to enable the person represented by the consular officer to be informed and to decide whether he desires to be represented otherwise than by the consular officer.

Article 24

1. Where a consular officer has a grant under paragraph 2 of Article 23, he shall, if the court so requests, furnish reasonable evidence of the receipt of the assets by those entitled to them or repay or return those assets to the appropriate authority or person in the event of his being unable to furnish such evidence. He shall likewise, after having administered the estate, transfer the assets to the persons entitled to them through any channels which, if the eventuality arises, the court may direct.

2. Where a consular officer may take into his control and administer an estate without a grant or order of a court, he shall, as regards transfer of the assets to the beneficiaries, be bound by the law of the receiving State.

Article 25

When a consular officer exercises with regard to an estate the rights referred to in Articles 18 to 24, he shall, to that extent and in his consular capacity, be subject to the jurisdiction of the courts of the receiving State.

Article 26

A consular officer may receive from a competent authority or person, for transmission to a national of the sending State who is not resident in the receiving State, money or other property to which such national is entitled as a consequence of the death of any person. Such money or other property may include, but is not limited to, shares in an estate, payments made pursuant to social legislation or other relevant laws, and the proceeds of life assurance policies. With regard to furnishing reasonable evidence of the receipt of the money or other property by the national to whom it is to be transmitted, and with regard to returning the money or other property in the event of the consular officer being unable to furnish such evidence, the latter shall comply with any conditions laid down by the competent authority or person referred to above.

Article 27

Money or other property may be paid, delivered or transferred to a consular officer, only to the extent that, and subject to the conditions under which, payment, delivery, or transfer to the person whom the consular officer represents or on whose behalf he receives the money or other property, would be permitted under the law of the receiving State. The consular officer shall acquire no greater rights in respect of such money or other property than the person whom he represents or on whose behalf he receives the money or other property would have acquired, if the money or other property had been paid, delivered or transferred to such person directly.

CHAPTER IV

SHIPPING

Article 28

When a vessel of the sending State is in a port of the receiving State or in the territorial or internal waters of that State, a consular officer shall be entitled to afford all appropriate assistance to the vessel.

Article 29

A consular officer may invoke the assistance of the authorities of the receiving State in any matter pertaining to the performance of the functions described in this chapter, and the said authorities shall give such assistance unless they have serious reasons to put forward for refusing it in a particular case.

Article 30

1. When a vessel of the sending State is in a port of the receiving State or anchors in the territorial or internal waters of that State, the appropriate consular officer may, as soon as she has received pratique, go on board this vessel himself or send his representative.

2. The master and members of the crew shall be permitted to communicate with the consular officer. They may proceed to the consular post provided that sufficient time is available before the departure of the vessel. If, however, the authorities of the receiving State consider that sufficient time is not available, they shall immediately so inform the appropriate consular officer.

Article 31

A consular officer shall be entitled to:

(*a*) Question the master and members of the crew of a vessel of the sending State;

(*b*) Examine and countersign the vessel's papers;

(*c*) In cases where this is required by the maritime laws of the sending State, take statements and execute maritime declarations with regard to all events relating to the master, members of the crew and other persons on board, the vessel, its voyage, destination and cargo;

(*d*) Generally facilitate the vessel's entry into, stay in, and departure from, a port, or territorial or internal waters;

(*e*) Deliver on behalf of the sending State any documents necessary to enable the vessel to sail;

(*f*) Issue and renew special documents relating to seamen in conformity with the law of the sending State;

(*g*) Arrange for the engagement, embarkation, discharge and disembarkation of the master and members of the crew;

(*h*) Receive, draw up or execute any declaration or other document prescribed by the maritime laws of the sending State concerning, *inter alia*:

(i) The entry in, or removal from, the register of the sending State of any vessel;

(ii) The transfer from one owner to another of any vessel inscribed on that register;

(iii) The registration of any mortgage or charge of such a vessel;

(iv) The fitting-out or laying-up of such a vessel;

(v) The loss of such a vessel, or average in relation to such a vessel;

(*i*) Take any other measures for the enforcement on board the vessel of the maritime laws of the sending State.

Article 32

A consular officer or his representative shall be entitled to aid the master and members of the crew in their dealings with the administrative or judicial authorities of the receiving State.

Article 33

Subject to the provisions of Articles 35 and 36, a consular officer shall be entitled to:

(*a*) Take measures for the preservation of good order and discipline on board vessels of the sending State;

(*b*) Settle disputes between the master and members of the crew, including disputes as to wages and contracts of service.

Article 34

1. A consular officer may make arrangements for medical assistance, including treatment in hospital, for the master and members of the crew of a vessel of the sending State, even after discharge.
2. He may likewise make arrangements for the repatriation of any such person.

Article 35

1. Except at the request or with the consent of the consular officer, the administrative authorities of the receiving State shall not concern themselves with any matter relating to the internal management of the vessel.
2. The administrative or judicial authorities of the receiving State shall not interfere with the detention of a seaman in custody on the vessel for a disciplinary offence, provided that such detention is lawful under the law of the sending State and is not accompanied by unjustifiable severity or inhumanity, and provided that there is no reasonable cause for believing that the life or liberty of the seaman will be endangered, for reasons of race, nationality, political opinion, or religion, in any country to which the vessel is likely to sail.
3. With regard to disputes between the master and members of the crew as to wages and contracts of service, the judicial authorities of the receiving State shall not exercise such jurisdiction as they possess under the law of that State unless the consular officer has been notified and has raised no objection.

Article 36

1. Unless paragraphs 2 and 3 of the present article provide otherwise, the judicial and administrative authorities of the receiving State shall not entertain prosecutions or intervene, as the case may be, in relation to offences committed or matters occurring on board the vessel, except at the request or with the consent of the consular officer or other duly authorised person.
2. Irrespective of the consent of the consular officer or other duly authorised person, the judicial authorities of the receiving State may entertain prosecutions in respect of offences committed on board the vessel, when these offences:
   (*a*) Have been committed by or against any person other than the master or member of the crew or by or against a national of the receiving State;
   (*b*) Involve the tranquillity or safety of a port of the receiving State or the safety of the territorial or internal waters of such State;
   (*c*) Are offences against the law of the receiving State regarding public safety, public health, the safeguarding of life at sea, immigration, customs or oil pollution;
   (*d*) Are grave offences.
3. The administrative authorities of the receiving State may likewise, intervene, irrespective of the consent of the consular officer or other duly authorised person, in relation to matters occurring on board the vessel:
   (*a*) Where a person has been charged with having committed on board an offence in respect of which the judicial authorities of the receiving State may, in conformity with the foregoing paragraph, entertain a prosecution, or where there is reasonable cause for believing that such offence is about to be or is being or has been committed, on board;
   (*b*) Where they are entitled to intervene in conformity with paragraph 2 of Article 35;
   (*c*) Where a person is detained on board against his will, with the exception of a member of the crew detained for a disciplinary offence;
   (*d*) For the purpose of taking any action or making any examination which they consider necessary in regard to any of the matters specified in sub-paragraphs b and c of the foregoing paragraph.
4. For the purposes of this article, the term “grave offence” shall mean any offence which under the law of the receiving State is punishable with a maximum sentence of at least five years deprivation of liberty, or in the case of States which make a notification to this effect, three years or four years deprivation of liberty as the case may be.

Article 37

1. Unless it is impossible by reason of the urgency of the matter, the consular officer shall be given prior notice in sufficient time to enable him to be present whenever the authorities of the receiving State proceed on board the vessel to act in pursuance of Article 36.
2. In all cases where the authorities of the receiving State take action under Article 36, they shall provide the consular officer with full information about what has taken place.
3. The provisions of this article shall not apply to routine examination concerning customs, public health, the policing of ports, dangerous goods and immigration control.

Article 38

1. If a member of the crew of a vessel fails to report for duties on board a vessel of the sending State, the administrative and judicial authorities of the receiving State shall, at the request of the consular officer, accord every possible assistance in finding the said member of the crew.
2. On proof of desertion, the authorities of the receiving State shall, subject to the provisions of Article 29, detain the deserter and convey him on board the vessel, or deliver him to the master or such other person as may be competent under the law of the receiving State.
3. The authorities of the receiving State shall not, however, be bound by the provisions of the preceding paragraph:
   (*a*) If the deserter is a national of the receiving State;
   (*b*) If there is reasonable cause for believing that his life or liberty will be endangered for reason of race, nationality, political opinion or religion in any country to which the vessel is likely to sail.
4. If a member of the crew of a vessel misses that vessel and wishes to rejoin her at another port or to join another vessel or otherwise to leave the receiving State forthwith, the authorities of that State, at the request of the consular officer shall, subject to the provisions of Article 29, and where appropriate, accord facilities and assistance for these purposes and refrain from any action which would impede their fulfilment.

Article 39

1. The authorities of the receiving State shall inform the appropriate consular officer as soon as it comes to their knowledge that:
   (*a*) A vessel of the sending State has been wrecked or stranded in the territorial or internal waters of the receiving State, or in the vicinity of those waters;
   (*b*) parts of a vessel of the sending State or of her cargo, have come to shore in the receiving State.
2. The authorities of the receiving State shall take all necessary measures to maintain order, to ensure the protection of the vessel and of persons and property in the cases mentioned in the preceding paragraph, and to prevent any damage that might be caused to other vessels or to harbour installations. The authorities shall also inform the appropriate consular officer as soon as possible of the measures taken and, where appropriate and practicable, shall associate him with these measures.

Article 40

1. If neither the master, the owner nor the insurers or their agents are in a position to make arrangements to this effect, the appropriate consular officer may, as a representative of the owner, make, in collaboration with the authorities and in accordance with the law of the receiving State, the same arrangements in respect of any vessel, part of a vessel or cargo to which paragraph 1 of Article 39 applies, as the owner could have made if he had been present.
2. Articles belonging to such a vessel or cargo shall not be liable to customs duties or import tax, unless they are brought ashore for use or consumption within the receiving State. The authorities of the receiving State may, however, if they think fit, require security for the protection of the revenue in relation to such articles temporarily based in the receiving State.

Article 41

1. If a master or member of a crew, not being a national of the State of the flag, has died at sea, or on land in any country whatsoever, the competent authorities of the State of the flag shall, without delay, send to the consular officer or to other competent authorities of the State of the deceased a copy of the accounts they have received relating to the effects, wages and other property of the deceased, as well as all information which may facilitate the search for persons entitled to make claims in order to succeed to his estate.
2. If the value of effects, wages and other property of the deceased master or seaman does not exceed 500 gold Swiss Francs or such higher sum as may be notified subsequently by the State of the flag, the competent authorities of such State, if they are satisfied that a person resident in the State of the deceased is entitled to succeed to the estate of the deceased, shall transfer, without delay, the effects, wages and other property of the deceased master or seaman in their custody to the consular officer or to other competent authorities of the State of the deceased. The authorities of the State of the flag shall, however, be entitled, before making such transfer, to deduct from the said estate any sums necessary to meet debts to persons not resident in the State of the deceased if they are satisfied that such debts are legally valid.

Chapter V

GENERAL PROVISIONS

Article 42

In the exercise of his functions, a consular officer may levy the fees and charges provided for by the sending State. Such fees and charges shall be freely convertible into the currency of, and transferable to, the sending State.

Article 43

The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.

Article 44

1. A consular officer shall be entitled, in addition to the consular functions for which provision is made in the present Convention, to exercise any other consular functions entrusted to him by the sending State which are not prohibited by the law of the receiving State or to which no objection is taken by that State.
2. In any case where the present Convention provides for the exercise by a consular officer of a particular function, it shall be for the sending State to determine whether and to what extent the consular officer shall exercise such function.
3. No Contracting Party may claim under the present Convention the right for its consular officers to exercise in the territory of another Contracting Party any function which it does not permit the consular officers of that Party to exercise.

Article 45

In any case where the application of the present Convention may be of concern to the consular officers of two or more Contracting Parties, it is for the said officers to establish the necessary contacts to ensure effective co-operation not only among themselves but also between themselves and the administrative or judicial authorities of the receiving State.

Article 46

1. A consular officer of the State where a stateless person has his habitual residence, may protect such a person as if Article 2, paragraph 1, of the present Convention applied, provided that the person concerned is not a former national of the receiving State.
2. For the purposes of this article, the term “stateless person” means any person to whom the Convention relating to the status of stateless persons opened for signature at New York on 28th September 1954 applies.

Article 47

The receiving State shall not be obliged to recognise a consular officer as entitled to exercise consular functions on behalf of, or otherwise to act on behalf of or concern himself with, a national of the sending State who has become a political refugee whether for reasons of race, nationality, political opinion or religion.

Article 48

Nothing in the present Convention shall prejudice the special status and international protection accorded to refugees by the Parties to the Convention in conformity with international instruments, present or future.

CHAPTER VI

FINAL PROVISIONS

Article 49

The annexes to the present Convention shall form an integral part thereof.

Article 50

1. The present Convention shall be open to signature by the Member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. The present Convention shall enter into force three months after the date of the deposit of the fifth instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the present Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 51

1. After the entry into force of the present Convention, the Committee of Ministers of the Council of Europe may decide by a unanimous vote to invite any Non-Member European State to accede thereto.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 52

1. Any Contracting Party may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which the present Convention shall apply.
2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the present Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory specified in such declaration, be withdrawn according to the procedure laid down in Article 55 of the present Convention.

Article 53

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in Annex I to the present Convention.
2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

3. A Contracting Party which has made a reservation in respect of any provision of the present Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in as far as it has itself accepted it.

Article 54

Any Contracting Party may declare, by a notification to the Secretary General of the Council of Europe, that it has agreed with one or more other Contracting Parties to expand the scope of certain provisions of the present Convention in respect of their mutual relations. Such notification shall be accompanied by the text of the agreement in question.

Article 55

1. The present Convention shall remain in force indefinitely.
2. Any Contracting Party may, in so far as it is concerned, denounce the present Convention by means of a notification addressed to the Secretary General of the Council of Europe.
3. This denunciation shall take effect six months after the date of receipt by the Secretary General of the notification.

Article 56

1. The parties to any dispute which may arise concerning the application or interpretation of the provisions of this Convention or its Protocols shall first of all seek to resolve it by means of negotiation, conciliation, arbitration or by any other methods of peaceful settlement accepted by mutual agreement between them.

   The Committee of Ministers of the Council of Europe may establish procedures of settlement to be available for use by the parties in dispute if they should so agree.

2. If the parties do not succeed in settling the dispute by one of the methods indicated in the foregoing paragraph, it shall be submitted to the International Court of Justice at the request of one of the parties.

Article 57

The Secretary General of the Council of Europe shall notify the Member States of the Council and any State which has acceded to the present Convention of:

(*a*) Any signature;

(*b*) Any deposit of an instrument of ratification, acceptance or accession;

(*c*) Any date of entry into force of the present Convention in accordance with Articles 50 and 51;

(*d*) Any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 52;

(*e*) Any reservation made in pursuance of the provisions of paragraph 1 of Article 53;

(*f*) The withdrawal of any reservations carried out in pursuance of the provisions of paragraph 2 of Article 53;

(*g*) Any notification received in pursuance of the provisions of paragraph 4 of Article 36, paragraph 2 of Article 41, or Article 54;

(*h*) Any notification received in pursuance of the provisions of Article 55 and the date on which denunciation takes effect.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE at Paris, this 11th day of December 1967, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

Annex I

Any Contracting Party may declare that it reserves the right:

1. Not to admit the obligation to inform the consular officers mentioned in Article 6, paragraph 1, if the person concerned, after having been informed without delay of his rights, does not so request and not to permit the exercise of the right of visit provided for by paragraphs 2 and 3 of Article 6, unless the person concerned has no objection;
2. To decide that the notices to be issued by consular officers for the attention of their nationals under Article 8, paragraph a, shall in no case be published in the local press;
3. Not to permit consular officers to receive, in any form, ballot papers transmitted to them in accordance with Article 8, paragraph b, by their nationals desirous of participating in a referendum or election;
4. Not to recognise as having effect within the territory documents concerning civil status drawn up by a consular officer in pursuance of Article 13, paragraph 1, sub-paragraph (a).

Annex II

The Contracting Parties recognise that Austria shall not be bound to apply to shipping within its territory the provisions of Chapter IV of the present Convention relating to shipping.

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PROTOCOL TO THE EUROPEAN CONVENTION ON CONSULAR FUNCTIONS CONCERNING THE PROTECTION OF REFUGEES

Adopted in Paris on 11 December 1967

Entry into force: In accordance with Article 3
Text: *European Treaty Series*, No. 61

PREAMBLE

The Member States of the Council of Europe, signatory hereto,

Having regard to the provisions of the European Convention on Consular Functions (hereinafter referred to as "the Convention");

Desiring to ensure for refugees effective consular protection,

Have agreed as follows:

Article 1

The present Protocol shall apply to refugees in the sense of Article 48 of the Convention.

Article 2

1. The States signatory to the present Protocol recognise the right of a Contracting Party to decline to admit a consular officer as being entitled to act on behalf of, or otherwise concern himself with, a national of his State who is a refugee.
2. The consular officer of the State where the refugee has his habitual residence shall be entitled to protect such a refugee and to defend his rights and interests in conformity with the Convention, in consultation, whenever possible, with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it.

Article 3

1. The present Protocol shall be open to signature by the Member States of the Council of Europe which have signed the Convention. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. The present Protocol shall enter into force three months after the date of the deposit of the fifth instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the present Protocol shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.
4. No Member State of the Council of Europe may ratify or accept the present Protocol unless it has, simultaneously or previously, ratified or accepted the Convention.

Article 4

1. Any State which has acceded to the Convention may accede to the present Protocol after the latter's entry into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 5

1. Any Contracting Party, may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which the present Protocol shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend the present Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory specified in such declaration, be withdrawn according to the procedure laid down in Article 7 of the present Protocol.

Article 6

No reservation may be made in respect of the present Protocol. However, reservations made to the Convention in pursuance of Article 53 thereof shall also apply to the Protocol.

Article 7

1. The present Protocol shall have the same duration as the Convention.

2. Any Contracting Party may, in so far as it is concerned, denounce the present Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

4. Denunciation of the Convention entails automatically denunciation of the present Protocol.

Article 8

The Secretary General of the Council of Europe shall notify the Member States of the Council and any State which has acceded to the present Protocol of:

(*a*) Any signature;

(*b*) Any deposit of an instrument of ratification, acceptance or accession;

(*c*) Any date of entry into force of the present Protocol in accordance with Articles 3 and 4;

(*d*) Any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 5;

(*e*) Any notification received in pursuance of the provisions of Article 7 and the date on which denunciation takes effect.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Protocol.

DONE at Paris, this 11th day of December 1967, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

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EUROPEAN CONVENTION ON THE REPATRIATION OF MINORS

Adopted in The Hague on 28 May 1970

Entry into force: In accordance with Article 23
Text: *European Treaty Series*, No. 71

PREAMBLE

The Member States of the Council of Europe, signatory hereto,

Considering that their close unity is manifested particularly in increased movements of persons;

Considering that although this generally has beneficial consequences, certain problems are nevertheless involved, in particular when a minor is in the territory of a State against the will of those responsible for protecting his interests or when his presence in the territory of a State is incompatible either with his own interests or those of that State;

Convinced of the necessity for mutual co-operation to enable such minors to be compulsorily transferred from one State to another,

Have agreed as follows:

SECTION I

GENERAL INFORMATION

Article 1

For the purposes of this Convention:

(*a*) The term "minor" shall mean any person not having attained his majority under the law applicable according to the rules of private international law of the requesting State and who under this same law has not the right himself to determine his own place of residence;

(*b*) The term "parental authority" shall mean the authority devolving upon natural or legal persons under the law or by a legal or administrative decision, to determine a minor's place of residence;

(*c*) The term "repatriation" shall mean the transfer, in implementation of this Convention, of a minor from one Contracting State to another Contracting State, whether or not the latter is the State of which he is a national.

Article 2

1. This Convention shall apply to minors in the territory of a Contracting State whose repatriation is requested by another Contracting State for one of the following reasons:

   (*a*) The presence of the minor in the territory of the requested State is against the will of the person or persons having parental authority in respect of him;

   (*b*) The presence of the minor in the territory of the requested State is incompatible with a measure of protection or re-education taken in respect of him by the competent authorities of the requesting State;

   (*c*) The presence of the minor is necessary in the territory of the requesting State because of the institution of proceedings there with a view to taking measures of protection and re-education in respect of him.

2. This Convention shall also apply to the repatriation of minors whose presence in its territory a Contracting State deems to be incompatible with its own interests or with the interests of the minors concerned, provided that its legislation authorises removal of the minor from its territory.

Article 3

Each Contracting State shall designate a central authority to formulate, issue and receive requests for repatriation and notify the Secretary General of the Council of Europe of the authority so designated.

SECTION II

REPATRIATION OF A MINOR ON THE REQUEST OF A STATE OTHER THAN THE STATE OF SOJOURN

Article 4

1. Applications for the repatriation of a minor for one of the reasons set out in Article 2, paragraph 1, shall be addressed to the central authority of the State to which the minor is to be repatriated.
2. If the competent authorities of that State consider that the application is well founded and reasonable, the central authority shall issue a request for repatriation to the central authority of the State of sojourn of the minor.

Article 5

1. No decision shall be taken concerning a request for repatriation until the minor, if his capacity for discernment allows, has been heard in person by a competent authority in the requested State.
2. The said authority shall also endeavour to obtain the views of those persons having an interest in the decision, in particular, those having parental authority or those who, in the territory of the requested State, have *de facto* custody of the minor. This ascertainment of views shall not take place in so far as it is likely to prejudice the interests of the minor by reason of the delay which it may cause.

Article 6

The requested State shall grant any request for repatriation which is in conformity with the provisions of the present Convention and grounded on Article 2, paragraph 1, unless it exercises its right to refuse a request in accordance with Articles 7 and 8.

Article 7

A request may be refused:

(*a*) If the minor, according to the law applicable under the rules of private international law of the requested State, has the right himself to determine his place of residence, or if such a right follows from the national law of the requested State;

(*b*) If it is grounded on Article 2, paragraph 1.a and is designed to submit the minor to the authority of a person or persons who do not have parental authority according to the law applicable under the rules of private international law of the requested State or do not have parental authority under the national law of the requested State;

(*c*) If the requested State considers that the requesting State is not competent to take the measures referred to in Article 2, paragraph 1.b and c;

(*d*) If the requested State considers that the repatriation of the minor would be contrary to *ordre public*;

(*e*) If the minor is a national of the requested State;

(*f*) If the minor in question is a national of a State which is not a Party to the Convention, and whose repatriation would not be compatible with the obligations existing between that State and the requested State.

Article 8

The requested State may, moreover, having regard to all the aspects of the case, refuse the request:

(*a*) If, being present in the territory of the requested State, the person or persons having parental authority or those having care of the minor, oppose repatriation;

(*b*) If the repatriation is considered by the requested State to be contrary to the interests of the minor, in particular when he has effective family or social ties in that State or when repatriation is incompatible with a measure of protection or re-education taken in the said State.

Article 9

The decision of the requested State on the request may be postponed:

(*a*) If the parental authority upon which the request is based is contested on serious grounds;

(*b*) If it considers it necessary to prosecute the minor for an offence or to require him to submit to a penal sanction involving deprivation of liberty.

Article 10

If the request is granted the competent authorities in the requesting State and the requested State shall agree as promptly as possible on the repatriation procedure.

Article 11

The requested State may take such provisional measures as seem necessary for the purpose of repatriation, in particular placing the minor in a home for juveniles. It may at any time terminate these measures which shall, in any case, be terminated after the expiration of a period of 30 days if the request has not been granted. The measures in question are governed by the domestic law of the requested State.

Article 12

In urgent cases, the central authority in the requesting State may ask that the provisional measures mentioned in Article 11 be taken before the requested State has received the request for repatriation. Such measures shall cease if the request for repatriation has not been received within ten days.

Article 13

1. No prosecution may be initiated or continued in the requesting State against a person repatriated in accordance with the provisions of this section for offences committed prior to his repatriation, unless the requested State expressly consents to such prosecution. Such consent shall also be required in order to enforce a penal sanction involving deprivation of liberty or any more severe sentence passed in the requesting State before repatriation.
2. The consent referred to in paragraph 1 shall be governed by the rules regulating extradition in the requested State or by such other rule established there for the implementation of this article.
3. Consent may not be withheld in cases where the requested State would be obliged to grant extradition, were extradition to be requested.

SECTION III

REPATRIATION ON THE REQUEST OF THE STATE OF SOJOURN

Article 14

1. In the cases provided for in Article 2, paragraph 2, the State of sojourn of the minor may request another Contracting State to agree to the repatriation of such a minor as hereinafter provided:

   (*a*) When the person or persons having parental authority are in another Contracting State, the request shall be addressed to that other State;

   (*b*) When the person or persons having parental authority are in a State which is not a party to this Convention, the request shall be addressed to the Contracting State where the minor has his habitual residence;

   (*c*) When it is not known in what State the person or persons having parental authority are to be found or when no one has parental authority, the request shall be addressed to the Contracting State where the minor has his habitual residence or, if repatriation to that State is not agreed to or otherwise proves impossible, to the Contracting State of which the minor is a national.

2. The provisions of paragraph 1 shall not affect the powers which Contracting States enjoy under their own legislation in respect of foreign nationals.

Article 15

1. If the requested State agrees to receive the minor the competent authorities in the requesting State and in the requested State shall agree as promptly as possible on the repatriation procedure.
2. The request relating to repatriation may be accompanied by a request that measures be taken which are deemed appropriate because of the conduct, or the situation, of the minor in the requesting State. The request may also specify all other conditions with which the repatriation must comply.

SECTION IV

COMMON PROVISIONS

Article 16

1. All requests relating to repatriation shall be submitted in writing and shall state, in particular:
   (*a*) The name of the issuing central authority;
   (*b*) The identity and nationality of the minor whose repatriation is requested and, if possible, his address in the requested State;
   (*c*) The reasons invoked in support of the request;
   (*d*) If applicable, the authority or person making the application for repatriation as well as their legal relations with the minor.
2. In cases grounded on Article 2, paragraph 1, the request shall be accompanied, where appropriate, by the original or a certified copy either of the document proving parental authority except where such authority derives directly from law, or of the decision ordering a measure of protection or re-education of the minor concerned or of the documents proving the necessity for the minor to appear at the proceedings in course in the requesting State and the purpose of such proceedings.
3. If the requested State considers that the information supplied by the requesting State is not sufficient to enable it to decide on the request, it shall ask for the necessary additional information. It may fix a time-limit for the receipt of such information.

Article 17

1. Subject to paragraph 2 of this article, no translation of requests or of the supporting documents shall be required.
2. Any Contracting State may, when signing or depositing its instrument of ratification, acceptance or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and supporting documents shall be accompanied by a translation into its own language or one of its languages or into one of the official languages of the Council of Europe or into such one of those languages as it shall indicate. The other Contracting States may apply reciprocity.
3. This article shall be without prejudice to any provision concerning translation of requests and supporting documents contained in agreements or arrangements now in force or which may be concluded between two or more Contracting States.

Article 18

Evidence and documents transmitted in connection with this Convention shall be exempt from all formalities of legalisation.

Article 19

1. The transit of a minor in process of repatriation, in pursuance of the present Convention, through the territory of a Contracting State, shall be authorised upon simple notification, of which there shall be a written record by the State from which the repatriation is to be effected.

2. Transit may be refused when:

   (*a*) The minor is the subject of a criminal prosecution in the State of transit or if he is required to submit to a penal sanction involving deprivation of liberty or a more severe penalty;

   (*b*) The minor is a national of the State of transit.

3. If transit is not refused, the minor may neither be arrested nor detained in the State of transit for offences committed before his entry into that State.

4. The State of transit shall seek to ensure that the minor does not elude repatriation.

Article 20

Reasons shall be given for any refusal of repatriation or transit.

Article 21

Communications between central authorities in connection with the implementation of this Convention may be transmitted through the International Criminal Police Organization (Interpol).

Article 22

1. Any costs incurred in implementing this Convention shall be borne by:

   (*a*) The requested State, if such costs are incurred in its territory;

   (*b*) The requesting State, in all other cases.

2. This article shall not prevent the recovery of costs from the minor or other persons responsible for them.

SECTION V

FINAL CLAUSES

Article 23

1. This Convention shall be open to signature by the Member States represented on the Committee of Ministers of the Council of Europe. It shall be subjected to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force three months after the date of deposit of the third instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of deposit of its instrument of ratification or acceptance.

Article 24

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any Non-Member State to accede thereto.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 25

Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, make a declaration defining, as far as it is concerned, the term “nationals” as used in this Convention.

Article 26

1. Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.

2. Any Contracting State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this

Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 29 of this Convention.

Article 27

1. Subject to the provisions of paragraphs 3 and 4 of this article, this Convention shall, in respect of the territories to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements between Contracting States governing the repatriation of minors for the reasons specified in Article 2, to the extent that the Contracting States may always avail themselves of the facilities for repatriation provided for in this Convention.
2. This Convention shall not prevent repatriation or extradition founded either on international agreements or conventions, or on the internal law of the State in question.
3. Contracting States may conclude between themselves bilateral or multilateral agreements on matters governed by this Convention; however, such agreements shall only be made in order to supplement the provisions of this Convention or to facilitate the application of the principles contained herein. Such bilateral or multilateral agreements or arrangements may provide, in particular, for direct relations between competent national authorities.
4. Furthermore, where two or more Contracting States have established or establish relations on the basis of uniform legislation or a special system, these States shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting States which, in accordance with this paragraph, exclude, as between themselves, the application of this Convention, shall notify the Secretary General of the Council of Europe accordingly.

Article 28

The Council of Europe shall keep itself informed concerning the application of this Convention and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 29

1. This Convention shall remain in force indefinitely.
2. Any Contracting State may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 30

The Secretary General of the Council of Europe shall inform the Member States represented on the Committee of Ministers of the Council and any State which has acceded to this Convention of:

(*a*) Any signature;

(*b*) Any deposit of an instrument of ratification, acceptance or accession;

(*c*) Any notification received in accordance with Article 3 of this Convention;

(*d*) Any date of entry into force of this Convention in accordance with Article 23 thereof;

(*e*) Any declaration received in accordance with Article 25;

(*f*) Any notification received in accordance with Article 26;

(*g*) Any notification received in accordance with Article 27, paragraph 4;

(*h*) Any notification received in pursuance of Article 29 and the date on which the denunciation takes effect.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague this 28th May 1970 in English and in French, both texts being equally authoritative, in a single copy, which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory and acceding governments.

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EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

Adopted in Strasbourg on 27 January 1977

Entry into force: 4 August 1978, in accordance with Article 11
Text: *European Treaty Series*, No. 90

The Member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Aware of the growing concern caused by the increase in acts of terrorism;

Wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment;

Convinced that extradition is a particularly effective measure for achieving this result,

Have agreed as follows:

Article 1

For the purposes of extradition between Contracting States, none of the following offences shall be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives:

(*a*) An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;

(*b*) An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;

(*c*) A serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

(*d*) An offence involving kidnapping, the taking of a hostage or serious unlawful detention;

(*e*) An offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;

(*f*) An attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 2

1. For the purpose of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.
2. The same shall apply to a serious offence involving an act against property, other than one covered by Article 1, if the act created a collective danger for persons.
3. The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

Article 3

The provisions of all extradition treaties and arrangements applicable between Contracting States, including the European Convention on Extradition, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 4

For the purpose of this Convention and to the extent that any offence mentioned in Article 1 or 2 is not listed as an extraditable offence in any extradition convention or treaty existing between Contracting States, it shall be deemed to be included as such therein.

Article 5

Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State has substantial grounds for believing that the request for extradition for an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

Article 6

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over an offence mentioned in Article 1 in the case where the suspected offender is present in its territory and it does not extradite him after receiving a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State.
2. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

A Contracting State in whose territory a person suspected to have committed an offence mentioned in Article 1 is found and which has received a request for extradition under the conditions mentioned in Article 6, paragraph 1, shall, if it does not extradite that person, submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

Article 8

1. Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of the offences mentioned in Article 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.
2. Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual assistance if the requested State has substantial grounds for believing that the request for mutual assistance in respect of an offence mentioned in Article 1 or 2 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.
3. The provisions of all treaties and arrangements concerning mutual assistance in criminal matters applicable between Contracting States, including the European Convention on Mutual Assistance in Criminal Matters, are modified as between Contracting States to the extent that they are incompatible with this Convention.

Article 9

1. The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention.
2. It shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 10

1. Any dispute between Contracting States concerning the interpretation or application of this Convention, which has not been settled in the framework of Article 9, paragraph 2, shall, at the request of any Party to the dispute, be referred to arbitration. Each Party shall nominate an arbitrator and the two arbitrators

shall nominate a referee. If any Party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other Party by the President of the European Court of Human Rights. If the latter should be a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court or if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court not being a national of one of the Parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.

2. The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

Article 11

1. This Convention shall be open to signature by the Member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 12

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect immediately or at such later date as may be specified in the notification.

Article 13

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:

   (*a*) That it created a collective danger to the life, physical integrity or liberty of persons; or

   (*b*) That it affected persons foreign to the motives behind it; or

   (*c*) That cruel or vicious means have been used in the commission of the offence.

2. Any State may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
3. A State which has made a reservation in accordance with paragraph 1 of this article may not claim the application of Article 1 by any other State; it may, however, if its reservation is partial or conditional, claim the application of that article in so far as it has itself accepted it.

Article 14

Any Contracting State may denounce this Convention by means of a written notification addressed to the Secretary General of the Council of Europe. Any such denunciation shall take effect immediately or at such later date as may be specified in the notification.

Article 15

This Convention ceases to have effect in respect of any Contracting State which withdraws from or ceases to be a member of the Council of Europe.

Article 16

The Secretary General of the Council of Europe shall notify the Member States of the Council of:

(*a*) Any signature;

(*b*) Any deposit of an instrument of ratification, acceptance or approval;

(*c*) Any date of entry into force of this Convention in accordance with Article 11 thereof;

(*d*) Any declaration or notification received in pursuance of the provisions of Article 12;

(*e*) Any reservation made in pursuance of the provisions of Article 13, paragraph 1;

(*f*) The withdrawal of any reservation effected in pursuance of the provisions of Article 13, paragraph 2;

(*g*) Any notification received in pursuance of Article 14 and the date on which denunciation takes effect;

(*h*) Any cessation of the effects of the Convention pursuant to Article 15.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, this 27th day of January 1977, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

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PROTOCOL AMENDING THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

Adopted in Strasbourg on 15 May 2003

Entry into force: In accordance with Article 18
Text: *European Treaty Series*, No. 190

The Member States of the Council of Europe, signatory to this Protocol,

Bearing in mind the Committee of Ministers of the Council of Europe's Declaration of 12 September 2001 and its Decision of 21 September 2001 on the Fight against International Terrorism, and the Vilnius Declaration on Regional Co-operation and the Consolidation of Democratic Stability in Greater Europe adopted by the Committee of Ministers at its 110th Session in Vilnius on 3 May 2002;

Bearing in mind the Parliamentary Assembly of the Council of Europe's Recommendation 1550 (2002) on Combating terrorism and respect for human rights;

Bearing in mind the General Assembly of the United Nations Resolution A/RES/51/210 on measures to eliminate international terrorism and the annexed Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and its Resolution A/RES/49/60 on measures to eliminate international terrorism and the Declaration on Measures to Eliminate International Terrorism annexed thereto;

Wishing to strengthen the fight against terrorism while respecting human rights, and mindful of the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 11 July 2002;

Considering for that purpose that it would be appropriate to amend the European Convention on the Suppression of Terrorism (ETS No. 90) opened for signature in Strasbourg on 27 January 1977, hereinafter referred to as "the Convention";

Considering that it would be appropriate to update the list of international conventions in Article 1 of the Convention and to provide for a simplified procedure to subsequently update it as required;

Considering that it would be appropriate to strengthen the follow-up of the implementation of the Convention;

Considering that it would be appropriate to review the reservation regime;

Considering that it would be appropriate to open the Convention to the signature of all interested States,

Have agreed as follows:

Article 1

1. The introductory paragraph to Article 1 of the Convention shall become paragraph 1 of this article. In sub-paragraph b of this paragraph, the term "signed" shall be replaced by the term "concluded" and sub-paragraphs c, d, e and f of this paragraph shall be replaced by the following sub-paragraphs:

   "(*c*) An offence within the scope of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted at New York on 14 December 1973;

   (*d*) An offence within the scope of the International Convention Against the Taking of Hostages, adopted at New York on 17 December 1979;

   (*e*) An offence within the scope of the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;

   (*f*) An offence within the scope of the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;".

2. Paragraph 1 of Article 1 of the Convention shall be supplemented by the following four sub-paragraphs:

"(*g*)An offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10 March 1988;

(*h*) An offence within the scope of the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988;

(*i*) An offence within the scope of the International Convention for the Suppression of Terrorist Bombings, adopted at New York on 15 December 1997;

(*j*) An offence within the scope of the International Convention for the Suppression of the Financing of Terrorism, adopted at New York on 9 December 1999."

3. The text of Article 1 of the Convention shall be supplemented by the following paragraph:

"2. Insofar as they are not covered by the conventions listed under paragraph 1, the same shall apply, for the purpose of extradition between Contracting States, not only to the commission of those principal offences as a perpetrator but also to:

(*a*) The attempt to commit any of these principal offences;

(*b*) The participation as an accomplice in the perpetration of any of these principal offences or in an attempt to commit any of them;

(*c*) Organising the perpetration of, or directing others to commit or attempt to commit, any of these principal offences."

Article 2

Paragraph 3 of Article 2 of the Convention shall be amended to read as follows:

"3. The same shall apply to:

(*a*) The attempt to commit any of the foregoing offences;

(*b*) The participation as an accomplice in any of the foregoing offences or in an attempt to commit any such offence;

(*c*) Organising the perpetration of, or directing others to commit or attempt to commit, any of the foregoing offences."

Article 3

1. The text of Article 4 of the Convention shall become paragraph 1 of this article and a new sentence shall be added at the end of this paragraph as follows: "Contracting States undertake to consider such offences as extraditable offences in every extradition treaty subsequently concluded between them."

2. The text of Article 4 of the Convention shall be supplemented by the following paragraph:

"2. When a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, the requested Contracting State may, at its discretion, consider this Convention as a legal basis for extradition in relation to any of the offences mentioned in Articles 1 or 2."

Article 4

1. The text of Article 5 of the Convention shall become paragraph 1 of this article.

2. The text of Article 5 of the Convention shall be supplemented by the following paragraphs:

"2. Nothing in this Convention shall be interpreted as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to torture.

3. Nothing in this Convention shall be interpreted either as imposing on the requested State an obligation to extradite if the person subject of the extradition request risks being exposed to the death penalty or, where the law of the requested State does not allow for life imprisonment, to life imprisonment without the possibility of parole, unless under applicable extradition treaties the requested State is under the obligation to extradite if the requesting State gives such assurance as the requested State

considers sufficient that the death penalty will not be imposed or, where imposed, will not be carried out, or that the person concerned will not be subject to life imprisonment without the possibility of parole."

Article 5

A new article shall be inserted after Article 8 of the Convention and shall read as follows:

"Article 9

The Contracting States may conclude between themselves bilateral or multilateral agreements in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein."

Article 6

1. Article 9 of the Convention shall become Article 10.
2. Paragraph 1 of new Article 10 shall be amended to read as follows:

"The European Committee on Crime Problems (CDPC) is responsible for following the application of the Convention. The CDPC:

(*a*) Shall be kept informed regarding the application of the Convention;

(*b*) Shall make proposals with a view to facilitating or improving the application of the Convention;

(*c*) Shall make recommendations to the Committee of Ministers concerning the proposals for amendments to the Convention, and shall give its opinion on any proposals for amendments to the Convention submitted by a Contracting State in accordance with Articles 12 and 13;

(*d*) Shall, at the request of a Contracting State, express an opinion on any question concerning the application of the Convention;

(*e*) Shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of the execution of the Convention;

(*f*) Shall make recommendations to the Committee of Ministers concerning non-member States of the Council of Europe to be invited to accede to the Convention in accordance with Article 14, paragraph 3;

(*g*) Shall submit every year to the Committee of Ministers of the Council of Europe a report on the follow-up given to this article in the application of the Convention."

3. Paragraph 2 of new Article 10 shall be deleted.

Article 7

1. Article 10 of the Convention shall become Article 11.
2. In the first sentence of paragraph 1 of new Article 11, the terms "Article 9, paragraph 2" shall be replaced by the terms "Article 10.e, or by negotiation". In the second sentence of this paragraph, the term "two" shall be deleted. The remaining sentences of this paragraph shall be deleted.
3. Paragraph 2 of new Article 11 shall become paragraph 6 of this article. The sentence "Where a majority cannot be reached, the referee shall have a casting vote" shall be added after the second sentence and in the last sentence the terms "Its award" shall be replaced by the terms "The tribunal's judgement".
4. The text of new Article 11 shall be supplemented by the following paragraphs:

"2. In the case of disputes involving Parties which are Member States of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the European Court of Human Rights at the request of the other Party.

3. In the case of disputes involving any Party which is not a member of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the International Court of Justice at the request of the other Party.

4. In the cases covered by paragraphs 2 and 3 of this article, where the President of the Court concerned is a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court, or if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court who is not a national of one of the Parties to the dispute.

5. The procedures referred to in paragraphs 2 or 3 and 4 above apply, *mutatis mutandis*, where the arbitrators fail to agree on the nomination of a referee in accordance with paragraph 1 of this article."

Article 8

A new article shall be introduced after new Article 11 and shall read as follows:

"Article 12

1. Amendments to this Convention may be proposed by any Contracting State, or by the Committee of Ministers. Proposals for amendment shall be communicated by the Secretary General of the Council of Europe to the Contracting States.

2. After having consulted the non-member Contracting States and, if necessary, the CDPC, the Committee of Ministers may adopt the amendment in accordance with the majority provided for in Article 20.d of the Statute of the Council of Europe. The Secretary General of the Council of Europe shall submit any amendments adopted to the Contracting States for acceptance.

3. Any amendment adopted in accordance with the above paragraph shall enter into force on the thirtieth day following notification by all the Parties to the Secretary General of their acceptance thereof."

Article 9

A new article shall be introduced after new Article 12 and shall read as follows:

"Article 13

1. In order to update the list of treaties in Article 1, paragraph 1, amendments may be proposed by any Contracting State or by the Committee of Ministers. These proposals for amendment shall only concern treaties concluded within the United Nations Organization dealing specifically with international terrorism and having entered into force. They shall be communicated by the Secretary General of the Council of Europe to the Contracting States.

2. After having consulted the non-member Contracting States and, if necessary the CDPC, the Committee of Ministers may adopt a proposed amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Contracting States. During this period, any Contracting State may notify the Secretary General of any objection to the entry into force of the amendment in its respect.

3. If one-third of the Contracting States notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.

4. If less than one-third of the Contracting States notifies an objection, the amendment shall enter into force for those Contracting States which have not notified an objection.

5. Once an amendment has entered into force in accordance with paragraph 2 of this article and a Contracting State has notified an objection to it, this amendment shall come into force in respect of the Contracting State concerned on the first day of the month following the date on which it has notified the Secretary General of the Council of Europe of its acceptance."

Article 10

1. Article 11 of the Convention shall become Article 14.

2. In the first sentence of paragraph 1 of new Article 14 the terms "member States of the Council of Europe" shall be replaced by the terms "member States of and Observer States to the Council of Europe" and in the second and third sentences, the terms "or approval" shall be replaced by the terms ", approval or accession".

3. The text of new Article 14 shall be supplemented by the following paragraph:

   "3. The Committee of Ministers of the Council of Europe, after consulting the CDPC, may invite any State not a member of the Council of Europe, other than those referred to under paragraph 1 of this article, to accede to the Convention. The decision shall be taken by the majority provided for in Article 20.*d* of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers."

4. Paragraph 3 of new Article 14 shall become paragraph 4 of this article, and the terms "or approving" and "or approval" shall be replaced respectively by the terms ", approving or acceding" and ", approval or accession".

Article 11

1. Article 12 of the Convention shall become Article 15.
2. In the first sentence of paragraph 1 of new Article 15, the terms "or approval" shall be replaced by the terms ", approval or accession".
3. In the first sentence of paragraph 2 of new Article 15, the terms "or approval" are replaced by the terms ", approval or accession".

Article 12

1. Reservations to the Convention made prior to the opening for signature of the present Protocol shall not be applicable to the Convention as amended by the present Protocol.
2. Article 13 of the Convention shall become Article 16.
3. In the first sentence of paragraph 1 of new Article 16 the terms "Party to the Convention on 15 May 2003" shall be added before the term "may" and the terms "of the Protocol amending the Convention" shall be added after the term "approval". A second sentence shall be added after the terms "political motives" and shall read: "The Contracting State undertakes to apply this reservation on a case-by-case basis, through a duly reasoned decision and taking into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence, including:" The remainder of the first sentence shall be deleted, with the exception of sub-paragraphs a, b and c.
4. The text of new Article 16 shall be supplemented by the following paragraph:

   "2. When applying paragraph 1 of this article, a Contracting State shall indicate the offences to which its reservation applies.".

5. Paragraph 2 of new Article 16 shall become paragraph 3 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State" and the terms "the foregoing paragraph" shall be replaced by the terms "paragraph 1."
6. Paragraph 3 of new Article 16 shall become paragraph 4 of this article. In the first sentence of this paragraph, the term "Contracting" shall be added before the term "State".
7. The text of new Article 16 shall be supplemented by the following paragraphs:

   "5. The reservations referred to in paragraph 1 of this article shall be valid for a period of three years from the day of the entry into force of this Convention in respect of the State concerned. However, such reservations may be renewed for periods of the same duration.

   6. Twelve months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Contracting State concerned. No later than three months before expiry, the Contracting State shall notify the Secretary General of the Council of Europe that it is upholding, amending or withdrawing its reservation. Where a Contracting State notifies the Secretary General of the Council of Europe that it is upholding its reservation, it shall provide an explanation of the grounds justifying its continuance. In the absence of notification by the Contracting State concerned, the Secretary General of the Council of Europe shall inform that Contracting State that its reservation is considered to have been extended automatically for a period of six months.

Failure by the Contracting State concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.

7. Where a Contracting State does not extradite a person, in application of a reservation made in accordance with paragraph 1 of this article, after receiving a request for extradition from another Contracting State, it shall submit the case, without exception whatsoever and without undue delay, to its competent authorities for the purpose of prosecution, unless the requesting State and the requested State otherwise agree. The competent authorities, for the purpose of prosecution in the requested State, shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State. The requested State shall communicate, without undue delay, the final outcome of the proceedings to the requesting State and to the Secretary General of the Council of Europe, who shall forward it to the Conference provided for in Article 17.

8. The decision to refuse the extradition request, on the basis of a reservation made in accordance with paragraph 1 of this article, shall be forwarded promptly to the requesting State. If within a reasonable time no judicial decision on the merits has been taken in the requested State according to paragraph 7, the requesting State may communicate this fact to the Secretary General of the Council of Europe, who shall submit the matter to the Conference provided for in Article 17. This Conference shall consider the matter and issue an opinion on the conformity of the refusal with the Convention and shall submit it to the Committee of Ministers for the purpose of issuing a declaration thereon. When performing its functions under this paragraph, the Committee of Ministers shall meet in its composition restricted to the Contracting States."

Article 13

A new article shall be introduced after new Article 16 of the Convention, and shall read as follows:

"Article 17

1. Without prejudice to the application of Article 10, there shall be a Conference of States Parties against Terrorism (hereinafter referred to as the "COSTER") responsible for ensuring:

   (*a*) The effective use and operation of this Convention including the identification of any problems therein, in close contact with the CDPC;

   (*b*) The examination of reservations made in accordance with Article 16 and in particular the procedure provided in Article 16, paragraph 8;

   (*c*) The exchange of information on significant legal and policy developments pertaining to the fight against terrorism;

   (*d*) The examination, at the request of the Committee of Ministers, of measures adopted within the Council of Europe in the field of the fight against terrorism and, where appropriate, the elaboration of proposals for additional measures necessary to improve international co-operation in the area of the fight against terrorism and, where co-operation in criminal matters is concerned, in consultation with the CDPC;

   (*e*) The preparation of opinions in the area of the fight against terrorism and the execution of the terms of reference given by the Committee of Ministers.

2. The COSTER shall be composed of one expert appointed by each of the Contracting States. It will meet once a year on a regular basis, and on an extraordinary basis at the request of the Secretary General of the Council of Europe or of at least one-third of the Contracting States.

3. The COSTER will adopt its own Rules of Procedure. The expenses for the participation of Contracting States which are Member States of the Council of Europe shall be borne by the Council of Europe. The Secretariat of the Council of Europe will assist the COSTER in carrying out its functions pursuant to this article.

4. The CDPC shall be kept periodically informed about the work of the COSTER."

Article 14

Article 14 of the Convention shall become Article 18.

Article 15

Article 15 of the Convention shall be deleted.

Article 16

1. Article 16 of the Convention shall become Article 19.
2. In the introductory sentence of new Article 19, the terms "member States of the Council" shall be replaced by the terms "Contracting States".
3. In paragraph b of new Article 19, the terms "or approval" shall be replaced by the terms ", approval or accession".
4. In paragraph c of new Article 19, the number "11" shall read "14".
5. In paragraph d of new Article 19, the number "12" shall read "15".
6. Paragraphs e and f of new Article 19 shall be deleted.
7. Paragraph g of new Article 19 shall become paragraph *e* of this article and the number "14" shall read "18".
8. Paragraph h of new Article 19 shall be deleted.

Article 17

1. This Protocol shall be open for signature by Member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:

   (*a*) Signature without reservation as to ratification, acceptance or approval; or

   (*b*) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 18

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 17.

Article 19

The Secretary General of the Council of Europe shall notify the Member States of the Council of Europe of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance or approval;

(*c*) The date of entry into force of this Protocol, in accordance with Article 18;

(*d*) Any other act, notification or communication relating to this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

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EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Adopted in Strasbourg on 26 November 1987

Entry into force: 1 February 1989, in accordance with Article 19
Text: *European Treaty Series*, No. 126

Text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002.

The member States of the Council of Europe, signatory hereto,

Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms,

Recalling that, under Article 3 of the same Convention, "no one shall be subjected to torture or to inhuman or degrading treatment or punishment";

Noting that the machinery provided for in that Convention operates in relation to persons who allege that they are victims of violations of Article 3;

Convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,

Have agreed as follows:

Chapter I

Article 1

There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Committee"). The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

Article 2

Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.

Article 3

In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other.

Chapter II

Article 4

1. The Committee shall consist of a number of members equal to that of the Parties.
2. The members of the Committee shall be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention.
3. No two members of the Committee may be nationals of the same State.
4. The members shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

Article 5[1]

1. The members of the Committee shall be elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; each national delegation of the Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.

   Where a member is to be elected to the Committee in respect of a non-member State of the Council of Europe, the Bureau of the Consultative Assembly shall invite the Parliament of that State to put forward three candidates, of whom two at least shall be its nationals. The election by the Committee of Ministers shall take place after consultation with the Party concerned.

2. The same procedure shall be followed in filling casual vacancies.

3. The members of the Committee shall be elected for a period of four years. They may be re-elected twice. However, among the members elected at the first election, the terms of three members shall expire at the end of two years. The members whose terms are to expire at the end of the initial period of two years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.

4. In order to ensure that, as far as possible, one half of the membership of the Committee shall be renewed every two years, the Committee of Ministers may decide, before proceeding to any subsequent election, that the term or terms of office of one or more members to be elected shall be for a period other than four years but not more than six and not less than two years.

5. In cases where more than one term of office is involved and the Committee of Ministers applies the preceding paragraph, the allocation of the terms of office shall be effected by the drawing of lots by the Secretary General, immediately after the election.

Article 6

1. The Committee shall meet in camera. A quorum shall be equal to the majority of its members. The decisions of the Committee shall be taken by a majority of the members present, subject to the provisions of Article 10, paragraph 2.

2. The Committee shall draw up its own rules of procedure.

3. The Secretariat of the Committee shall be provided by the Secretary General of the Council of Europe.

Chapter III

Article 7

1. The Committee shall organise visits to places referred to in Article 2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances.

2. As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters.

Article 8

1. The Committee shall notify the Government of the Party concerned of its intention to carry out a visit. After such notification, it may at any time visit any place referred to in Article 2.

2. A Party shall provide the Committee with the following facilities to carry out its task:

   (*a*) access to its territory and the right to travel without restriction;

   (*b*) full information on the places where persons deprived of their liberty are being held;

   (*c*) unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;

[1] Text amended according to the provisions of Protocols No. 1 and No. 2.

(d) other information available to the Party which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.

3. The Committee may interview in private persons deprived of their liberty.

4. The Committee may communicate freely with any person whom it believes can supply relevant information.

5. If necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned.

Article 9

1. In exceptional circumstances, the competent authorities of the Party concerned may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress.

2. Following such representations, the Committee and the Party shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Committee proposed to visit. Until the visit takes place, the Party shall provide information to the Committee about any person concerned.

Article 10

1. After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by the Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary. The Committee may consult with the Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.

2. If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.

Article 11

1. The information gathered by the Committee in relation to a visit, its report and its consultations with the Party concerned shall be confidential.

2. The Committee shall publish its report, together with any comments of the Party concerned, whenever requested to do so by that Party.

3. However, no personal data shall be published without the express consent of the person concerned.

Article 12[2]

Subject to the rules of confidentiality in Article 11, the Committee shall every year submit to the Committee of Ministers a general report on its activities which shall be transmitted to the Consultative Assembly and to any non-member State of the Council of Europe which is a party to the Convention, and made public.

Article 13

The members of the Committee, experts and other persons assisting the Committee are required, during and after their terms of office, to maintain the confidentiality of the facts or information of which they have become aware during the discharge of their functions

[2] Text amended according to the provisions of Protocol No. 1.

Article 14

1. The names of persons assisting the Committee shall be specified in the notification under Article 8, paragraph 1.
2. Experts shall act on the instructions and under the authority of the Committee. They shall have particular knowledge and experience in the areas covered by this Convention and shall be bound by the same duties of independence, impartiality and availability as the members of the Committee.
3. A Party may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place within its jurisdiction.

Chapter IV

Article 15

Each Party shall inform the Committee of the name and address of the authority competent to receive notifications to its Government, and of any liaison officer it may appoint.

Article 16

The Committee, its members and experts referred to in Article 7, paragraph 2 shall enjoy the privileges and immunities set out in the annex to this Convention.

Article 17

1. This Convention shall not prejudice the provisions of domestic law or any international agreement which provide greater protection for persons deprived of their liberty.
2. Nothing in this Convention shall be construed as limiting or derogating from the competence of the organs of the European Convention on Human Rights or from the obligations assumed by the Parties under that Convention.
3. The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.

Chapter V

Article 18[3]

1. This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. The Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe to accede to the Convention.

Article 19[4]

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 18.
2. In respect of any State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance, approval or accession.

Article 20[5]

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

[3] Text amended according to the provisions of Protocol No. 1.
[4] Text amended according to the provisions of Protocol No. 1.
[5] Text amended according to the provisions of Protocol No. 1.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 21

No reservation may be made in respect of the provisions of this Convention.

Article 22

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of the notification by the Secretary General.

Article 23[6]

The Secretary General of the Council of Europe shall notify the member States and any non-member State of the Council of Europe party to the Convention of:

(*a*) any signature;

(*b*) the deposit of any instrument of ratification, acceptance, approval or accession;

(*c*) any date of entry into force of this Convention in accordance with Articles 19 and 20;

(*d*) any other act, notification or communication relating to this Convention, except for action taken in pursuance of Articles 8 and 10.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, the 26 November 1987, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

[6] Text amended according to the provisions of Protocol No. 1.

Annex

Privileges and immunities

(Article 16)

1. For the purpose of this annex, references to members of the Committee shall be deemed to include references to experts mentioned in Article 7, paragraph 2.

2. The members of the Committee shall, while exercising their functions and during journeys made in the exercise of their functions, enjoy the following privileges and immunities:

   (*a*) immunity from personal arrest or detention and from seizure of their personal baggage and, in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;

   (*b*) exemption from any restrictions on their freedom of movement on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions.

3. In the course of journeys undertaken in the exercise of their functions, the members of the Committee shall, in the matter of customs and exchange control, be accorded:

   (*a*) by their own Government, the same facilities as those accorded to senior officials travelling abroad on temporary official duty;

   (*b*) by the Governments of other Parties, the same facilities as those accorded to representatives of foreign Governments on temporary official duty.

4. Documents and papers of the Committee, in so far as they relate to the business of the Committee, shall be inviolable.

   The official correspondence and other official communications of the Committee may not be held up or subjected to censorship.

5. In order to secure for the members of the Committee complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

6. Privileges and immunities are accorded to the members of the Committee, not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The Committee alone shall be competent to waive the immunity of its members; it has not only the right, but is under a duty, to waive the immunity of one of its members in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

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COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

Adopted in Warsaw on 16 May 2005

Entry into force: In accordance with Article 42

Text: *Council of Europe Treaty Series*, No. 197

PREAMBLE

The Member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being;

Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

Recalling the declarations by the Ministers for Foreign Affairs of the Member States at the 112th (14-15 May 2003) and the 114th (12-13 May 2004) Sessions of the Committee of Ministers calling for reinforced action by the Council of Europe on trafficking in human beings;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the following recommendations of the Committee of Ministers to Member States of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;

Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe Member States; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1545 (2002) on a campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 1611 (2003) on trafficking in organs in Europe; Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

Bearing in mind the European Union Council Framework Decision of 19 July 2002 on combating trafficking in human beings, the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the European Union Council Directive of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them;

Taking due account of the other international legal instruments relevant in the field of action against trafficking in human beings;

Taking into account the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking and setting up a specific monitoring mechanism,

Have agreed as follows:

CHAPTER I

PURPOSES, SCOPE, NON-DISCRIMINATION PRINCIPLE AND DEFINITIONS

Article 1

Purposes of the Convention

1. The purposes of this Convention are:

   (*a*) To prevent and combat trafficking in human beings, while guaranteeing gender equality;

   (*b*) To protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;

   (*c*) To promote international cooperation on action against trafficking in human beings.

2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

Article 2

Scope

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

Article 3

Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 4

Definitions

For the purposes of this Convention:

(*a*) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(*b*) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(*c*) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(*d*) "Child" shall mean any person under eighteen years of age;

(*e*) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

CHAPTER II

PREVENTION, CO-OPERATION AND OTHER MEASURES

Article 5

Prevention of trafficking in human beings

1. Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
2. Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
3. Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
4. Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
5. Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.
6. Measures established in accordance with this article shall involve, where appropriate, non-governmental Organizations, other relevant Organizations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

Article 6

Measures to discourage the demand

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

(*a*) Research on best practices, methods and strategies;

(*b*) Raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;

(*c*) Target information campaigns involving, as appropriate, *inter alia*, public authorities and policy makers;

(*d*) Preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

Article 7

Border measures

1. Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.
2. Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.
6. Parties shall strengthen co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

Article 8

Security and control of documents

Each Party shall adopt such measures as may be necessary:

(*a*) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(*b*) To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.

Article 9

Legitimacy and validity of documents

At the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.

CHAPTER III

MEASURES TO PROTECT AND PROMOTE THE RIGHTS OF VICTIMS, GUARANTEEING GENDER EQUALITY

Article 10

Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support Organizations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support Organizations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
4. As soon as an unaccompanied child is identified as a victim, each Party shall:
   (*a*) Provide for representation of the child by a legal guardian, Organization or authority which shall act in the best interests of that child;
   (*b*) Take the necessary steps to establish his/her identity and nationality;
   (*c*) Make every effort to locate his/her family when this is in the best interests of the child.

Article 11

Protection of private life

1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).
2. Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.
3. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

Article 12

Assistance to victims

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
   (*a*) Standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
   (*b*) Access to emergency medical treatment;
   (*c*) Translation and interpretation services, when appropriate;
   (*d*) Counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
   (*e*) Assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
   (*f*) Access to education for children.
2. Each Party shall take due account of the victim's safety and protection needs.
3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
4. Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.

5. Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental Organizations, other relevant Organizations or other elements of civil society engaged in assistance to victims.
6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
7. For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

Article 13

Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.
2. During this period, the persons referred to in paragraph 1 of this article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

Article 14

Residence permit

1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

   (*a*) The competent authority considers that their stay is necessary owing to their personal situation;

   (*b*) The competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
2. The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
3. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
4. If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
5. Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Article 15

Compensation and legal redress

1. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.
2. Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

4. Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

Article 16

Repatriation and return of victims

1. The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.

2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.

3. At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.

4. In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

5. Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non governmental Organizations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.

6. Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental Organizations, legal professions able to provide counselling and social welfare agencies.

7. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

Article 17

Gender equality

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

CHAPTER IV

SUBSTANTIVE CRIMINAL LAW

Article 18

Criminalisation of trafficking in human beings

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in Article 4 of this Convention, when committed intentionally.

Article 19

Criminalisation of the use of services of a victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 20

Criminalisation of acts relating to travel or identity documents

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

(*a*) Forging a travel or identity document;

(*b*) Procuring or providing such a document;

(*c*) Retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

Article 21

Attempt and aiding or abetting

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.
2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 18 and 20, paragraph (a), of this Convention.

Article 22

Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

   (*a*) A power of representation of the legal person;

   (*b*) An authority to take decisions on behalf of the legal person;

   (*c*) An authority to exercise control within the legal person.
2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.
3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 23

Sanctions and measures

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and

dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2. Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

3. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.

4. Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of *bona fide* third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

Article 24

Aggravating circumstances

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

(*a*) The offence deliberately or by gross negligence endangered the life of the victim;

(*b*) The offence was committed against a child;

(*c*) The offence was committed by a public official in the performance of her/his duties;

(*d*) The offence was committed within the framework of a criminal Organization.

Article 25

Previous convictions

Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.

Article 26

Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

Chapter V

INVESTIGATION, PROSECUTION AND PROCEDURAL LAW

Article 27

Ex parte and *ex officio* applications

1. Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.

2. Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.
3. Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental Organizations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

Article 28

Protection of victims, witnesses and collaborators with the judicial authorities

1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:
   (*a*) Victims;
   (*b*) As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;
   (*c*) Witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
   (*d*) When necessary, members of the family of persons referred to in subparagraphs a and c.
2. Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.
3. A child victim shall be afforded special protection measures taking into account the best interests of the child.
4. Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental Organizations which carry out the activities set out in Article 27, paragraph 3.
5. Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

Article 29

Specialised authorities and co-ordinating bodies

1. Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.
2. Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.
3. Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.

4. Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

Article 30

Court proceedings

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

(*a*) The protection of victims' private life and, where appropriate, identity;

(*b*) Victims' safety and protection from intimidation,

In accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

Article 31

Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

   (*a*) In its territory; or

   (*b*) On board a ship flying the flag of that Party; or

   (*c*) On board an aircraft registered under the laws of that Party; or

   (*d*) By one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;

   (*e*) Against one of its nationals.

2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.

3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.

4. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

5. Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.

CHAPTER VI

INTERNATIONAL CO-OPERATION AND CO-OPERATION WITH CIVIL SOCIETY

Article 32

General principles and measures for international co-operation

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

(*a*) Preventing and combating trafficking in human beings;

(*b*) Protecting and providing assistance to victims;

(*c*) Investigations or proceedings concerning criminal offences established in accordance with this Convention.

Article 33

Measures relating to endangered or missing persons

1. When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.
2. The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

Article 34

Information

1. The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.
2. A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
3. Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.
4. All information requested concerning Articles 13, 14 and 16, necessary to provide the rights conferred by these Articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 11 of the present Convention.

Article 35

Co-operation with civil society

Each Party shall encourage state authorities and public officials, to co-operate with non-governmental Organizations, other relevant Organizations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

CHAPTER VII

MONITORING MECHANISM

Article 36

Group of experts on action against trafficking in human beings

1. The Group of experts on action against trafficking in human beings (hereinafter referred to as “GRETA”), shall monitor the implementation of this Convention by the Parties.

2. GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.

3. The election of the members of GRETA shall be based on the following principles:

   (*a*) They shall be chosen from among persons of high moral character, known for their recognised competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;

   (*b*) They shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;

   (*c*) No two members of GRETA may be nationals of the same State;

   (*d*) They should represent the main legal systems.

4. The election procedure of the members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

Article 37

Committee of the Parties

1. The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the Member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.

2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GRETA. It shall subsequently meet whenever one-third of the Parties, the President of GRETA or the Secretary General so requests.

3. The Committee of the Parties shall adopt its own rules of procedure.

Article 38

Procedure

1. The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of each round GRETA shall select the specific provisions on which the evaluation procedure shall be based.

2. GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.

3. GRETA may request information from civil society.

4. GRETA may subsidiarily organise, in co-operation with the national authorities and the "contact person" appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.

5. GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.

6. On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be

sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.

7. Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.

CHAPTER VIII

RELATIONSHIP WITH OTHER INTERNATIONAL INSTRUMENTS

Article 39

Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

Article 40

Relationship with other international instruments

1. This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.
2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. Without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties, Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case.
4. Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of *non-refoulement* as contained therein.

CHAPTER IX

AMENDMENTS TO THE CONVENTION

Article 41

Amendments

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the Member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43.

2. Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the Parties to this Convention and after obtaining their unanimous consent, may adopt the amendment.

4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

CHAPTER X

FINAL CLAUSES

Article 42

Signature and entry into force

1. This Convention shall be open for signature by the Member States of the Council of Europe, the non Member States which have participated in its elaboration and the European Community.

2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 Signatories, including at least 8 Member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4. In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 43

Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 (*d*) of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 44

Territorial application

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 45

Reservations

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 31, paragraph 2.

Article 46

Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 47

Notification

The Secretary General of the Council of Europe shall notify the Member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43 of:

(*a*) Any signature;

(*b*) The deposit of any instrument of ratification, acceptance, approval or accession;

(*c*) Any date of entry into force of this Convention in accordance with Articles 42 and 43;

(*d*) Any amendment adopted in accordance with Article 41 and the date on which such an amendment enters into force;

(*e*) Any denunciation made in pursuance of the provisions of Article 46;

(*f*) Any other act, notification or communication relating to this Convention;

(*g*) Any reservation made under Article 45.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

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TWENTY GUIDELINES ON FORCED RETURN[1]

Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), 925th Meeting, 4 May 2005

The Committee of Ministers,

Recalling that, in accordance with Article 1 of the European Convention on Human Rights, member states shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention;

Recalling that everyone shall have the right to freedom of movement in accordance with Article 2 of Protocol No. 4 to the Convention;

Recalling that member states have the right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens on their territory;

Considering that, in exercising this right, member states may find it necessary to forcibly return illegal residents within their territory;

Concerned about the risk of violations of fundamental rights and freedoms which may arise in the context of forced return;

Believing that guidelines not only bringing together the Council of Europe's standards and guiding principles applicable in this context, but also identifying best possible practices, could serve as a practical tool for use by both governments in the drafting of national laws and regulations on the subject and all those directly or indirectly involved in forced return operations;

Recalling that every person seeking international protection has the right for his or her application to be treated in a fair procedure in line with international law, which includes access to an effective remedy before a decision on the removal order is issued or is executed,

1. *Adopts* the attached guidelines and invites member states to ensure that they are widely disseminated amongst the national authorities responsible for the return of aliens.

2. *Considers* that in applying or referring to those guidelines the following elements must receive due consideration:

   (*a*) none of the guidelines imply any new obligations for Council of Europe member states. When the guidelines make use of the verb "shall" this indicates only that the obligatory character of the norms corresponds to already existing obligations of member states. In certain cases however, the guidelines go beyond the simple reiteration of existing binding norms. This is indicated by the use of the verb "should" to indicate where the guidelines constitute recommendations addressed to the member states. The guidelines also identify certain good practices, which appear to represent innovative and promising ways to reconcile a return policy with full respect for human rights. States are then "encouraged" to seek inspiration from these practices, which have been considered by the Committee of Ministers to be desirable;

   (*b*) nothing in the guidelines shall affect any provisions in national or international law which are more conducive to the protection of human rights. In particular, in so far as these guidelines refer to rights which are contained in the European Convention on Human Rights, their interpretation must comply with the case-law of the European Court of Human Rights;

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[1] When adopting this decision, the Permanent Representative of the United Kingdom indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with Guidelines 2, 4, 6, 7, 8, 11 and 16.

Editor's note: A set of comments on these Guidelines were prepared by the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR). The comments clarify the scope of the Guidelines themselves and their origin, by referring widely, in particular, to the case-law of the European Court of Human Rights. The comments can be downloaded in PDF format from the Council of Europe website (http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Foreigners_and_citizens/Asylum,_refugees_and_stateless_persons/).

(*c*) the guidelines are without prejudice to member states' reservations to international instruments.

Chapter I – Voluntary return

Guideline 1. Promotion of voluntary return

The host state should take measures to promote voluntary returns, which should be preferred to forced returns. It should regularly evaluate and improve, if necessary, the programmes which it has implemented to that effect.

Chapter II – The removal order

Guideline 2. Adoption of the removal order

Removal orders shall only be issued in pursuance of a decision reached in accordance with the law.

1. A removal order shall only be issued where the authorities of the host state have considered all relevant information that is readily available to them, and are satisfied, as far as can reasonably be expected, that compliance with, or enforcement of, the order, will not expose the person facing return to:

   (*a*) a real risk of being executed, or exposed to torture or inhuman or degrading treatment or punishment;

   (*b*) a real risk of being killed or subjected to inhuman or degrading treatment by non-state actors, if the authorities of the state of return, parties or organisations controlling the state or a substantial part of the territory of the state, including international organisations, are unable or unwilling to provide appropriate and effective protection; or

   (*c*) other situations which would, under international law or national legislation, justify the granting of international protection.

2. The removal order shall only be issued after the authorities of the host state, having considered all relevant information readily available to them, are satisfied that the possible interference with the returnee's right to respect for family and/or private life is, in particular, proportionate and in pursuance of a legitimate aim.

3. If the state of return is not the state of origin, the removal order should only be issued if the authorities of the host state are satisfied, as far as can reasonably be expected, that the state to which the person is returned will not expel him or her to a third state where he or she would be exposed to a real risk mentioned in paragraph 1, sub-paragraph a. and b. or other situations mentioned in paragraph 1, sub-paragraph c.

4. In making the above assessment with regard to the situation in the country of return, the authorities of the host state should consult available sources of information, including non-governmental sources of information, and they should consider any information provided by the United Nations High Commissioner for Refugees (UNHCR).

5. Before deciding to issue a removal order in respect of a separated child, assistance – in particular legal assistance – should be granted with due consideration given to the best interest of the child. Before removing such a child from its territory, the authorities of the host state should be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.

6. The removal order should not be enforced if the authorities of the host state have determined that the state of return will refuse to readmit the returnee. If the returnee is not readmitted to the state of return, the host state should take him/her back.

Guideline 3. Prohibition of collective expulsion

A removal order shall only be issued on the basis of a reasonable and objective examination of the particular case of each individual person concerned, and it shall take into account the circumstances specific to each case. The collective expulsion of aliens is prohibited.

Guideline 4. Notification of the removal order

1. The removal order should be addressed in writing to the individual concerned either directly or through his/her authorised representative. If necessary, the addressee should be provided with an explanation of the order in a language he/she understands. The removal order shall indicate:
   - the legal and factual grounds on which it is based;
   - the remedies available, whether or not they have a suspensive effect, and the deadlines within which such remedies can be exercised.
2. Moreover, the authorities of the host state are encouraged to indicate:
   - the bodies from whom further information may be obtained concerning the execution of the removal order;
   - the consequences of non-compliance with the removal order.

Guideline 5. Remedy against the removal order

1. In the removal order, or in the process leading to the removal order, the subject of the removal order shall be afforded an effective remedy before a competent authority or body composed of members who are impartial and who enjoy safeguards of independence. The competent authority or body shall have the power to review the removal order, including the possibility of temporarily suspending its execution.
2. The remedy shall offer the required procedural guarantees and present the following characteristics:
   - the time-limits for exercising the remedy shall not be unreasonably short;
   - the remedy shall be accessible, which implies in particular that, where the subject of the removal order does not have sufficient means to pay for necessary legal assistance, he/she should be given it free of charge, in accordance with the relevant national rules regarding legal aid;
   - where the returnee claims that the removal will result in a violation of his or her human rights as set out in guideline 2.1, the remedy shall provide rigorous scrutiny of such a claim.
3. The exercise of the remedy should have a suspensive effect when the returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights as set out in guideline 2.1.

Chapter III – Detention pending removal

Guideline 6. Conditions under which detention may be ordered

1. A person may only be deprived of his/her liberty, with a view to ensuring that a removal order will be executed, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the removal order cannot be ensured as effectively by resorting to non-custodial measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems.
2. The person detained shall be informed promptly, in a language which he/she understands, of the legal and factual reasons for his/her detention, and the possible remedies; he/she should be given the immediate possibility of contacting a lawyer, a doctor, and a person of his/her own choice to inform that person about his/her situation.

Guideline 7. Obligation to release where the removal arrangements are halted

Detention pending removal shall be justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence the detention will cease to be permissible.

Guideline 8. Length of detention

1. Any detention pending removal shall be for as short a period as possible.
2. In every case, the need to detain an individual shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods, such reviews should be subject to the supervision of a judicial authority.

Guideline 9. Judicial remedy against detention

1. A person arrested and/or detained for the purposes of ensuring his/her removal from the national territory shall be entitled to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court and, subject to any appeal, he/she shall be released immediately if the detention is not lawful.
2. This remedy shall be readily accessible and effective and legal aid should be provided for in accordance with national legislation.

Guideline 10. Conditions of detention pending removal

1. Persons detained pending removal should normally be accommodated within the shortest possible time in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.
2. Such facilities should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. In addition, care should be taken in the design and layout of the premises to avoid, as far as possible, any impression of a "carceral" environment. Organised activities should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation.
3. Staff in such facilities should be carefully selected and receive appropriate training. Member states are encouraged to provide the staff concerned, as far as possible, with training that would not only equip them with interpersonal communication skills but also familiarise them with the different cultures of the detainees. Preferably, some of the staff should have relevant language skills and should be able to recognise possible symptoms of stress reactions displayed by detained persons and take appropriate action. When necessary, staff should also be able to draw on outside support, in particular medical and social support.
4. Persons detained pending their removal from the territory should not normally be held together with ordinary prisoners, whether convicted or on remand. Men and women should be separated from the opposite sex if they so wish; however, the principle of the unity of the family should be respected and families should therefore be accommodated accordingly.
5. National authorities should ensure that the persons detained in these facilities have access to lawyers, doctors, non-governmental organisations, members of their families, and the UNHCR, and that they are able to communicate with the outside world, in accordance with the relevant national regulations. Moreover, the functioning of these facilities should be regularly monitored, including by recognised independent monitors.
6. Detainees shall have the right to file complaints for alleged instances of ill-treatment or for failure to protect them from violence by other detainees. Complainants and witnesses shall be protected against any ill-treatment or intimidation arising as a result of their complaint or of the evidence given to support it.
7. Detainees should be systematically provided with information which explains the rules applied in the facility and the procedure applicable to them and sets out their rights and obligations. This information should be available in the languages most commonly used by those concerned and, if necessary, recourse should be made to the services of an interpreter. Detainees should be informed of their entitlement to contact a lawyer of their choice, the competent diplomatic representation of their country, international organisations such as the UNHCR and the International Organization for Migration (IOM), and non-governmental organisations. Assistance should be provided in this regard.

Guideline 11. Children and families

1. Children shall only be detained as a measure of last resort and for the shortest appropriate period of time.
2. Families detained pending removal should be provided with separate accommodation guaranteeing adequate privacy.
3. Children, whether in detention facilities or not, have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education could be subject to the length of their stay.

4. Separated children should be provided with accommodation in institutions provided with the personnel and facilities which take into account the needs of persons of their age.
5. The best interest of the child shall be a primary consideration in the context of the detention of children pending removal.

Chapter IV – Readmission

Guideline 12. Cooperation between states

1. The host state and the state of return shall cooperate in order to facilitate the return of foreigners who are found to be staying illegally in the host state.
2. In carrying out such cooperation, the host state and the state of return shall respect the restrictions imposed on the processing of personal data relating to the reasons for which a person is being returned. The state of origin is under the same obligation where its authorities are contacted with a view to establishing the identity, the nationality or place of residence of the returnee.
3. The restrictions imposed on the processing of such personal data are without prejudice to any exchange of information which may take place in the context of judicial or police cooperation, where the necessary safeguards are provided.
4. The host state shall exercise due diligence to ensure that the exchange of information between its authorities and the authorities of the state of return will not put the returnee, or his/her relatives, in danger upon return. In particular, the host state should not share information relating to the asylum application.

Guideline 13. States' obligations

1. The state of origin shall respect its obligation under international law to readmit its own nationals without formalities, delays or obstacles, and cooperate with the host state in determining the nationality of the returnee in order to permit his/her return. The same obligation is imposed on states of return where they are bound by a readmission agreement and are, in application thereof, requested to readmit persons illegally residing on the territory of the host (requesting) state.
2. When requested by the host state to deliver documents to facilitate return, the authorities of the state of origin or of the state of return should not enquire about the reasons for the return or the circumstances which led the authorities of the host state to make such a request and should not require the consent of the returnee to return to the state of origin.
3. The state of origin or the state of return should take into account the principle of family unity, in particular in relation to the admission of family members of the returnees not possessing its nationality.
4. The state of origin or the state of return shall refrain from applying any sanctions against returnees:
   - on account of their having filed asylum applications or sought other forms of protection in another country;
   - on account of their having committed offences in another country for which they have been finally convicted or acquitted in accordance with the law and penal procedure of each country; or
   - on account of their having illegally entered into, or remained in, the host state.

Guideline 14. Statelessness

The state of origin shall not arbitrarily deprive the person concerned of its nationality, in particular where this would lead to a situation of statelessness. Nor shall the state of origin permit the renunciation of nationality when this may lead, for the person possessing this state's nationality, to a situation of statelessness which could then be used to prevent his or her return.

Chapter V – Forced removals

Guideline 15. Cooperation with returnees

1. In order to limit the use of force, host states should seek the cooperation of returnees at all stages of the removal process to comply with their obligations to leave the country.

2. In particular, where the returnee is detained pending his/her removal, he/she should as far as possible be given information in advance about the removal arrangements and the information given to the authorities of the state of return. He/she should be given an opportunity to prepare that return, in particular by making the necessary contacts both in the host state and in the state of return, and if necessary, to retrieve his/her personal belongings which will facilitate his/her return in dignity.

Guideline 16. Fitness for travel and medical examination

1. Persons shall not be removed as long as they are medically unfit to travel.
2. Member states are encouraged to perform a medical examination prior to removal on all returnees either where they have a known medical disposition or where medical treatment is required, or where the use of restraint techniques is foreseen.
3. A medical examination should be offered to persons who have been the subject of a removal operation which has been interrupted due to their resistance in cases where force had to be used by the escorts.
4. Host states are encouraged to have "fit-to-fly" declarations issued in cases of removal by air.

Guideline 17. Dignity and safety

While respecting the dignity of the returnee, the safety of the other passengers, of the crew members and of the returnee himself/herself shall be paramount in the removal process. The removal of a returnee may have to be interrupted where its continuation would endanger this.

Guideline 18. Use of escorts

1. The authorities of the host state are responsible for the actions of escorts acting on their instruction, whether these people are state employees or employed by a private contractor.
2. Escort staff should be carefully selected and receive adequate training, including in the proper use of restraint techniques. The escort should be given adequate information about the returnee to enable the removal to be conducted safely, and should be able to communicate with the returnee. Member states are encouraged to ensure that at least one escort should be of the same sex as that of the returnee.
3. Contact should be established between the members of the escort and the returnee before the removal.
4. The members of the escort should be identifiable; the wearing of hoods or masks should be prohibited. Upon request, they should identify themselves in one way or another to the returnee.

Guideline 19. Means of restraint

1. The only forms of restraint which are acceptable are those constituting responses that are strictly proportionate responses to the actual or reasonably anticipated resistance of the returnee with a view to controlling him/her.
2. Restraint techniques and coercive measures likely to obstruct the airways partially or wholly, or forcing the returnee into positions where he/she risks asphyxia, shall not be used.
3. Members of the escort team should have training which defines the means of restraint which may be used, and in which circumstances; the members of the escort should be informed of the risks linked to the use of each technique, as part of their specialised training. If training is not offered, as a minimum regulations or guidelines should define the means of restraint, the circumstances under which they may be used, and the risks linked to their use.
4. Medication shall only be administered to persons during their removal on the basis of a medical decision taken in respect of each particular case.

Guideline 20. Monitoring and remedies

1. Member states should implement an effective system for monitoring forced returns.
2. Suitable monitoring devices should also be considered where necessary.

3. The forced return operation should be fully documented, in particular with respect to any significant incidents that occur or any means of restraint used in the course of the operation. Special attention shall be given to the protection of medical data.
4. If the returnee lodges a complaint against any alleged ill-treatment that took place during the operation, it should lead to an effective and independent investigation within a reasonable time.

Appendix

Definitions

For the purpose of these guidelines, the following definitions apply:

- State of origin: the state of which the returnee is a national, or where he/she permanently resided legally before entering the host state;
- State of return: the state to which a person is returned;
- Host state: the state where a non-national of that state has arrived, and/or has sojourned or resided either legally or illegally, before being served with a removal order;
- Illegal resident: a person who does not fulfil, or no longer fulfils, the conditions for entry, presence in, or residence on the territory of the host state;
- Returnee: any non-national who is subject to a removal order or is willing to return voluntarily;
- Return: the process of going back to one's state of origin, transit or other third state, including preparation and implementation. The return may be voluntary or enforced;
- Voluntary return: the assisted or independent departure to the state of origin, transit or another third state based on the will of the returnee;
- Assisted voluntary return: the return of a non-national with the assistance of the International Organization for Migration (IOM) or other organisations officially entrusted with this mission;
- Supervised voluntary return: any return which is executed under direct supervision and control of the national authorities of the host state, with the consent of the returnee and therefore without coercive measures;
- Forced return: the compulsory return to the state of origin, transit or other third state, on the basis of an administrative or judicial act;
- Removal: act of enforcement of the removal order, which means the physical transfer out of the host country;
- Removal order: administrative or judicial decision providing the legal basis of the removal;
- Readmission: act by a state accepting the re-entry of an individual (own nationals, third country nationals or stateless persons), who has been found illegally entering, being present in or residing in another state;
- Readmission agreement: agreement setting out reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not or no longer fulfil the conditions of entry to, presence in or residence in the requesting state;
- Separated children: children separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives.

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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

Published in the Official Journal of the European Communities OJ L 316, 15.12.2000, p. 1–10

The Council of the European Union:

Having regard to the Treaty establishing the European Community, and in particular Article 63 point (1)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[1],

Whereas:

1. Member States have ratified the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees.

2. Member States have concluded 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 (hereinafter referred to as "the Dublin Convention")[2].

3. For the purposes of applying the Dublin Convention, it is necessary to establish the identity of applicants for asylum and of persons apprehended in connection with the unlawful crossing of the external borders of the Community. It is also desirable, in order effectively to apply the Dublin Convention, and in particular points (c) and (e) of Article 10(1) thereof, to allow each Member State to check whether an alien found illegally present on its territory has applied for asylum in another Member State.

4. Fingerprints constitute an important element in establishing the exact identity of such persons. It is necessary to set up a system for the comparison of their fingerprint data.

5. To this end, it is necessary to set up a system known as 'Eurodac', consisting of a Central Unit, to be established within the Commission and which will operate a computerised central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the central database.

6. It is also necessary to require the Member States promptly to take fingerprints of every applicant for asylum and of every alien who is apprehended in connection with the irregular crossing of an external border of a Member State, if they are at least 14 years of age.

7. It is necessary to lay down precise rules on the transmission of such fingerprint data to the Central Unit, the recording of such fingerprint data and other relevant data in the central database, their storage, their comparison with other fingerprint data, the transmission of the results of such comparison and the blocking and erasure of the recorded data. Such rules may be different for, and should be specifically adapted to, the situation of different categories of aliens.

8. Aliens who have requested asylum in one Member State may have the option of requesting asylum in another Member State for many years to come. Therefore, the maximum period during which fingerprint data should be kept by the Central Unit should be of considerable length. Given that most aliens who have stayed in the Community for several years will have obtained a settled status or even citizenship of a Member State after that period, a period of ten years should be considered a reasonable period for the conservation of fingerprint data.

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[1] OJ C 189, 7.7.2000, p. 105 and p. 227 and opinion delivered on 21 September 2000 (not yet published in the Official Journal).
[2] OJ C 254, 19.8.1997, p. 1.

9. The conservation period should be shorter in certain special situations where there is no need to keep fingerprint data for that length of time. Fingerprint data should be erased immediately once aliens obtain citizenship of a Member State.

10. It is necessary to lay down clearly the respective responsibilities of the Commission, in respect of the Central Unit, and of the Member States, as regards data use, data security, access to, and correction of, recorded data.

11. While the non-contractual liability of the Community in connection with the operation of the Eurodac system will be governed by the relevant provisions of the Treaty, it is necessary to lay down specific rules for the non-contractual liability of the Member States in connection with the operation of the system.

12. In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, the objective of the proposed measures, namely the creation within the Commission of a system for the comparison of fingerprint data to assist the implementation of the Community's asylum policy, cannot, by its very nature, be sufficiently achieved by the Member States and can therefore be better achieved by the Community. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to achieve that objective.

13. Since the Member States alone are responsible for identifying and classifying the results of comparisons transmitted by the Central Unit as well as for the blocking of data relating to persons admitted and recognised as refugees and since this responsibility concerns the particularly sensitive area of the processing of personal data and could affect the exercise of individual freedoms, there are specific grounds for the Council reserving for itself the exercise of certain implementing powers, relating in particular to the adoption of measures ensuring the safety and reliability of such data.

14. The measures necessary for the implementation of other measures of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[3].

15. Directive 95/46/EC of the European Parliament and of 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[4] applies to the processing of personal data by the Member States within the framework of the Eurodac system.

16. By virtue of Article 286 of the Treaty, Directive 95/46/EC also applies to Community institutions and bodies. Since the Central Unit will be established within the Commission, that Directive will apply to the processing of personal data by that Unit.

17. The principles set out in Directive 95/46/EC regarding the protection of the rights and freedoms of individuals, notably their right to privacy, with regard to the processing of personal data should be supplemented or clarified, in particular as far as certain sectors are concerned.

18. It is appropriate to monitor and evaluate the performance of Eurodac.

19. Member States should provide for a system of penalties to sanction the use of data recorded in the central database contrary to the purpose of Eurodac.

20. The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.

21. Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the said Treaties, is not participating in the adoption of this Regulation and is therefore not bound by it nor subject to its application.

22. It is appropriate to restrict the territorial scope of this Regulation so as to align it on the territorial scope of the Dublin Convention.

[3] OJ L 184, 17.7.1999, p. 23.
[4] OJ L 281, 23.11.1995, p. 31.

23. This Regulation should serve as legal basis for the implementing rules which, with a view to its rapid application, are required for the establishment of the necessary technical arrangements by the Member States and the Commission. The Commission should be charged with verifying that those conditions are fulfilled,

Has adopted this regulation:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose of 'Eurodac'

1. A system known as 'Eurodac' is hereby established, the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State, and otherwise to facilitate the application of the Dublin Convention under the conditions set out in this Regulation.

2. Eurodac shall consist of:

   (*a*) the Central Unit referred to in Article 3;

   (*b*) a computerised central database in which the data referred to in Article 5(1), Article 8(2) and Article 11(2) are processed for the purpose of comparing the fingerprint data of applicants for asylum and of the categories of aliens referred to in Article 8(1) and Article 11(1);

   (*c*) means of data transmission between the Member States and the central database.

   The rules governing Eurodac shall also apply to operations effected by the Member States as from the transmission of data to the Central Unit until use is made of the results of the comparison.

3. Without prejudice to the use of data intended for Eurodac by the Member State of origin in databases set up under the latter's national law, fingerprint data and other personal data may be processed in Eurodac only for the purposes set out in Article 15(1) of the Dublin Convention.

Article 2

Definitions

1. For the purposes of this Regulation:

   (*a*) 'the Dublin Convention' means the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed at Dublin on 15 June 1990;

   (*b*) an 'applicant for asylum' means an alien who has made an application for asylum or on whose behalf such an application has been made;

   (*c*) 'Member State of origin' means:

      (i) in relation to an applicant for asylum, the Member State which transmits the personal data to the Central Unit and receives the results of the comparison;

      (ii) in relation to a person covered by Article 8, the Member State which transmits the personal data to the Central Unit;

      (iii) in relation to a person covered by Article 11, the Member State which transmits such data to the Central Unit and receives the results of the comparison;

   (*d*) 'refugee' means a person who has been recognised as a refugee in accordance with the Geneva Convention on Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967;

   (*e*) 'hit' shall mean the existence of a match or matches established by the Central Unit by comparison between fingerprint data recorded in the databank and those transmitted by a Member State with

regard to a person, without prejudice to the requirement that Member States shall immediately check the results of the comparison pursuant to Article 4(6).

2. The terms defined in Article 2 of Directive 95/46/EC shall have the same meaning in this Regulation.

3. Unless stated otherwise, the terms defined in Article 1 of the Dublin Convention shall have the same meaning in this Regulation.

Article 3

Central Unit

1. A Central Unit shall be established within the Commission which shall be responsible for operating the central database referred to in Article 1(2)(b) on behalf of the Member States. The Central Unit shall be equipped with a computerised fingerprint recognition system.

2. Data on applicants for asylum, persons covered by Article 8 and persons covered by Article 11 which are processed at the Central Unit shall be processed on behalf of the Member State of origin under the conditions set out in this Regulation.

3. The Central Unit shall draw up statistics on its work every quarter, indicating:

   (*a*) the number of data sets transmitted on applicants for asylum and the persons referred to in Articles 8(1) and 11(1);

   (*b*) the number of hits for applicants for asylum who have lodged an application for asylum in another Member State;

   (*c*) the number of hits for persons referred to in Article 8(1) who have subsequently lodged an application for asylum;

   (*d*) the number of hits for persons referred to in Article 11(1) who had previously lodged an application for asylum in another Member State;

   (*e*) the number of fingerprint data which the Central Unit had to request a second time from the Member States of origin because the fingerprint data originally transmitted did not lend themselves to comparison using the computerised fingerprint recognition system.

   At the end of each year, statistical data shall be established in the form of a compilation of the quarterly statistics drawn up since the beginning of Eurodac's activities, including an indication of the number of persons for whom hits have been recorded under (b), (c) and (d).

   The statistics shall contain a breakdown of data for each Member State.

4. Pursuant to the procedure laid down in Article 23(2), the Central Unit may be charged with carrying out certain other statistical tasks on the basis of the data processed at the Central Unit.

CHAPTER II

APPLICANTS FOR ASYLUM

Article 4

Collection, transmission and comparison of fingerprints

1. Each Member State shall promptly take the fingerprints of all fingers of every applicant for asylum of at least 14 years of age and shall promptly transmit the data referred to in points (a) to (f) of Article 5(1) to the Central Unit. The procedure for taking fingerprints shall be determined in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child.

2. The data referred to in Article 5(1) shall be immediately recorded in the central database by the Central Unit, or, provided that the technical conditions for such purposes are met, directly by the Member State of origin.

3. Fingerprint data within the meaning of point (b) of Article 5(1), transmitted by any Member State, shall be compared by the Central Unit with the fingerprint data transmitted by other Member States and already stored in the central database.

4. The Central Unit shall ensure, on the request of a Member State, that the comparison referred to in paragraph 3 covers the fingerprint data previously transmitted by that Member State, in addition to the data from other Member States.

5. The Central Unit shall forthwith transmit the hit or the negative result of the comparison to the Member State of origin. Where there is a hit, it shall transmit for all data sets corresponding to the hit, the data referred to in Article 5(1), although in the case of the data referred to in Article 5(1)(b), only insofar as they were the basis for the hit.

   Direct transmission to the Member State of origin of the result of the comparison shall be permissible where the technical conditions for such purpose are met.

6. The results of the comparison shall be immediately checked in the Member State of origin. Final identification shall be made by the Member State of origin in cooperation with the Member States concerned, pursuant to Article 15 of the Dublin Convention.

   Information received from the Central Unit relating to other data found to be unreliable shall be erased or destroyed as soon as the unreliability of the data is established.

7. The implementing rules setting out the procedures necessary for the application of paragraphs 1 to 6 shall be adopted in accordance with the procedure laid down in Article 22(1).

Article 5

Recording of data

1. Only the following data shall be recorded in the central database:

   (*a*) Member State of origin, place and date of the application for asylum;

   (*b*) fingerprint data;

   (*c*) sex;

   (*d*) reference number used by the Member State of origin;

   (*e*) date on which the fingerprints were taken;

   (*f*) date on which the data were transmitted to the Central Unit;

   (*g*) date on which the data were entered in the central database;

   (*h*) details in respect of the recipient(s) of the data transmitted and the date(s) of transmission(s).

2. After recording the data in the central database, the Central Unit shall destroy the media used for transmitting the data, unless the Member State of origin has requested their return.

Article 6

Data storage

Each set of data, as referred to in Article 5(1), shall be stored in the central database for ten years from the date on which the fingerprints were taken.

Upon expiry of this period, the Central Unit shall automatically erase the data from the central database.

Article 7

Advance data erasure

Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 6 shall be erased from the central database, in accordance with Article 15(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship.

CHAPTER III

ALIENS APPREHENDED IN CONNECTION WITH THE IRREGULAR CROSSING OF AN EXTERNAL BORDER

Article 8

Collection and transmission of fingerprint data

1. Each Member State shall, in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child, promptly take the fingerprints of all fingers of every alien of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back.

2. The Member State concerned shall promptly transmit to the Central Unit the following data in relation to any alien, as referred to in paragraph 1, who is not turned back:

   (*a*) Member State of origin, place and date of the apprehension;

   (*b*) fingerprint data;

   (*c*) sex;

   (*d*) reference number used by the Member State of origin;

   (*e*) date on which the fingerprints were taken;

   (*f*) date on which the data were transmitted to the Central Unit.

Article 9

Recording of data

1. The data referred to in Article 5(1)(g) and in Article 8(2) shall be recorded in the central database.

   Without prejudice to Article 3(3), data transmitted to the Central Unit pursuant to Article 8(2) shall be recorded for the sole purpose of comparison with data on applicants for asylum transmitted subsequently to the Central Unit.

   The Central Unit shall not compare data transmitted to it pursuant to Article 8(2) with any data previously recorded in the central database, nor with data subsequently transmitted to the Central Unit pursuant to Article 8(2).

2. The procedures provided for in Article 4(1), second sentence, Article 4(2) and Article 5(2) as well as the provisions laid down pursuant to Article 4(7) shall apply. As regards the comparison of data on applicants for asylum subsequently transmitted to the Central Unit with the data referred to in paragraph 1, the procedures provided for in Article 4(3), (5) and (6) shall apply.

Article 10

Storage of data

1. Each set of data relating to an alien as referred to in Article 8(1) shall be stored in the central database for two years from the date on which the fingerprints of the alien were taken. Upon expiry of this period, the Central Unit shall automatically erase the data from the central database.

2. The data relating to an alien as referred to in Article 8(1) shall be erased from the central database in accordance with Article 15(3) immediately, if the Member State of origin becomes aware of one of the following circumstances before the two-year period mentioned in paragraph 1 has expired:

   (*a*) the alien has been issued with a residence permit;

   (*b*) the alien has left the territory of the Member States;

   (*c*) the alien has acquired the citizenship of any Member State.

CHAPTER IV

ALIENS FOUND ILLEGALLY PRESENT IN A MEMBER STATE

Article 11

Comparison of fingerprint data

1. With a view to checking whether an alien found illegally present within its territory has previously lodged an application for asylum in another Member State, each Member State may transmit to the Central Unit any fingerprint data relating to fingerprints which it may have taken of any such alien of at least 14 years of age together with the reference number used by that Member State.

   As a general rule there are grounds for checking whether the alien has previously lodged an application for asylum in another Member State where:

   (*a*) the alien declares that he/she has lodged an application for asylum but without indicating the Member State in which he/she made the application;

   (*b*) the alien does not request asylum but objects to being returned to his/her country of origin by claiming that he/she would be in danger, or

   (*c*) the alien otherwise seeks to prevent his/her removal by refusing to cooperate in establishing his/her identity, in particular by showing no, or false, identity papers.

2. Where Member States take part in the procedure referred to in paragraph 1, they shall transmit to the Central Unit the fingerprint data relating to all or at least the index fingers, and, if those are missing, the prints of all other fingers, of aliens referred to in paragraph 1.

3. The fingerprint data of an alien as referred to in paragraph 1 shall be transmitted to the Central Unit solely for the purpose of comparison with the fingerprint data of applicants for asylum transmitted by other Member States and already recorded in the central database.

   The fingerprint data of such an alien shall not be recorded in the central database, nor shall they be compared with the data transmitted to the Central Unit pursuant to Article 8(2).

4. As regards the comparison of fingerprint data transmitted under this Article with the fingerprint data of applicants for asylum transmitted by other Member States which have already been stored in the Central Unit, the procedures provided for in Article 4(3), (5) and (6) as well as the provisions laid down pursuant to Article 4(7) shall apply.

5. Once the results of the comparison have been transmitted to the Member State of origin, the Central Unit shall forthwith:

   (*a*) erase the fingerprint data and other data transmitted to it under paragraph 1; and

   (*b*) destroy the media used by the Member State of origin for transmitting the data to the Central Unit, unless the Member State of origin has requested their return.

CHAPTER V

RECOGNISED REFUGEES

Article 12

Blocking of data

1. Data relating to an applicant for asylum which have been recorded pursuant to Article 4(2) shall be blocked in the central database if that person is recognised and admitted as a refugee in a Member State. Such blocking shall be carried out by the Central Unit on the instructions of the Member State of origin.

   As long as a decision pursuant to paragraph 2 has not been adopted, hits concerning persons who have been recognised and admitted as refugees in a Member State shall not be transmitted. The Central Unit shall return a negative result to the requesting Member State.

2. Five years after Eurodac starts operations, and on the basis of reliable statistics compiled by the Central Unit on persons who have lodged an application for asylum in a Member State after having been

recognised and admitted as refugees in another Member State, a decision shall be taken in accordance with the relevant provisions of the Treaty, as to whether the data relating to persons who have been recognised and admitted as refugees in a Member State should:

(*a*) be stored in accordance with Article 6 for the purpose of the comparison provided for in Article 4(3); or

(*b*) be erased in advance once a person has been recognised and admitted as a refugee.

3. In the case referred to in paragraph 2(a), the data blocked pursuant to paragraph 1 shall be unblocked and the procedure referred to in paragraph 1 shall no longer apply.

4. In the case referred to in paragraph 2(b):

(*a*) data which have been blocked in accordance with paragraph 1 shall be erased immediately by the Central Unit; and

(*b*) data relating to persons who are subsequently recognised and admitted as refugees shall be erased in accordance with Article 15(3), as soon as the Member State of origin becomes aware that the person has been recognised and admitted as a refugee in a Member State.

5. The implementing rules concerning the procedure for the blocking of data referred to in paragraph 1 and the compilation of statistics referred to in paragraph 2 shall be adopted in accordance with the procedure laid down in Article 22(1).

CHAPTER VI

DATA USE, DATA PROTECTION AND LIABILITY

Article 13

Responsibility for data use

1. The Member State of origin shall be responsible for ensuring that:

(*a*) fingerprints are taken lawfully;

(*b*) fingerprint data and the other data referred to in Article 5(1), Article 8(2) and Article 11(2) are lawfully transmitted to the Central Unit;

(*c*) data are accurate and up-to-date when they are transmitted to the Central Unit;

(*d*) without prejudice to the responsibilities of the Commission, data in the central database are lawfully recorded, stored, corrected and erased;

(*e*) the results of fingerprint data comparisons transmitted by the Central Unit are lawfully used.

2. In accordance with Article 14, the Member State of origin shall ensure the security of the data referred to in paragraph 1 before and during transmission to the Central Unit as well as the security of the data it receives from the Central Unit.

3. The Member State of origin shall be responsible for the final identification of the data pursuant to Article 4(6).

4. The Commission shall ensure that the Central Unit is operated in accordance with the provisions of this Regulation and its implementing rules. In particular, the Commission shall:

(*a*) adopt measures ensuring that persons working in the Central Unit use the data recorded in the central database only in accordance with the purpose of Eurodac as laid down in Article 1(1);

(*b*) ensure that persons working in the Central Unit comply with all requests from Member States made pursuant to this Regulation in relation to recording, comparison, correction and erasure of data for which they are responsible;

(*c*) take the necessary measures to ensure the security of the Central Unit in accordance with Article 14;

(*d*) ensure that only persons authorised to work in the Central Unit have access to data recorded in the central database, without prejudice to Article 20 and the powers of the independent supervisory body which will be established under Article 286(2) of the Treaty.

The Commission shall inform the European Parliament and the Council of the measures it takes pursuant to the first subparagraph.

Article 14

Security

1. The Member State of origin shall take the necessary measures to:

(*a*) prevent any unauthorised person from having access to national installations in which the Member State carries out operations in accordance with the aim of Eurodac (checks at the entrance to the installation);

(*b*) prevent data and data media in Eurodac from being read, copied, modified or erased by unauthorised persons (control of data media);

(*c*) guarantee that it is possible to check and establish *a posteriori* what data have been recorded in Eurodac, when and by whom (control of data recording);

(*d*) prevent the unauthorised recording of data in Eurodac and any unauthorised modification or erasure of data recorded in Eurodac (control of data entry);

(*e*) guarantee that, in using Eurodac, authorised persons have access only to data which are within their competence (control of access);

(*f*) guarantee that it is possible to check and establish to which authorities data recorded in Eurodac may be transmitted by data transmission equipment (control of transmission);

(*g*) prevent the unauthorised reading, copying, modification or erasure of data during both the direct transmission of data to or from the central database and the transport of data media to or from the Central Unit (control of transport).

2. As regards the operation of the Central Unit, the Commission shall be responsible for applying the measures mentioned under paragraph 1.

Article 15

Access to, and correction or erasure of, data recorded in Eurodac

1. The Member State of origin shall have access to data which it has transmitted and which are recorded in the central database in accordance with the provisions of this Regulation.

No Member State may conduct searches in the data transmitted by another Member State, nor may it receive such data apart from data resulting from the comparison referred to in Article 4(5).

2. The authorities of Member States which, pursuant to paragraph 1, have access to data recorded in the central database shall be those designated by each Member State. Each Member State shall communicate to the Commission a list of those authorities.

3. Only the Member State of origin shall have the right to amend the data which it has transmitted to the Central Unit by correcting or supplementing such data, or to erase them, without prejudice to erasure carried out in pursuance of Article 6, Article 10(1) or Article 12(4)(a).

Where the Member State of origin records data directly in the central database, it may amend or erase the data directly.

Where the Member State of origin does not record data directly in the central database, the Central Unit shall amend or erase the data at the request of that Member State.

4. If a Member State or the Central Unit has evidence to suggest that data recorded in the central database are factually inaccurate, it shall advise the Member State of origin as soon as possible.

If a Member State has evidence to suggest that data were recorded in the central database contrary to this Regulation, it shall similarly advise the Member State of origin as soon as possible. The latter shall check the data concerned and, if necessary, amend or erase them without delay.

5. The Central Unit shall not transfer or make available to the authorities of any third country data recorded in the central database, unless it is specifically authorised to do so in the framework of a Community agreement on the criteria and mechanisms for determining the State responsible for examining an application for asylum.

Article 16

Keeping of records by the Central Unit

1. The Central Unit shall keep records of all data processing operations within the Central Unit. These records shall show the purpose of access, the date and time, the data transmitted, the data used for interrogation and the name of both the unit putting in or retrieving the data and the persons responsible.

2. Such records may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security pursuant to Article 14. The records must be protected by appropriate measures against unauthorised access and erased after a period of one year, if they are not required for monitoring procedures which have already begun.

Article 17

Liability

1. Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with the provisions laid down in this Regulation shall be entitled to receive compensation from the Member State responsible for the damage suffered. That State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.

2. If failure of a Member State to comply with its obligations under this Regulation causes damage to the central database, that Member State shall be held liable for such damage, unless and insofar as the Commission failed to take reasonable steps to prevent the damage from occurring or to minimise its impact.

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the defendant Member State.

Article 18

Rights of the data subject

1. A person covered by this Regulation shall be informed by the Member State of origin of the following:

   (*a*) the identity of the controller and of his representative, if any;

   (*b*) the purpose for which the data will be processed within Eurodac;

   (*c*) the recipients of the data;

   (*d*) in relation to a person covered by Article 4 or Article 8, the obligation to have his/her fingerprints taken;

   (*e*) the existence of the right of access to, and the right to rectify, the data concerning him/her.

   In relation to a person covered by Article 4 or Article 8, the information referred to in the first subparagraph shall be provided when his/her fingerprints are taken.

   In relation to a person covered by Article 11, the information referred to in the first subparagraph shall be provided no later than the time when the data relating to the person are transmitted to the Central Unit. This obligation shall not apply where the provision of such information proves impossible or would involve a disproportionate effort.

2. In each Member State any data subject may, in accordance with the laws, regulations and procedures of that State, exercise the rights provided for in Article 12 of Directive 95/46/EC.

Without prejudice to the obligation to provide other information in accordance with point (a) of Article 12 of Directive 95/46/EC, the data subject shall have the right to obtain communication of the data relating to him/her recorded in the central database and of the Member State which transmitted them to the Central Unit. Such access to data may be granted only by a Member State.

3. In each Member State, any person may request that data which are factually inaccurate be corrected or that data recorded unlawfully be erased. The correction and erasure shall be carried out without excessive delay by the Member State which transmitted the data, in accordance with its laws, regulations and procedures.

4. If the rights of correction and erasure are exercised in a Member State, other than that, or those, which transmitted the data, the authorities of that Member State shall contact the authorities of the Member State, or States, in question so that the latter may check the accuracy of the data and the lawfulness of their transmission and recording in the central database.

5. If it emerges that data recorded in the central database are factually inaccurate or have been recorded unlawfully, the Member State which transmitted them shall correct or erase the data in accordance with Article 15(3). That Member State shall confirm in writing to the data subject without excessive delay that it has taken action to correct or erase data relating to him/her.

6. If the Member State which transmitted the data does not agree that data recorded in the central database are factually inaccurate or have been recorded unlawfully, it shall explain in writing to the data subject without excessive delay why it is not prepared to correct or erase the data.

   That Member State shall also provide the data subject with information explaining the steps which he/she can take if he/she does not accept the explanation provided. This shall include information on how to bring an action or, if appropriate, a complaint before the competent authorities or courts of that Member State and any financial or other assistance that is available in accordance with the laws, regulations and procedures of that Member State.

7. Any request under paragraphs 2 and 3 shall contain all the necessary particulars to identify the data subject, including fingerprints. Such data shall be used exclusively to permit the exercise of the rights referred to in paragraphs 2 and 3 and shall be destroyed immediately afterwards.

8. The competent authorities of the Member States shall cooperate actively to enforce promptly the rights laid down in paragraphs 3, 4 and 5.

9. In each Member State, the national supervisory authority shall assist the data subject in accordance with Article 28(4) of Directive 95/46/EC in exercising his/her rights.

10. The national supervisory authority of the Member State which transmitted the data and the national supervisory authority of the Member State in which the data subject is present shall assist and, where requested, advise him/her in exercising his/her right to correct or erase data. Both national supervisory authorities shall cooperate to this end. Requests for such assistance may be made to the national supervisory authority of the Member State in which the data subject is present, which shall transmit the requests to the authority of the Member State which transmitted the data. The data subject may also apply for assistance and advice to the joint supervisory authority set up by Article 20.

11. In each Member State any person may, in accordance with the laws, regulations and procedures of that State, bring an action or, if appropriate, a complaint before the competent authorities or courts of the State if he/she is refused the right of access provided for in paragraph 2.

12. Any person may, in accordance with the laws, regulations and procedures of the Member State which transmitted the data, bring an action or, if appropriate, a complaint before the competent authorities or courts of that State concerning the data relating to him/her recorded in the central database, in order to exercise his/her rights under paragraph 3. The obligation of the national supervisory authorities to assist and, where requested, advise the data subject, in accordance with paragraph 10, shall subsist throughout the proceedings.

Article 19

National supervisory authority

1. Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question, including their transmission to the Central Unit.

2. Each Member State shall ensure that its national supervisory authority has access to advice from persons with sufficient knowledge of fingerprint data.

Article 20

Joint supervisory authority

1. An independent joint supervisory authority shall be set up, consisting of a maximum of two representatives from the supervisory authorities of each Member State. Each delegation shall have one vote.

2. The joint supervisory authority shall have the task of monitoring the activities of the Central Unit to ensure that the rights of data subjects are not violated by the processing or use of the data held by the Central Unit. In addition, it shall monitor the lawfulness of the transmission of personal data to the Member States by the Central Unit.

3. The joint supervisory authority shall be responsible for the examination of implementation problems in connection with the operation of Eurodac, for the examination of possible difficulties during checks by the national supervisory authorities and for drawing up recommendations for common solutions to existing problems.

4. In the performance of its duties, the joint supervisory authority shall, if necessary, be actively supported by the national supervisory authorities.

5. The joint supervisory authority shall have access to advice from persons with sufficient knowledge of fingerprint data.

6. The Commission shall assist the joint supervisory authority in the performance of its tasks. In particular, it shall supply information requested by the joint supervisory body, give it access to all documents and paper files as well as access to the data stored in the system and allow it access to all its premises, at all times.

7. The joint supervisory authority shall unanimously adopt its rules of procedure. It shall be assisted by a secretariat, the tasks of which shall be defined in the rules of procedure.

8. Reports drawn up by the joint supervisory authority shall be made public and shall be forwarded to the bodies to which the national supervisory authorities submit their reports, as well as to the European Parliament, the Council and the Commission for information. In addition, the joint supervisory authority may submit comments or proposals for improvement regarding its remit to the European Parliament, the Council and the Commission at any time.

9. In the performance of their duties, the members of the joint supervisory authority shall not receive instructions from any government or body.

10. The joint supervisory authority shall be consulted on that part of the draft operating budget of the Eurodac Central Unit which concerns it. Its opinion shall be annexed to the draft budget in question.

11. The joint supervisory authority shall be disbanded upon the establishment of the independent supervisory body referred to in Article 286(2) of the Treaty. The independent supervisory body shall replace the joint supervisory authority and shall exercise all the powers conferred on it by virtue of the act under which that body is established.

CHAPTER VII

FINAL PROVISIONS

Article 21

Costs

1. The costs incurred in connection with the establishment and operation of the Central Unit shall be borne by the general budget of the European Union.
2. The costs incurred by national units and the costs for their connection to the central database shall be borne by each Member State.
3. The costs of transmission of data from the Member State of origin and of the findings of the comparison to that State shall be borne by the State in question.

Article 22

Implementing rules

1. The Council shall adopt, acting by the majority laid down in Article 205(2) of the Treaty, the implementing provisions necessary for

   – laying down the procedure referred to in Article 4(7),

   – laying down the procedure for the blocking of the data referred to in Article 12(1),

   – drawing up the statistics referred to in Article 12(2).

   In cases where these implementing provisions have implications for the operational expenses to be borne by the Member States, the Council shall act unanimously.
2. The measures referred to in Article 3(4) shall be adopted in accordance with the procedure referred to in Article 23(2).

Article 23

Committee

1. The Commission shall be assisted by a committee.
2. In the cases where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

   The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. The committee shall adopt its rules of procedure.

Article 24

Annual report: Monitoring and evaluation

1. The Commission shall submit to the European Parliament and the Council an annual report on the activities of the Central Unit. The annual report shall include information on the management and performance of Eurodac against pre-defined quantitative indicators for the objectives referred to in paragraph 2.
2. The Commission shall ensure that systems are in place to monitor the functioning of the Central Unit against objectives, in terms of outputs, cost-effectiveness and quality of service.
3. The Commission shall regularly evaluate the operation of the Central Unit in order to establish whether its objectives have been attained cost-effectively and with a view to providing guidelines for improving the efficiency of future operations.
4. One year after Eurodac starts operations, the Commission shall produce an evaluation report on the Central Unit, focusing on the level of demand compared with expectation and on operational and management issues in the light of experience, with a view to identifying possible short-term improvements to operational practice.

5. Three years after Eurodac starts operations and every six years thereafter, the Commission shall produce an overall evaluation of Eurodac, examining results achieved against objectives and assessing the continuing validity of the underlying rationale and any implications for future operations.

Article 25

Penalties

Member States shall ensure that use of data recorded in the central database contrary to the purpose of Eurodac as laid down in Article 1(1) shall be subject to appropriate penalties.

Article 26

Territorial scope

The provisions of this Regulation shall not be applicable to any territory to which the Dublin Convention does not apply.

Article 27

Entry into force and applicability

1. This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

2. This Regulation shall apply, and Eurodac shall start operations, from the date which the Commission shall publish in the Official Journal of the European Communities, when the following conditions are met:

   (*a*) each Member State has notified the Commission that it has made the necessary technical arrangements to transmit data to the Central Unit in accordance with the implementing rules adopted under Article 4(7) and to comply with the implementing rules adopted under Article 12(5); and

   (*b*) the Commission has made the necessary technical arrangements for the Central Unit to begin operations in accordance with the implementing rules adopted under Article 4(7) and Article 12(5).

   This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

   DONE at Brussels, 11 December 2000.

For the Council

The President

H. VÉDRINE

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COUNCIL DIRECTIVE 2001/51/EC

OF 28 JUNE 2001

SUPPLEMENTING THE PROVISIONS OF ARTICLE 26 OF THE CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT OF 14 JUNE 1985

Published in the Official Journal of the European Communities OJ L 187, 10.7.2001, p. 45–46

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 61(a) and Article 63(3)(b) thereof,

Having regard to the initiative of the French Republic[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

1. In order to combat illegal immigration effectively, it is essential that all the Member States introduce provisions laying down the obligations of carriers transporting foreign nationals into the territory of the Member States. In addition, in order to ensure a greater effectiveness of this objective, the financial penalties currently provided for by the Member States for cases where carriers fail to meet their control obligations should be harmonised to the extent possible, taking into account the differences in legal systems and practices between the Member States.

2. This measure is among the general provisions aimed at curbing migratory flows and combating illegal immigration.

3. Application of this Directive is without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.

4. The freedom of the Member States to retain or introduce additional measures or penalties for carriers, whether referred to in this Directive or not, should not be affected.

5. Member States should ensure that in any proceedings brought against carriers which may result in the application of penalties, the rights of defence and the right of appeal against such decisions can be exercised effectively.

6. This Directive builds on the Schengen acquis, in accordance with the Protocol integrating it into the framework of the European Union, as laid down by Annex A to Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis[3].

7. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 25 October 2000, of its wish to take part in the adoption and application of this Directive.

8. Pursuant to Article 1 of the aforementioned Protocol, Ireland is not participating in the adoption of this Directive. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.

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[1] OJ C 269, 20.9.2000, p. 8.
[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).
[3] OJ L 176, 10.7.1999, p. 1.

9. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it or subject to its application. Given that this instrument aims to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, in accordance with Article 5 of the abovementioned Protocol, Denmark shall decide within a period of 6 months after the Council has adopted this Directive whether it will implement it in its national law.

10. As regards the Republic of Iceland and the Kingdom of Norway, this Directive constitutes a development of the Schengen acquis within the meaning of the Agreement concluded on 18 May 1999 by the Council of the European Union and those two States concerning the latter's association with the implementation, application and development of the Schengen acquis[4],

Has adopted this directive:

Article 1

The aim of this Directive is to supplement the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990[5] (hereinafter referred to as "the Schengen Convention") and to define certain conditions with respect to their implementation.

Article 2

Member States shall take the necessary steps to ensure that the obligation of carriers to return third country nationals provided for in the provisions of Article 26(1)(a) of the Schengen Convention shall also apply when entry is refused to a third-country national in transit if:

(*a*) the carrier which was to take him to his country of destination refuses to take him on board;

(*b*) or the authorities of the State of destination have refused him entry and have sent him back to the Member State through which he transited.

Article 3

Member States shall take the necessary measures to oblige carriers which are unable to effect the return of a third-country national whose entry is refused to find means of onward transportation immediately and to bear the cost thereof, or, if immediate onward transportation is not possible, to assume responsibility for the costs of the stay and return of the third-country national in question.

Article 4

1. Member States shall take the necessary measures to ensure that the penalties applicable to carriers under the provisions of Article 26(2) and (3) of the Schengen Convention are dissuasive, effective and proportionate and that:

   (*a*) either the maximum amount of the applicable financial penalties is not less than EUR 5000 or equivalent national currency at the rate of exchange published in the Official Journal on 10 August 2001, for each person carried, or

   (*b*) the minimum amount of these penalties is not less than EUR 3000 or equivalent national currency at the rate of exchange published in the Official Journal on 10 August 2001, for each person carried, or

   (*c*) the maximum amount of the penalty imposed as a lump sum for each infringement is not less that EUR 500000 or equivalent national currency at the rate of exchange published in the Official Journal on 10 August 2001, irrespective of the number of persons carried.

[4] OJ L 176, 10.7.1999, p. 3.
[5] OJ L 239, 22.9.2000, p. 1.

2. Paragraph 1 is without prejudice to Member States' obligations in cases where a third country national seeks international protection.

Article 5

This Directive shall not prevent Member States from adopting or retaining, for carriers which do not comply with the obligations arising from the provisions of Article 26(2) and (3) of the Schengen Convention and of Article 2 of this Directive, other measures involving penalties of another kind, such as immobilisation, seizure and confiscation of the means of transport, or temporary suspension or withdrawal of the operating licence.

Article 6

Member States shall ensure that their laws, regulations and administrative provisions stipulate that carriers against which proceedings are brought with a view to imposing penalties have effective rights of defence and appeal.

Article 7

1. Member States shall take the necessary measures to comply with this Directive not later than 11 February 2003. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

Article 8

This Directive shall enter into force 30 days after its publication in the Official Journal of the European Communities.

Article 9

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

DONE at Luxembourg, 28 June 2001.

For the Council

The President

B. ROSENGREN

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COUNCIL DIRECTIVE 2001/55/EC OF 20 JULY 2001 ON MINIMUM STANDARDS FOR GIVING TEMPORARY PROTECTION IN THE EVENT OF A MASS INFLUX OF DISPLACED PERSONS AND ON MEASURES PROMOTING A BALANCE OF EFFORTS BETWEEN MEMBER STATES IN RECEIVING SUCH PERSONS AND BEARING THE CONSEQUENCES THEREOF

Published in the Official Journal of the European Communities OJ L 212, 07/08/2001 P. 0012 – 0023

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular point 2(a) and (b) of Article 63 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the Economic and Social Committee[3],

Having regard to the opinion of the Committee of the Regions[4],

Whereas:

1. The preparation of a common policy on asylum, including common European arrangements for asylum, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the European Union.
2. Cases of mass influx of displaced persons who cannot return to their country of origin have become more substantial in Europe in recent years. In these cases it may be necessary to set up exceptional schemes to offer them immediate temporary protection.
3. In the conclusions relating to persons displaced by the conflict in the former Yugoslavia adopted by the Ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the Community institutions expressed their concern at the situation of displaced persons.
4. On 25 September 1995 the Council adopted a Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis[5], and, on 4 March 1996, adopted Decision 96/198/JHA on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis[6].
5. The Action Plan of the Council and the Commission of 3 December 1998[7] provides for the rapid adoption, in accordance with the Treaty of Amsterdam, of minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and of measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons.
6. On 27 May 1999 the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo crisis in order to establish the measures in accordance with the Treaty.
7. The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States.

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[1] OJ C 311 E, 31.10.2000, p. 251.
[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).
[3] OJ C 155, 29.5.2001, p. 21.
[4] Opinion delivered on 13 June 2001 (not yet published in the Official Journal).
[5] OJ C 262, 7.10.1995, p. 1.
[6] OJ L 63, 13.3.1996, p. 10.
[7] OJ C 19, 20.1.1999, p. 1.

8. It is therefore necessary to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and to take measures to promote a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons.

9. Those standards and measures are linked and interdependent for reasons of effectiveness, coherence and solidarity and in order, in particular, to avert the risk of secondary movements. They should therefore be enacted in a single legal instrument.

10. This temporary protection should be compatible with the Member States' international obligations as regards refugees. In particular, it must not prejudge the recognition of refugee status pursuant to the Geneva Convention of 28 July 1951 on the status of refugees, as amended by the New York Protocol of 31 January 1967, ratified by all the Member States.

11. The mandate of the United Nations High Commissioner for Refugees regarding refugees and other persons in need of international protection should be respected, and effect should be given to Declaration No 17, annexed to the Final Act to the Treaty of Amsterdam, on Article 63 of the Treaty establishing the European Community which provides that consultations are to be established with the United Nations High Commissioner for Refugees and other relevant international Organizations on matters relating to asylum policy.

12. It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons enjoying temporary protection in the event of a mass influx of displaced persons.

13. Given the exceptional character of the provisions established by this Directive in order to deal with a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, the protection offered should be of limited duration.

14. The existence of a mass influx of displaced persons should be established by a Council Decision, which should be binding in all Member States in relation to the displaced persons to whom the Decision applies. The conditions for the expiry of the Decision should also be established.

15. The Member States' obligations as to the conditions of reception and residence of persons enjoying temporary protection in the event of a mass influx of displaced persons should be determined. These obligations should be fair and offer an adequate level of protection to those concerned.

16. With respect to the treatment of persons enjoying temporary protection under this Directive, the Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

17. Member States should, in concert with the Commission, enforce adequate measures so that the processing of personal data respects the standard of protection of 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[8].

18. Rules should be laid down to govern access to the asylum procedure in the context of temporary protection in the event of a mass influx of displaced persons, in conformity with the Member States' international obligations and with the Treaty.

19. Provision should be made for principles and measures governing the return to the country of origin and the measures to be taken by Member States in respect of persons whose temporary protection has ended.

20. Provision should be made for a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial and the second concerns the actual reception of persons in the Member States.

21. The implementation of temporary protection should be accompanied by administrative cooperation between the Member States in liaison with the Commission.

22. It is necessary to determine criteria for the exclusion of certain persons from temporary protection in the event of a mass influx of displaced persons.

[8] OJ L 281, 23.11.1995, p. 31.

23. Since the objectives of the proposed action, namely to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balance of efforts between the Member States in receiving and bearing the consequences of receiving such persons, cannot be sufficiently attained by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

24. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 27 September 2000, of its wish to take part in the adoption and application of this Directive.

25. Pursuant to Article 1 of the said Protocol, Ireland is not participating in the adoption of this Directive. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.

26. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it nor subject to its application,

Has adopted this directive:

CHAPTER I

GENERAL PROVISIONS

Article 1

The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.

Article 2

For the purposes of this Directive:

(*a*) "Temporary protection" means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;

(*b*) "Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(*c*) "Displaced persons" means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international Organizations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

  (i) Persons who have fled areas of armed conflict or endemic violence;

  (ii) Persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

(*d*) "Mass influx" means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme;

(*e*) "Refugees" means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention;

(*f*) "Unaccompanied minors" means third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States;

(*g*) "Residence permit" means any permit or authorisation issued by the authorities of a Member State and taking the form provided for in that State's legislation, allowing a third country national or a stateless person to reside on its territory;

(*h*) "Sponsor" means a third-country national enjoying temporary protection in a Member State in accordance with a decision taken under Article 5 and who wants to be joined by members of his or her family.

Article 3

1. Temporary protection shall not prejudge recognition of refugee status under the Geneva Convention.
2. Member States shall apply temporary protection with due respect for human rights and fundamental freedoms and their obligations regarding *non-refoulement*.
3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other relevant international Organizations.
4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.
5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable conditions for persons covered by temporary protection.

CHAPTER II

DURATION AND IMPLEMENTATION OF TEMPORARY PROTECTION

Article 4

1. Without prejudice to Article 6, the duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.
2. Where reasons for temporary protection persist, the Council may decide by qualified majority, on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council, to extend that temporary protection by up to one year.

Article 5

1. The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.
2. The Commission proposal shall include at least:

   (*a*) A description of the specific groups of persons to whom the temporary protection will apply;

   (*b*) The date on which the temporary protection will take effect;

   (*c*) An estimation of the scale of the movements of displaced persons.
3. The Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive. The Decision shall include at least:

   (*a*) A description of the specific groups of persons to whom the temporary protection applies;

   (*b*) The date on which the temporary protection will take effect;

(*c*) Information received from Member States on their reception capacity;

(*d*) Information from the Commission, UNHCR and other relevant international Organizations.

4. The Council Decision shall be based on:

(*a*) An examination of the situation and the scale of the movements of displaced persons;

(*b*) An assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;

(*c*) Information received from the Member States, the Commission, UNHCR and other relevant international Organizations.

5. The European Parliament shall be informed of the Council Decision.

Article 6

1. Temporary protection shall come to an end:

(*a*) When the maximum duration has been reached; or

(*b*) At any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding *non-refoulement*. The European Parliament shall be informed of the Council Decision.

Article 7

1. Member States may extend temporary protection as provided for in this Directive to additional categories of displaced persons over and above those to whom the Council Decision provided for in Article 5 applies, where they are displaced for the same reasons and from the same country or region of origin. They shall notify the Council and the Commission immediately.

2. The provisions of Articles 24, 25 and 26 shall not apply to the use of the possibility referred to in paragraph 1, with the exception of the structural support included in the European Refugee Fund set up by Decision 2000/596/EC[9], under the conditions laid down in that Decision.

CHAPTER III

OBLIGATIONS OF THE MEMBER STATES TOWARDS PERSONS ENJOYING TEMPORARY PROTECTION

Article 8

1. The Member States shall adopt the necessary measures to provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued for that purpose.

2. Whatever the period of validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 16.

3. The Member States shall, if necessary, provide persons to be admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas. Formalities must be reduced to a minimum because of the urgency of the situation. Visas should be free of charge or their cost reduced to a minimum.

[9] OJ L 252, 6.10.2000, p. 12.

Article 9

The Member States shall provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out.

Article 10

To enable the effective application of the Council Decision referred to in Article 5, Member States shall register the personal data referred to in Annex II, point (a), with respect to the persons enjoying temporary protection on their territory.

Article 11

A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply.

Article 12

The Member States shall authorise, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience. For reasons of labour market policies, Member States may give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit. The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

Article 13

1. The Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary, receive the means to obtain housing.
2. The Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care. Without prejudice to paragraph 4, the assistance necessary for medical care shall include at least emergency care and essential treatment of illness.
3. Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.
4. The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

Article 14

1. The Member States shall grant to persons under 18 years of age enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. The Member States may stipulate that such access must be confined to the state education system.
2. The Member States may allow adults enjoying temporary protection access to the general education system.

Article 15

1. For the purpose of this Article, in cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass influx, the following persons shall be considered to be part of a family:

   (*a*) The spouse of the sponsor or his/her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married

couples under its law relating to aliens; the minor unmarried children of the sponsor or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted;

(*b*) Other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time.

2. In cases where the separate family members enjoy temporary protection in different Member States, Member States shall reunite family members where they are satisfied that the family members fall under the description of paragraph 1(a), taking into account the wish of the said family members. Member States may reunite family members where they are satisfied that the family members fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship they would face if the reunification did not take place.

3. Where the sponsor enjoys temporary protection in one Member State and one or some family members are not yet in a Member State, the Member State where the sponsor enjoys temporary protection shall reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(a). The Member State may reunite family members, who are in need of protection, with the sponsor in the case of family members where it is satisfied that they fall under the description of paragraph 1(b), taking into account on a case by case basis the extreme hardship which they would face if the reunification did not take place.

4. When applying this Article, the Member States shall take into consideration the best interests of the child.

5. The Member States concerned shall decide, taking account of Articles 25 and 26, in which Member State the reunification shall take place.

6. Reunited family members shall be granted residence permits under temporary protection. Documents or other equivalent evidence shall be issued for that purpose. Transfers of family members onto the territory of another Member State for the purposes of reunification under paragraph 2, shall result in the withdrawal of the residence permits issued, and the termination of the obligations towards the persons concerned relating to temporary protection, in the Member State of departure.

7. The practical implementation of this Article may involve cooperation with the international Organizations concerned.

8. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person receiving temporary protection which is needed to process a matter under this Article.

Article 16

1. The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an Organization which is responsible for the care and well-being of minors, or by any other appropriate representation.

2. During the period of temporary protection Member States shall provide for unaccompanied minors to be placed:

(*a*) With adult relatives;

(*b*) With a foster-family;

(*c*) In reception centres with special provisions for minors, or in other accommodation suitable for minors;

(*d*) With the person who looked after the child when fleeing.

The Member States shall take the necessary steps to enable the placement. Agreement by the adult person or persons concerned shall be established by the Member States. The views of the child shall be taken into account in accordance with the age and maturity of the child.

CHAPTER IV

ACCESS TO THE ASYLUM PROCEDURE IN THE CONTEXT OF TEMPORARY PROTECTION

Article 17

1. Persons enjoying temporary protection must be able to lodge an application for asylum at any time.
2. The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period.

Article 18

The criteria and mechanisms for deciding which Member State is responsible for considering an asylum application shall apply. In particular, the Member State responsible for examining an asylum application submitted by a person enjoying temporary protection pursuant to this Directive, shall be the Member State which has accepted his transfer onto its territory.

Article 19

1. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration.
2. Where, after an asylum application has been examined, refugee status or, where applicable, other kind of protection is not granted to a person eligible for or enjoying temporary protection, the Member States shall, without prejudice to Article 28, provide for that person to enjoy or to continue to enjoy temporary protection for the remainder of the period of protection.

CHAPTER V

RETURN AND MEASURES AFTER TEMPORARY PROTECTION HAS ENDED

Article 20

When the temporary protection ends, the general laws on protection and on aliens in the Member States shall apply, without prejudice to Articles 21, 22 and 23.

Article 21

1. The Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity.

   The Member States shall ensure that the decision of those persons to return is taken in full knowledge of the facts. The Member States may provide for exploratory visits.
2. For such time as the temporary protection has not ended, the Member States shall, on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return.
3. At the end of the temporary protection, the Member States may provide for the obligations laid down in CHAPTER III to be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme. The extension shall have effect until the date of return.

Article 22

1. The Member States shall take the measures necessary to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission is conducted with due respect for human dignity.

2. In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

Article 23

1. The Member States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel; where for example they would suffer serious negative effects if their treatment was interrupted. They shall not be expelled so long as that situation continues.
2. The Member States may allow families whose children are minors and attend school in a Member State to benefit from residence conditions allowing the children concerned to complete the current school period.

CHAPTER VI

SOLIDARITY

Article 24

The measures provided for in this Directive shall benefit from the European Refugee Fund set up by Decision 2000/596/EC, under the terms laid down in that Decision.

Article 25

1. The Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate – in figures or in general terms – their capacity to receive such persons. This information shall be set out in the Council Decision referred to in Article 5. After that Decision has been adopted, the Member States may indicate additional reception capacity by notifying the Council and the Commission. This information shall be passed on swiftly to UNHCR.
2. The Member States concerned, acting in cooperation with the competent international Organizations, shall ensure that the eligible persons defined in the Council Decision referred to in Article 5, who have not yet arrived in the Community have expressed their will to be received onto their territory.
3. When the number of those who are eligible for temporary protection following a sudden and massive influx exceeds the reception capacity referred to in paragraph 1, the Council shall, as a matter of urgency, examine the situation and take appropriate action, including recommending additional support for Member States affected.

Article 26

1. For the duration of the temporary protection, the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the consent of the persons concerned to such transferral.
2. A Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR. The Member States shall inform the requesting Member State of their capacity for receiving transferees.
3. A Member State shall, at the request of another Member State, provide information, as set out in Annex II, on a person enjoying temporary protection which is needed to process a matter under this Article.
4. Where a transfer is made from one Member State to another, the residence permit in the Member State of departure shall expire and the obligations towards the persons concerned relating to temporary protection in the Member State of departure shall come to an end. The new host Member State shall grant temporary protection to the persons concerned.
5. The Member States shall use the model pass set out in Annex I for transfers between Member States of persons enjoying temporary protection.

CHAPTER VII

ADMINISTRATIVE COOPERATION

Article 27

1. For the purposes of the administrative cooperation required to implement temporary protection, the Member States shall each appoint a national contact point, whose address they shall communicate to each other and to the Commission. The Member States shall, in liaison with the Commission, take all the appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.
2. The Member States shall, regularly and as quickly as possible, communicate data concerning the number of persons enjoying temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection.

CHAPTER VIII

SPECIAL PROVISIONS

Article 28

1. The Member States may exclude a person from temporary protection if:

   (*a*) There are serious reasons for considering that:

   (i) He or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

   (ii) He or she has committed a serious non-political crime outside the Member State of reception prior to his or her admission to that Member State as a person enjoying temporary protection. 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;

   (iii) He or she has been guilty of acts contrary to the purposes and principles of the United Nations;

   (*b*) There are reasonable grounds for regarding him or her as a danger to the security of the host Member State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host Member State.

2. The grounds for exclusion referred to in paragraph 1 shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.

CHAPTER IX

FINAL PROVISIONS

Article 29

Persons who have been excluded from the benefit of temporary protection or family reunification by a Member State shall be entitled to mount a legal challenge in the Member State concerned.

Article 30

The Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 31

1. Not later than two years after the date specified in Article 32, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report.
2. After presenting the report referred to at paragraph 1, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 32

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.
2. When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 33

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 34

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

DONE at Brussels, 20 July 2001.

For the Council

The President

J. VANDE LANOTTE

ANNEX I

Model pass for the transfer of persons enjoying temporary protection

PASS

Name of the Member State delivering the pass:

Reference number (*):

Issued under Article 26 of Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of effort between Member States in receiving such persons and bearing the consequences thereof.

Valid only for the transfer from ……..…… (1) to …… (2).

The person in question must present himself/herself at ……..… (3) by ……..……..... (4).

Issued at: ……..…….

SURNAME: ……..……...

FORENAMES: ……..……..

PLACE AND DATE OF BIRTH: ……..…….

In case of a minor, name(s) of responsible adult: ……..……..

SEX: ……..

NATIONALITY: ……...……..

Date issued: ……...……

PHOTO

SEAL

Signature of the beneficiary: ……..……..…….. For the competent authorities: ….……..……

The pass-holder has been identified by the authorities ……..……. (5) (6)

The identity of the pass-holder has not been established …….

This document is issued pursuant to Article 26 of Directive 2001/55/EC only and in no way constitutes a document which can be equated to a travel document authorising the crossing of the external border or a document proving the individual's identity.

(*) The reference number is allocated by the country from which the transfer to another Member State is made.
(1) Member State from which the transfer is being made.
(2) Member State to which the transfer is being made.
(3) Place where the person must present himself/herself on arrival in the second Member State.
(4) Deadline by which the person must present himself/herself on 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 documents other than a travel or identity document.

ANNEX II

The information referred to in Articles 10, 15 and 26 of the Directive includes to the extent necessary one or more of the following documents or data:

(*a*) Personal data on the person concerned (name, nationality, date and place of birth, marital status, family relationship);

(*b*) Identity documents and travel documents of the person concerned;

(*c*) Documents concerning evidence of family ties (marriage certificate, birth certificate, certificate of adoption);

(*d*) Other information essential to establish the person's identity or family relationship;

(*e*) Residence permits, visas or residence permit refusal decisions issued to the person concerned by the Member State, and documents forming the basis of decisions;

(*f*) Residence permit and visa applications lodged by the person concerned and pending in the Member State, and the stage reached in the processing of these.

The providing Member State shall notify any corrected information to the requesting Member State.

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COUNCIL DIRECTIVE 2003/9/EC OF 27 JANUARY 2003 LAYING DOWN MINIMUM STANDARDS FOR THE RECEPTION OF ASYLUM SEEKERS

Published in the Official Journal of the European Union OJ L 031, 06/02/2003 P. 0018 – 0025

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular point (1)(*b*) of the first subparagraph of Article 63 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the Economic and Social Committee[3],

Having regard to the opinion of the Committee of the Regions[4],

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. At its special meeting in Tampere on 15 and 16 October 1999, the European Council 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 maintaining the principle of *non-refoulement*.
3. The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of asylum seekers.
4. The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy.
5. This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the said Charter.
6. With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.
7. Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.
8. The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.
9. Reception of groups with special needs should be specifically designed to meet those needs.
10. Reception of applicants who are in detention should be specifically designed to meet their needs in that situation.
11. In order to ensure compliance with the minimum procedural guarantees consisting in the opportunity to contact Organizations or groups of persons that provide legal assistance, information should be provided on such Organizations and groups of persons.

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[1] OJ C 213 E, 31.7.2001, p. 286.
[2] Opinion delivered on 25 April 2002 (not yet published in the Official Journal).
[3] OJ C 48, 21.2.2002, p. 63.
[4] OJ C 107, 3.5.2002, p. 85.

12. The possibility of abuse of the reception system should be restricted by laying down cases for the reduction or withdrawal of reception conditions for asylum seekers.

13. The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.

14. Appropriate coordination should be encouraged between the competent authorities as regards the reception of asylum seekers, and harmonious relationships between local communities and accommodation centres should therefore be promoted.

15. It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.

16. In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that emanating from the Geneva Convention for third country nationals and stateless persons.

17. The implementation of this Directive should be evaluated at regular intervals.

18. Since the objectives of the proposed action, namely to establish minimum standards on the reception of asylum seekers in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

19. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 18 August 2001, of its wish to take part in the adoption and application of this Directive.

20. In accordance with Article 1 of the said Protocol, Ireland is not participating in the adoption of this Directive. Consequently, and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.

21. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive and is therefore neither bound by it nor subject to its application,

Has adopted this directive:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States.

Article 2

Definitions

For the purposes of this Directive:

(*a*) "Geneva Convention" shall mean the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(*b*) "Application for asylum" shall mean the application made by a third-country national or a stateless person which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum unless a third-country national or a stateless person explicitly requests another kind of protection that can be applied for separately;

(*c*) "Applicant" or "asylum seeker" shall mean a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;

(*d*) "Family members" shall mean, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for asylum:

(i) The spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;

(ii) The minor children of the couple referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

(*e*) "Refugee" shall mean a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

(*f*) "Refugee status" shall mean the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;

(*g*) "Procedures" and "appeals" shall mean the procedures and appeals established by Member States in their national law;

(*h*) "Unaccompanied minors" shall mean persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered the territory of Member States;

(*i*) "Reception conditions" shall mean the full set of measures that Member States grant to asylum seekers in accordance with this Directive;

(*j*) "Material reception conditions" shall mean the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;

(*k*) "Detention" shall mean confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(*l*) "Accommodation centre" shall mean any place used for collective housing of asylum seekers.

Article 3

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof[5] are applied.

[5] OJ L 212, 7.8.2001, p. 12.

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for third-country nationals or stateless persons who are found not to be refugees.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and other close relatives of the applicant who are present in the same Member State when they are dependent on him or for humanitarian reasons insofar as these provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

   Member States shall ensure that applicants are provided with information on Organizations or groups of persons that provide specific legal assistance and Organizations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, as far as possible, in a language that the applicants may reasonably be supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6

Documentation

1. Member States shall ensure that, within three days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in the territory of the Member State while his or her application is pending or being examined.

   If the holder is not free to move within all or a part of the territory of the Member State, the document shall also certify this fact.

2. Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for asylum made at the border or within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. In specific cases, during the examination of an application for asylum, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

3. The document referred to in paragraph 1 need not certify the identity of the asylum seeker.

4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory of the Member State concerned or at the border thereof.

5. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7

Residence and freedom of movement

1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.
2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.
3. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.
4. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation.
5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 4 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

   The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.
6. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Article 8

Families

Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the asylum seeker’s agreement.

Article 9

Medical screening

Member States may require medical screening for applicants on public health grounds.

Article 10

Schooling and education of minors

1. Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

   The Member State concerned may stipulate that such access must be confined to the State education system.

   Minors shall be younger than the age of legal majority in the Member State in which the application for asylum was lodged or is being examined. Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.
2. Access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents. This period may be extended to one year where specific education is provided in order to facilitate access to the education system.
3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State may offer other education arrangements.

Article 11

Employment

1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.
2. If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant.
3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.
4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.

Article 12

Vocational training

Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 11.

Article 13

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.
2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.

   Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.
3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.
4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

   If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.
5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions.

   Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.

Article 14

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:

   (*a*) Premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border;

   (*b*) Accommodation centres which guarantee an adequate standard of living;

   (*c*) Private houses, flats, hotels or other premises adapted for housing applicants.

2. Member States shall ensure that applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:

   (*a*) Protection of their family life;

   (*b*) The possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental Organizations (NGOs) recognised by Member States.

Member States shall pay particular attention to the prevention of assault within the premises and accommodation centres referred to in paragraph 1(a) and (b).

3. Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.

4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers of the transfer and of their new address.

5. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work.

6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

7. Legal advisors or counsellors of asylum seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental Organizations designated by the latter and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist the said asylum seekers. Limits on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum seekers.

8. Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

   – An initial assessment of the specific needs of the applicant is required,

   – Material reception conditions, as provided for in this Article, are not available in a certain geographical area,

   – Housing capacities normally available are temporarily exhausted,

   – The asylum seeker is in detention or confined to border posts.

   These different conditions shall cover in any case basic needs.

Article 15

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness.

2. Member States shall provide necessary medical or other assistance to applicants who have special needs.

CHAPTER III

REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 16

Reduction or withdrawal of reception conditions

1. Member States may reduce or withdraw reception conditions in the following cases:

   (*a*) Where an asylum seeker:

   – Abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or

   – Does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or

   – Has already lodged an application in the same Member State.

   When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the reception conditions;

   (*b*) Where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.

   If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.

2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.

3. Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.

4. Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 17, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to emergency health care.

5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.

CHAPTER IV

PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

Article 17

General principle

1. Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.

2. Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.

Article 18

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.
2. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

Article 19

Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an Organization which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.
2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum was made or is being examined, be placed:

   (*a*) With adult relatives;

   (*b*) With a foster-family;

   (*c*) In accommodation centres with special provisions for minors;

   (*d*) In other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers.

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.
4. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.

Article 20

Victims of torture and violence

Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts.

CHAPTER V

APPEALS

Article 21

Appeals

1. Member States shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review before a judicial body shall be granted.
2. Procedures for access to legal assistance in such cases shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 22

Cooperation

Member States shall regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions and provide full information on the type, name and format of the documents provided for by Article 6.

Article 23

Guidance, monitoring and control system

Member States shall, with due respect to their constitutional structure, ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

Article 24

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other Organizations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 25

Reports

By 6 August 2006, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report, including the statistical data provided for by Article 22 by 6 February 2006.

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 February 2005. They shall forthwith inform the Commission thereof.

   When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field relating to the enforcement of this Directive.

Article 27

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 28

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Union.

DONE at Brussels, 27 January 2003.

For the Council

The President

G. PAPANDREOU

COUNCIL REGULATION (EC) NO 343/2003 OF 18 FEBRUARY 2003 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

Published in the Official Journal of the European Union OJ L 050, 25/02/2003 P. 0001 – 0010

The Council of the European Union,

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

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

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*. In this respect, and without affecting the responsibility criteria laid down in this Regulation, Member States, all respecting the principle of *non-refoulement*, are considered as safe countries for third-country nationals.
3. The Tampere conclusions also stated that this system should include, in the short term, a clear and workable method for determining the Member 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 determine rapidly 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.
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[4], signed in Dublin on 15 June 1990 (hereinafter referred to as the Dublin Convention), whose implementation has stimulated the process of harmonising asylum policies.
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 Member 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. 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 humanitarian grounds.

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[1] OJ C 304 E, 30.10.2001, p. 192.
[2] Opinion of 9 April 2002 (not yet published in the Official Journal).
[3] OJ C 125, 27.5.2002, p. 28.
[4] OJ C 254, 19.8.1997, p. 1.

8. The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the Treaty establishing the European Community and the establishment of Community policies regarding the conditions of entry and stay of third country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

9. The application of this 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.

10. Continuity between the system for determining the Member 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[5].

11. The operation of the Eurodac system, as established by Regulation (EC) No 2725/2000 and in particular the implementation of Articles 4 and 8 contained therein should facilitate the implementation of this Regulation.

12. With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.

13. The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[6].

14. The application of the Regulation should be evaluated at regular intervals.

15. The Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union[7]. In particular, it seeks to ensure full observance of the right to asylum guaranteed by Article 18.

16. Since 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 sufficiently achieved by the Member States and, given the scale and effects, can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

17. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland gave notice, by letters of 30 October 2001, of their wish to take part in the adoption and application of this Regulation.

18. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.

19. The Dublin Convention remains in force and continues to apply between Denmark and the Member States that are bound by this Regulation until such time an agreement allowing Denmark's participation in the Regulation has been concluded,

Has adopted this regulation:

[5] OJ L 316, 15.12.2000, p. 1.
[6] OJ L 184, 17.7.1999, p. 23.
[7] OJ C 364, 18.12.2000, p. 1.

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 application for asylum 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 amended by the New York Protocol of 31 January 1967;

(*c*) "Application for asylum" means the application made by a third-country national which can be understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless a third-country national explicitly requests another kind of protection that can be applied for separately;

(*d*) "Applicant" or "asylum seeker" means a third country national who has made an application for asylum in respect of which a final decision has not yet been taken;

(*e*) "Examination of an asylum application" means any examination of, or decision or ruling concerning, an application for asylum by the competent authorities in accordance with national law except for procedures for determining the Member State responsible in accordance with this Regulation;

(*f*) "Withdrawal of the asylum application" means the actions by which the applicant for asylum terminates the procedures initiated by the submission of his application for asylum, in accordance with national law, either explicitly or tacitly;

(*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 unmarried persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States;

(*i*) "Family members" means insofar as the family already existed in the country of origin, the following members of the applicant's family who are present in the territory of the Member States:

(i) The spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;

(ii) The minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

(iii) The father, mother or guardian when the applicant or refugee is a minor and unmarried;

(*j*) "Residence document" means any authorisation issued by the authorities of a Member State authorising a third-country national to stay in its territory, including the documents substantiating the authorisation to remain in 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 period required to determine the responsible Member State as established in this Regulation or during examination of an application for asylum or an application for a residence permit;

(*k*) "Visa" means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

(i) "Long-stay visa" means the authorisation or decision of a Member State required for entry for an intended stay in that Member State of more than three months;

(ii) "Short-stay visa" means the authorisation or decision of a Member State required for entry for an intended 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 transit through the territory of that Member State or several Member States, except for transit at an airport;

(iv) "Airport transit visa" means 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. Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. By way of derogation from paragraph 1, 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 this Regulation. In such an event, that Member State shall become the Member 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 Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant.

3. Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention.

4. The asylum seeker shall be informed in writing in a language that he or she may reasonably be expected to understand regarding the application of this Regulation, its time limits and its effects.

Article 4

1. 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.

2. 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 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. 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, point (i), 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. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. 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 shall be made by the Member State in whose territory the applicant is present. 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 application for asylum was lodged.

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

5. An asylum seeker who is present in another Member State and there lodges an application for asylum after withdrawing his application during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Article 20, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum.

   This obligation shall cease, if the asylum seeker has in the meantime 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 shall be applied in the order in which they are set out in this Chapter.
2. The Member 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 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.

Article 7

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.

Article 8

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.

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 application for asylum.
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 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.

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 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.

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, paragraphs 1, 2 and 3 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 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.

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 Member State issuing the residence document or visa shall not be responsible if it can establish that a fraud was committed after the document or visa had been issued.

Article 10

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), including the data referred to in Chapter III of Regulation (EC) No 2725/2000, 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.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1, and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), 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 five 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 five months in several Member States, the Member State where this has been most recently the case shall be responsible for examining the application.

Article 11

1. If a third-country national enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for asylum.

2. The principle set out in paragraph 1 does not apply, if the third-country national 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 Member State shall be responsible for examining the application for asylum.

Article 12

Where the application 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.

Article 13

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

Article 14

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.

CHAPTER IV

HUMANITARIAN CLAUSE

Article 15

1. 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.
2. In cases in which the person concerned is dependent on the assistance of the other on account of pregnancy or a new-born child, serious illness, severe handicap or old age, Member States shall normally keep or bring together the asylum seeker with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin.
3. If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor.
4. Where the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.
5. 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 27(2).

CHAPTER V

TAKING CHARGE AND TAKING BACK

Article 16

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

(*a*) Take charge, under the conditions laid down in Articles 17 to 19, of an asylum seeker who has lodged an application in a different Member State;

(*b*) Complete the examination of the application for asylum;

(*c*) Take back, under the conditions laid down in Article 20, an applicant whose application is under examination and who is in the territory of another Member State without permission;

(*d*) Take back, under the conditions laid down in Article 20, 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 20, a third-country national whose application it has rejected and who is in 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. 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.

4. The obligations specified in paragraph 1(d) and (e) shall likewise cease once the Member 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 17

1. Where 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 three months 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 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.

2. The requesting Member State may ask for an urgent reply in cases where the application for asylum 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/or where the asylum seeker is held in detention.

   The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. This period shall be at least one week.

3. In both cases, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 18(3) and/or relevant elements from the asylum seeker's statement, enabling the authorities of the requested Member State 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 27(2).

Article 18

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received.

2. In the procedure for determining the Member State responsible for examining the application for asylum established in this Regulation, elements of proof and circumstantial evidence shall be used.

3. In accordance with the procedure referred to in Article 27(2) two lists shall be established and periodically reviewed, indicating the elements of proof and circumstantial evidence in accordance with the following criteria:

   (*a*) Proof:

      (i) This refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary.

(ii) The Member States shall provide the Committee provided for in Article 27 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs.

(*b*) Circumstantial evidence:

(i) This refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them.

(ii) Their evidentiary value, in relation to the responsibility for examining the application for asylum shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. Where the requesting Member State has pleaded urgency, in accordance with the provisions of Article 17(2), the requested Member State shall make every effort to conform to the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give the reply after the time limit requested, but in any case within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the provisions for proper arrangements for arrival.

Article 19

1. Where the requested Member State accepts that it should take charge of an applicant, the Member State in which the application for asylum was lodged shall notify the applicant of the decision not to examine the application, and of the obligation to transfer the applicant to the responsible Member State.

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 for 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 Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis if national legislation allows for this.

3. The transfer of the applicant from the Member State in which the application for asylum 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 that charge be taken or of the decision on an appeal or review where there is a suspensive effect.

   If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 27(2).

   The Member State responsible shall inform the requesting Member 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 six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

5. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).

Article 20

1. An asylum seeker shall be taken back in accordance with Article 4(5) and Article 16(1)(c), (d) and (e) as follows:

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

   (*b*) The Member State called upon to take back the applicant shall be obliged to make the necessary checks and reply to the request addressed to it as quickly as possible and under no circumstances exceeding a period of one month from the referral. When the request is based on data obtained from the Eurodac system, this time limit is reduced to two weeks;

   (*c*) Where the requested Member State does not communicate its decision within the one month period or the two weeks period mentioned in subparagraph (b), it shall be considered to have agreed to take back the asylum seeker;

   (*d*) A Member 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 that charge be taken by another Member State or of the decision on an appeal or review where there is a suspensive effect;

   (*e*) The requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. The decision 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 Member State responsible by his own means. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts or competent bodies so decide in a case-by-case basis if the national legislation allows for this.

If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer* of the design adopted in accordance with the procedure referred to in Article 27(2).

The Member State responsible shall inform the requesting Member 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 does not take place within the six months' time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer or the examination of the application could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

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 27(2).

4. Supplementary rules on carrying out transfers may be adopted in accordance with the procedure referred to in Article 27(2).

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 21

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 application for asylum;

   (*b*) Examining the application for asylum;

   (*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 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, provided it is necessary for the examination of the application for asylum, 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 Member 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 applicant for asylum.

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 requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means asylum seekers enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to the individual asylum seeker.

5. The requested Member State shall be obliged to reply within six weeks.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation 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 responsible for examining the application for asylum;

   (*b*) Examining the application for asylum;

   (*c*) Implementing any obligation arising under this Regulation.

8. The Member State which 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 shall have 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 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[8], 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 Member State transmitting or receiving the information.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/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 22

1. 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.

2. Rules relating to the establishment of secure electronic transmission channels between the authorities mentioned in paragraph 1 for transmitting requests and ensuring that senders automatically receive an electronic proof of delivery shall be established in accordance with the procedure referred to in Article 27(2).

Article 23

1. 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. 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 of or take back asylum seekers;

2. The arrangements referred to in paragraph 1 shall be communicated to the Commission. The Commission shall verify that the arrangements referred to in paragraph 1(*b*) do not infringe this Regulation.

CHAPTER VII

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 24

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 (Dublin Convention).

2. However, to ensure continuity of the arrangements for determining the Member State responsible for an application for asylum, where an application has been lodged after the date mentioned in the second paragraph of Article 29, 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, with the exception of the events mentioned in Article 10(2).

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 25

1. Any period of time prescribed in this Regulation shall be calculated as follows:

[8] OJ L 281, 23.11.1995, p. 31.

(*a*) Where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

(*b*) A period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

(*c*) Time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

2. Requests and replies shall be sent using any method that provides proof of receipt.

Article 26

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

Article 27

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

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

3. The Committee shall draw up its rules of procedure.

Article 28

At the latest three years after the date mentioned in the first paragraph of Article 29, 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 submitted that report, the Commission shall report to the European Parliament and the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 24(5) of Regulation (EC) No 2725/2000.

Article 29

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply to asylum applications lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back asylum seekers, irrespective of the date on which the application was made. 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 directly applicable in the Member States in conformity with the Treaty establishing the European Community.

DONE at Brussels, 18 February 2003.

For the Council

The President

N. CHRISTODOULAKIS

COMMISSION REGULATION (EC) NO 1560/2003 OF 2 SEPTEMBER 2003 LAYING DOWN DETAILED RULES FOR THE APPLICATION OF COUNCIL REGULATION (EC) NO 343/2003 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

Published in the Official Journal of the European Union OJ L 222, 05/09/2003 P. 0003 – 0023

The Commission of the European Communities,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 343/2003 of 18 February 2003 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[1], and in particular Article 15(5), Article 17(3), Article 18(3), Article 19(3) and (5), Article 20(1), (3) and (4) and Article 22(2) thereof,

Whereas:

1. A number of specific arrangements must be established for the effective application of Regulation (EC) No 343/2003. Those arrangements must be clearly defined so as to facilitate cooperation between the authorities in the Member States competent for implementing that Regulation as regards the transmission and processing of requests for the purposes of taking charge and taking back, requests for information and the carrying out of transfers.
2. To ensure the greatest possible continuity between the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities[2], signed in Dublin on 15 June 1990, and Regulation (EC) No 343/2003, which replaces that Convention, this Regulation should be based on the common principles, lists and forms adopted by the committee set up by Article 18 of that Convention, with the inclusion of amendments necessitated by the introduction of new criteria, the wording of certain provisions and of the lessons drawn from experience.
3. The interaction between the procedures laid down in Regulation (EC) No 343/2003 and the application of 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[3] must be taken into account.
4. It is desirable, both for the Member States and the asylum seekers concerned, that there should be a mechanism for finding a solution in cases where Member States differ over the application of the humanitarian clause in Article 15 of Regulation (EC) No 343/2003.
5. The establishment of an electronic transmission network to facilitate the implementation of Regulation (EC) No 343/2003 means that rules must be laid down relating to the technical standards applicable and the practical arrangements for using the network.
6. Directive 95/46/EC of the European Parliament and of 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[4] applies to processing carried out pursuant to the present Regulation in accordance with Article 21 of Regulation (EC) No 343/2003.
7. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark, which is not bound by Regulation (EC) No 343/2003, is not bound by the present Regulation or subject to its application, until such time as an agreement allowing it to participate in Regulation (EC) No 343/2003 is reached.

[1] OJ L 50, 25.2.2003, p. 1.
[2] OJ C 254, 19.8.1997, p. 1.
[3] OJ L 316, 15.12.2000, p. 1.
[4] OJ L 281, 23.11.1995, p. 31.

8. In accordance with Article 4 of the Agreement of 19 January 2001 between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining an application for asylum lodged in a Member State or in Iceland or Norway[5], this Regulation is to be applied by Iceland and Norway as it is applied by the Member States of the European Community. Consequently, for the purposes of this Regulation, Member States also include Iceland and Norway.

9. It is necessary for the present Regulation to enter into force as quickly as possible to enable Regulation (EC) No 343/2003 to be applied.

10. The measures set out in this Regulation are in accordance with the opinion of the Committee set up by Article 27 of Regulation (EC) No 343/2003,

Has adopted this regulation:

TITLE I

PROCEDURES

CHAPTER I

PREPARATION OF REQUESTS

Article 1

Preparation of requests for taking charge

1. Requests for taking charge shall be made on a standard form in accordance with the model in Annex I. The form shall include mandatory fields which must be duly filled in and other fields to be filled in if the information is available. Additional information may be entered in the field set aside for the purpose.

   The request shall also include:

   (*a*) A copy of all the proof and circumstantial evidence showing that the requested Member State is responsible for examining the application for asylum, accompanied, where appropriate, by comments on the circumstances in which it was obtained and the probative value attached to it by the requesting Member State, with reference to the lists of proof and circumstantial evidence referred to in Article 18(3) of Regulation (EC) No 343/2003, which are set out in Annex II to the present Regulation;

   (*b*) Where necessary, a copy of any written declarations made by or statements taken from the applicant.

2. Where the request is based on a positive result (hit) transmitted by the Eurodac Central Unit in accordance with Article 4(5) of Regulation (EC) No 2725/2000 after comparison of the asylum seeker's fingerprints with fingerprint data previously taken and sent to the Central Unit in accordance with Article 8 of that Regulation and checked in accordance with Article 4(6) of that Regulation, it shall also include the data supplied by the Central Unit.

3. Where the requesting Member State asks for an urgent reply in accordance with Article 17(2) of Regulation (EC) No 343/2003, the request shall describe the circumstances of the application for asylum and shall state the reasons in law and in fact which warrant an urgent reply.

Article 2

Preparation of requests for taking back

Requests for taking back shall be made on a standard form in accordance with the model in Annex III, setting out the nature of the request, the reasons for it and the provisions of Regulation (EC) No 343/2003 on which it is based.

[5] OJ L 93, 3.4.2001, p. 40.

The request shall also include the positive result (hit) transmitted by the Eurodac Central Unit, in accordance with Article 4(5) of Regulation EC) No 2725/2000, after comparison of the applicant's fingerprints with fingerprint data previously taken and sent to the Central Unit in accordance with Article 4(1) and (2) of that Regulation and checked in accordance with Article 4(6) of that Regulation.

For requests relating to applications dating from before Eurodac became operational, a copy of the fingerprints shall be attached to the form.

CHAPTER II

REACTION TO REQUESTS

Article 3

Processing requests for taking charge

1. The arguments in law and in fact set out in the request shall be examined in the light of the provisions of Regulation (EC) No 343/2003 and the lists of proof and circumstantial evidence which are set out in Annex II to the present Regulation.

2. Whatever the criteria and provisions of Regulation (EC) No 343/2003 that are relied on, the requested Member State shall, within the time allowed by Article 18(1) and (6) of that Regulation, check exhaustively and objectively, on the basis of all information directly or indirectly available to it, whether its responsibility for examining the application for asylum is established. If the checks by the requested Member State reveal that it is responsible under at least one of the criteria of that Regulation, it shall acknowledge its responsibility.

Article 4

Processing of requests for taking back

Where a request for taking back is based on data supplied by the Eurodac Central Unit and checked by the requesting Member State, in accordance with Article 4(6) of Regulation (EC) No 2725/2000, the requested Member State shall acknowledge its responsibility unless the checks carried out reveal that its obligations have ceased under the second subparagraph of Article 4(5) or under Article 16(2), (3) or (4) of Regulation (EC) No 343/2003. The fact that obligations have ceased on the basis of those provisions may be relied on only on the basis of material evidence or substantiated and verifiable statements by the asylum seeker.

Article 5

Negative reply

1. Where, after checks are carried out, the requested Member State considers that the evidence submitted does not establish its responsibility, the negative reply it sends to the requesting Member State shall state full and detailed reasons for its refusal.

2. Where the requesting Member State feels that such a refusal is based on a misappraisal, or where it has additional evidence to put forward, it may ask for its request to be re-examined. This option must be exercised within three weeks following receipt of the negative reply. The requested Member State shall endeavour to reply within two weeks. In any event, this additional procedure shall not extend the time limits laid down in Article 18(1) and (6) and Article 20(1)(*b*) of Regulation (EC) No 343/2003.

Article 6

Positive reply

Where the Member State accepts responsibility, the reply shall say so, specifying the provision of Regulation (EC) No 343/2003 that is taken as a basis, and shall include practical details regarding the subsequent transfer, such as contact particulars of the department or person to be contacted.

CHAPTER III

TRANSFERS

Article 7

Practical arrangements for transfers

1. Transfers to the Member State responsible may be carried out in one of the following ways:

   (*a*) At the request of the asylum seeker, by a certain specified date;

   (*b*) By supervised departure, with the asylum seeker being accompanied to the point of embarkation by an official of the requesting Member State, the responsible Member State being notified of the place, date and time of the asylum seeker's arrival within an agreed time limit;

   (*c*) Under escort, the asylum seeker being accompanied by an official of the requesting Member State or by a representative of an agency empowered by the requesting Member State to act in that capacity and handed over to the authorities in the responsible Member State.

2. In the cases referred to in paragraph 1(a) and (b), the applicant shall be supplied with the *laissez-passer* referred to in Article 19(3) and Article 20(1)(e) of Regulation (EC) No 343/2003, a model of which is set out in Annex IV to the present Regulation, to allow him to enter the Member State responsible and to identify himself on his arrival at the place and time indicated to him at the time of notification of the decision on taking charge or taking back by the Member State responsible.

   In the case referred to in paragraph 1(c), a *laissez-passer* shall be issued if the asylum seeker is not in possession of identity documents. The time and place of transfer shall be agreed in advance by the Member States concerned in accordance with the procedure set out in Article 8.

3. The Member State making the transfer shall ensure that all the asylum seeker's documents are returned to him before his departure, given into the safe keeping of members of the escort to be handed to the competent authorities of the Member State responsible, or sent by other appropriate means.

Article 8

Cooperation on transfers

1. It is the obligation of the Member State responsible to allow the asylum seeker's transfer to take place as quickly as possible and to ensure that no obstacles are put in his way. That Member State shall determine, where appropriate, the location on its territory to which the asylum seeker will be transferred or handed over to the competent authorities, taking account of geographical constraints and modes of transport available to the Member State making the transfer. In no case may a requirement be imposed that the escort accompany the asylum seeker beyond the point of arrival of the international means of transport used or that the Member State making the transfer meet the costs of transport beyond that point.

2. The Member State organising the transfer shall arrange the transport for the asylum seeker and his escort and decide, in consultation with the Member State responsible, on the time of arrival and, where necessary, on the details of the handover to the competent authorities. The Member State responsible may require that three working days' notice be given.

Article 9

Postponed and delayed transfers

1. The Member State responsible shall be informed without delay of any postponement due either to an appeal or review procedure with suspensive effect, or physical reasons such as ill health of the asylum seeker, non-availability of transport or the fact that the asylum seeker has withdrawn from the transfer procedure.

2. A Member State which, for one of the reasons set out in Article 19(4) and Article 20(2) of Regulation (EC) No 343/2003, cannot carry out the transfer within the normal time limit of six months provided for in Article 19(3) and Article 20(1)(d) of that Regulation, shall inform the Member State responsible before the end of

that time limit. Otherwise, the responsibility for processing the application for asylum and the other obligations under Regulation (EC) No 343/2003 falls to the former Member State, in accordance with Article 19(4) and Article 20(2) of that Regulation.

3. When, for one of the reasons set out in Article 19(4) and Article 20(2) of Regulation (EC) No 343/2003, a Member State undertakes to carry out the transfer after the normal time limit of six months, it shall make the necessary arrangements in advance with the Member State responsible.

Article 10

Transfer following an acceptance by default

1. Where, pursuant to Article 18(7) or Article 20(1)(c) of Regulation (EC) No 343/2003 as appropriate, the requested Member State is deemed to have accepted a request to take charge or to take back, the requesting Member State shall initiate the consultations needed to organise the transfer.
2. If asked to do so by the requesting Member State, the Member State responsible must confirm in writing, without delay, that it acknowledges its responsibility as a result of its failure to reply within the time limit. The Member State responsible shall take the necessary steps to determine the asylum seeker's place of arrival as quickly as possible and, where applicable, agree with the requesting Member State the time of arrival and the practical details of the handover to the competent authorities.

CHAPTER IV

HUMANITARIAN CLAUSE

Article 11

Situations of dependency

1. Article 15(2) of Regulation (EC) No 343/2003 shall apply whether the asylum seeker is dependent on the assistance of a relative present in another Member State or a relative present in another Member State is dependent on the assistance of the asylum seeker.
2. The situations of dependency referred to in Article 15(2) of Regulation (EC) No 343/2003 shall be assessed, as far as possible, on the basis of objective criteria such as medical certificates. Where such evidence is not available or cannot be supplied, humanitarian grounds shall be taken as proven only on the basis of convincing information supplied by the persons concerned.
3. The following points shall be taken into account in assessing the necessity and appropriateness of bringing together the persons concerned:

   (*a*) The family situation which existed in the country of origin;

   (*b*) The circumstances in which the persons concerned were separated;

   (*c*) The status of the various asylum procedures or procedures under the legislation on aliens under way in the Member States.
4. The application of Article 15(2) of Regulation (EC) No 343/2003 shall, in any event, be subject to the assurance that the asylum seeker or relative will actually provide the assistance needed.
5. The Member State in which the relatives will be reunited and the date of the transfer shall be agreed by the Member States concerned, taking account of:

   (*a*) The ability of the dependent person to travel;

   (*b*) The situation of the persons concerned as regards residence, preference being given to the bringing the asylum seeker together with his relative where the latter already has a valid residence permit and resources in the Member State in which he resides.

Article 12

Unaccompanied minors

1. Where the decision to entrust the care of an unaccompanied minor to a relative other than the mother, father or legal guardian is likely to cause particular difficulties, particularly where the adult concerned resides outside the jurisdiction of the Member State in which the minor has applied for asylum, cooperation between the competent authorities in the Member States, in particular the authorities or courts responsible for the protection of minors, shall be facilitated and the necessary steps taken to ensure that those authorities can decide, with full knowledge of the facts, on the ability of the adult or adults concerned to take charge of the minor in a way which serves his best interests.

   Options now available in the field of cooperation on judicial and civil matters shall be taken account of in this connection.

2. The fact that the duration of procedures for placing a minor may lead to a failure to observe the time limits set in Article 18(1) and (6) and Article 19(4) of Regulation (EC) No 343/2003 shall not necessarily be an obstacle to continuing the procedure for determining the Member State responsible or carrying out a transfer.

Article 13

Procedures

1. The initiative of requesting another Member State to take charge of an asylum seeker on the basis of Article 15 of Regulation (EC) No 343/2003 shall be taken either by the Member State where the application for asylum was made and which is carrying out a procedure to determine the Member State responsible, or by the Member State responsible.
2. The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.
3. The requested Member State shall carry out the necessary checks to establish, where applicable, humanitarian reasons, particularly of a family or cultural nature, the level of dependency of the person concerned or the ability and commitment of the other person concerned to provide the assistance desired.
4. In all events, the persons concerned must have given their consent.

Article 14

Conciliation

1. Where the Member States cannot resolve a dispute, either on the need to carry out a transfer or to bring relatives together on the basis of Article 15 of Regulation (EC) No 343/2003, or on the Member State in which the persons concerned should be reunited, they may have recourse to the conciliation procedure provided for in paragraph 2 of this Article.
2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 27 of Regulation (EC) No 343/2003. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

   The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

   The Chairman of the Committee, or his deputy, shall chair the discussion. He may put forward his point of view but he may not vote.

   Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

CHAPTER V

COMMON PROVISIONS

Article 15

Transmission of requests

1. Requests, replies and all written correspondence between Member States concerning the application of Regulation (EC) No 343/2003 shall where possible be sent through the "DubliNet" electronic communications network, set up under Title II of the present Regulation.

   By way of derogation from the first subparagraph, correspondence between the departments responsible for carrying out transfers and competent departments in the requested Member State regarding the practical arrangements for transfers, time and place of arrival, particularly where the asylum seeker is under escort, may be transmitted by other means.

2. Any request, reply or correspondence emanating from a National Access Point, as referred to in Article 19, shall be deemed to be authentic.

3. The acknowledgement issued by the system shall be taken as proof of transmission and of the date and time of receipt of the request or reply.

Article 16

Language of communication

The language or languages of communication shall be chosen by agreement between the Member States concerned.

Article 17

Consent of the persons concerned

1. For the application of Articles 7 and 8, Article 15(1) and Article 21(3) of Regulation (EC) No 343/2003, which require the persons concerned to express a desire or give consent, their approval must be given in writing.

2. In the case of Article 21(3) of Regulation (EC) No 343/2003, the applicant must know for what information he is giving his approval.

TITLE II

ESTABLISHMENT OF THE "DUBLINET" NETWORK

CHAPTER I

TECHNICAL STANDARDS

Article 18

Establishment of "DubliNet"

1. The secure electronic means of transmission referred to in Article 22(2) of Regulation (EC) No 343/2003 shall be known as "DubliNet".

2. DubliNet is based on the use of the generic IDA services referred to in Article 4 of Decision No 1720/1999/EC[6].

[6] OJ L 203, 3.8.1999, p. 9.

Article 19

National Access Points

1. Each Member State shall have a single designated National Access Point.
2. The National Access Points shall be responsible for processing incoming data and transmitting outgoing data.
3. The National Access Points shall be responsible for issuing an acknowledgement of receipt for every incoming transmission.
4. The forms of which the models are set out in Annexes I and III and the form for the request of information set out in Annex V shall be sent between National Access Points in the format supplied by the Commission. The Commission shall inform the Member States of the technical standards required.

CHAPTER II

RULES FOR USE

Article 20

Reference number

1. Each transmission shall have a reference number making it possible unambiguously to identify the case to which it relates and the Member State making the request. That number must also make it possible to determine whether the transmission relates to a request for taking charge (type 1), a request for taking back (type 2) or a request for information (type 3).
2. The reference number shall begin with the letters used to identify the Member State in Eurodac. This code shall be followed by the number indicating the type of request, according to the classification set out in paragraph 1.

   If the request is based on data supplied by Eurodac, the Eurodac reference number shall be included.

Article 21

Continuous operation

1. The Member States shall take the necessary steps to ensure that their National Access Points operate without interruption.
2. If the operation of a National Access Point is interrupted for more than seven working hours the Member State shall notify the competent authorities designated pursuant to Article 22(1) of Regulation (EC) No 343/2003 and the Commission and shall take all the necessary steps to ensure that normal operation is resumed as soon as possible.
3. If a National Access Point has sent data to a National Access Point that has experienced an interruption in its operation, the acknowledgement of transmission generated by the IDA generic services shall be used as proof of the date and time of transmission. The deadlines set by Regulation (EC) No 343/2003 for sending a request or a reply shall not be suspended for the duration of the interruption of the operation of the National Access Point in question.

TITLE III

TRANSITIONAL AND FINAL PROVISIONS

Article 22

Laissez-passer produced for the purposes of the Dublin Convention

Laissez-passer printed for the purposes of the Dublin Convention shall be accepted for the transfer of applicants for asylum under Regulation (EC) No 343/2003 for a period of no more than 18 months following the entry into force of the present Regulation.

Article 23

Entry into force

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

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

DONE at Brussels, 2 September 2003.

For the Commission

António VITORINO

Member of the Commission

Annex I

STANDARD FORM FOR DETERMINING THE MEMBER STATE ([1]) RESPONSIBLE FOR EXAMINING AN APPLICATION FOR ASYLUM

Request for taking charge presented on the basis of the following Article of Council Regulation (EC) No 343/2003:

Article 6 (unaccompanied minor): ❑
Article 7 (family member resident in the Member State as a refugee): ❑
Article 8 (family member applying for asylum in a Member State): ❑
Article 9(1) or (3) (valid residence document): ❑
Article 9(2) or (3) (valid visa): ❑
Article 9(4) (residence document which expired less than two years previously or visa which expired less than six months previously): ❑
Article 10(1) (illegal entry at external frontier less than 12 months ago): ❑
Article 10(2) (residence of at least 5 months in the Member State): ❑
Article 11(1) (visa requirement waived for entry): ❑
Article 14 (keeping family groups together): ❑
Article 15 (humanitarian grounds): ❑

Eurodac data: ❑ Eurodac No: ……
Reply requested urgently: ❑ No later than: ……..

Reason for urgency: ……..... ……..

Photo

File number:

Personal particulars of aplicant

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	……

[1] *Note:* Pursuant to the Agreement of 19 January 2001 between the European Community and the Republic of Iceland and the Kingdom of Norway, the words 'Member States' include Iceland and Norway.

(c) none/stateless	……
7. Sex	❑ Male ❑ Female
8. Name of father	……
9. Name of mother	……
10. Marital status	❑ Single ❑ Married ❑ Widowed ❑ Divorced ❑ Cohabitee
11. Language(s) of origin	…… …… ……

Personal particulars of family members

12. 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; in this case include the reference number of the other member of the couple on all forms).

……..
……..
Reference number of spouse (if necessary): ……

13. 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) ……

14. Place and date of the application for asylum in the country of residence: ……
……

Previous asylum procedures	
15. 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 ❑ Don't know ❑ Yes, application rejected
When was the decision taken?	…… ……
Identity papers	
16. National passport	❑ Yes ❑ No
Number	……
Issued on	……
By	……
Valid until	……
17. Document replacing passport	❑ Yes ❑ No
Number	……
Issued on	……

By	……
Valid until	……
18. Other document	❑ Yes ❑ No
Number	……
Issued on	……
By	……
Valid until	……
19. 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)	❑ Left without documents ❑ Documents lost ❑ Documents stolen (When? Where? …… ……..) ❑ Other reasons (Please specify …… ……..)
<u>Residence documents/visas</u>	
20. Does the asylum aplicant possess a residence document/visa for the country of residence?	❑ Yes ❑ No
Type of document	❑ Residence permit ❑ Entry visa ❑ Transit visa
Issued on	……
By	……
Valid until	……
21. Does the asylum applicant possess a residence document/visa for another EU Member State ([2])?	❑ Yes ❑ No
Which state?	……
Type of document	❑ Residence permit ❑ Entry visa ❑ Transit visa
Issued on	……
By	……
Valid until	……
<u>Travel route</u>	
22. 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 authorised crossing point	……
or	
– Avoided border controls (entered illegally)	……

[2] Including Iceland and Norway.

– Means of transport used	❑ Public transport (what form? ……..) ❑ Own vehicle …….. ❑ Other means (how? ……..) ……
23. Did the asylum applicant enter via another European Union Member State? ([3])	❑ Yes ❑ No
– Which was the first EU Member State entered?	……
– Crossed border at authorised border point,	……
or	
– Avoided border controls at	……
– When?	……
Residence in another EU Member State ([4])	
24. Residence in another EU Member State or States after leaving country in which journey was begun (country of origin/provenance)	❑ Yes ❑ No
– In which State or States?	……
– From – to	……
– Place/exact address	……
– Residence was	❑ Authorised ❑ Unauthorised
– Period of validity of residence permit	……
– Purpose of residence	……
Particulars of family members living in EU Member States ([5])	
25. (a) Is any family member residing in a Member State?	❑ Yes ❑ No
– Name of family member	……
– Date of birth	……
– Marital status	❑ Single ❑ Married ❑ Widowed ❑ Divorced
– Relationship	❑ spouse ❑ father ❑ mother ❑ child ❑ brother ❑ sister ❑ guardian ❑ other (please specify) ……
– Member State	……
– Address in that State	……
– Residence Status	❑ recognised refugee ❑ resident ❑ asylum applicant ❑ illegal
(b) Do any of those concerned object to the examination of the application for asylum in that Member State?	❑ Yes ❑ No

[3] Including Iceland and Norway.
[4] Including Iceland and Norway.
[5] Including Iceland and Norway.
[*] In block capitals.

Other useful information	…… …… …… …… ……

Annex II

(References are to Articles of Council Regulation (EC) No 343/2003)

List A

MEANS OF PROOF

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

1. Presence of a family member (father, mother, guardian) of an asylum applicant who is an unaccompanied minor (Article 6)

Probative evidence

– Written confirmation of the information by the other Member State,

– Extracts from registers,

– Residence permits issued to the family member,

– Evidence that the persons are related, if available,

– Failing this, and if necessary, a DNA or blood test.

2. Legal residence in a Member State of a family member recognised as having refugee status (Article 7)

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.

3. Presence of a family member applying for asylum whose application has not yet been the subject of a first decision regarding the substance in a Member State (Article 8)

Probative evidence

– Written confirmation of the information by the other Member State,

– Extracts from registers,

– Temporary residence authorisations issued to the individual while the asylum application is being examined,

– Evidence that the persons are related, if available,

– Failing this, if necessary, a DNA or blood test,

– Consent of the persons concerned.

4. Valid residence documents (Article 9(1) and (3) or residence documents which expired less than two years previously (and date of entry into force) (Article 9(4))

Probative evidence

– Residence document,

– Extracts from the register of aliens or similar registers,

– Reports/confirmation of the information by the Member State which issued the residence document.

5. Valid visas (Article 9(2) and(3)) and visas which expired less than six months previously (and date of entry into force) (Article 9(4))

Probative evidence

– Visa issued (valid or expired, as appropriate),

– Extracts from the register of aliens or similar registers,

– Reports/confirmation of the information by the Member State which issued the visa.

6. Legal entry into the territory at an external frontier (Article 11)

Probative evidence

– Entry stamp in a passport,

– Exit stamp from a country bordering on a Member State, bearing in mind the route 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.

7. Illegal entry at an external frontier (Article 10(1))

Probative evidence

– Positive match by Eurodac from a comparison of the fingerprints of the applicant with fingerprints taken pursuant to Article 8 of the "Eurodac" Regulation,

– Entry stamp in a forged or falsified passport,

– Exit stamp from a country bordering on a Member State, bearing in mind the route 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.

8. Residence in a Member State for at least five months (Article 10(2))

Probative evidence

– Residence authorisations issued while the application for a residence permit is being examined,

– Requests to leave the territory or expulsion order issued on dates at least five months apart or that have not been enforced,

– Extracts from the records of hospitals, prisons, detention centres.

9. Departure from the territory of the Member States (Article 16(3))

Probative evidence

– Exit stamp,

– Extracts from third-country registers (substantiating residence),

– Tickets conclusively establishing departure from or 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 route taken by the asylum-seeker and the date the frontier was crossed.

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

1. Process of determining the Member State responsible is under way in the Member State where the asylum application was lodged (Article 4(5))

Probative evidence

– Positive match by Eurodac from a comparison of the fingerprints of the applicant with fingerprints taken pursuant to Article 4 of the "Eurodac" Regulation,

– 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.

2. Application for asylum is under examination or was lodged previously (Article 16(1)(c)(d) and (e))

Probative evidence

– Positive match by Eurodac from a comparison of the fingerprints of the applicant with fingerprints taken pursuant to Article 4 of the "Eurodac" Regulation,
– 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.

3. Departure from the territory of the Member States (Article 4(5), Article 16(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 route 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.

4. Expulsion from the territory of the Member States (Article 16(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

CIRCUMSTANTIAL EVIDENCE

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

1. Presence of a family member (father, mother, guardian) of an asylum applicant who is an unaccompanied minor (Article 6)

Indicative evidence[6]

– Verifiable information from the asylum applicant,
– Statements by the family members concerned,
– Reports/confirmation of the information by an international Organization, such as UNHCR.

2. Legal residence in a Member State of a family member recognised as having refugee status (Article 7)

Indicative evidence

– Verifiable information from the asylum applicant,

[6] This indicative evidence must always be followed by an item of probative evidence as defined in list A.

– Reports/confirmation of the information by an international Organization, such as UNHCR.

3. Presence of a family member applying for asylum whose application has not yet been the subject of a first decision regarding the substance in a Member State (Article 8)

Indicative evidence

– Verifiable information from the asylum applicant,

– Reports/confirmation of the information by an international Organization, such as UNHCR.

4. Valid residence documents (Article 9(1) and (3)) or residence documents which expired less than two years previously (and date of entry into force) (Article 9(4))

Indicative evidence

– Detailed and verifiable statements by the asylum applicant,

– Reports/confirmation of the information by an international Organization, such as UNHCR,

– Reports/confirmation of the information by the Member State which did not issue the residence permit,

– Reports/confirmation of the information by family members, travelling companions, etc.

5. Valid visas (Article 9(2) and (3)) and visas which expired less than six months previously (and date of entry into force) (Article 9(4))

Indicative evidence

– Detailed and verifiable statements by the asylum applicant,

– Reports/confirmation of the information by an international Organization, such as UNHCR,

– Reports/confirmation of the information by the Member State which did not issue the residence permit,

– Reports/confirmation of the information by family members, travelling companions, etc.

6. Legal entry into the territory at an external frontier (Article 11)

Indicative evidence

– Detailed and verifiable statements by the asylum applicant,

– Reports/confirmation of the information by an international Organization, such as UNHCR,

– Reports/confirmation of the information by another Member State or third country,

– Reports/confirmation of the 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 travel agency,

– Other circumstantial evidence of the same kind.

7. Illegal entry into the territory at an external frontier (Article 10(1))

Indicative evidence

– Detailed and verifiable statements by the asylum applicant,

– Reports/confirmation of the information by an international Organization, such as UNHCR,

– Reports/confirmation of the information by another Member State or third country,

- Reports/confirmation of the 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,
- Other circumstantial evidence of the same kind.

8. Residence in a Member State for at least five months (Article 10(2))

Indicative evidence

- Detailed and verifiable statements by the asylum applicant,
- Reports/confirmation of the information by an international Organization, such as UNHCR,
- Reports/confirmation of the information by a non-governmental Organization, such as an Organization providing accommodation for those in need,
- Reports/confirmation of the information by family members, travelling companions, etc.,
- Fingerprints,
- 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,
- Other circumstantial evidence of the same kind.

9. Departure from the territory of the Member States (Article 16(3))

Indicative evidence

- Detailed and verifiable statements by the asylum applicant,
- Reports/confirmation of the information by an international Organization, such as UNHCR,
- Reports/confirmation of the 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 three months,
- Reports/confirmation of the 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. in a third country,
- Information showing that the asylum applicant has used the services of a courier or a travel agency,
- Other circumstantial evidence of the same kind.

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

1. Process of determining the Member State responsible is under way in the Member State where the asylum application was lodged (Article 4(5))

Indicative evidence

- Verifiable statements by the asylum applicant,
- Reports/confirmation of the information by an international Organization, such as UNHCR,
- Reports/confirmation of the information by family members, travelling companions, etc.,
- Reports/confirmation of the information by another Member State.

2. Application for asylum is under examination or was lodged previously (Article 16(1) (c)(d)(e))

Indicative evidence

- Verifiable statements by the asylum applicant,
- Reports/confirmation of the information by an international Organization, such as UNHCR,
- Reports/confirmation of the information by another Member State.

3. Departure from the territory of the Member States (Article 4(5), Article 16(3))

Indicative evidence

- Detailed and verifiable statements by the asylum applicant,
- Reports/confirmation of the information by an international Organization, such as UNHCR,
- Reports/confirmation of the 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 the 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. in a third country,
- Information showing that the asylum applicant has used the services of a courier or a travel agency,
- Other circumstantial evidence of the same kind.

4. Expulsion from the territory of the Member States (Article 16(4))

Indicative evidence

- Verifiable statements by the asylum applicant,
- Reports/confirmation of the information by an international Organization, 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 the 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,
- Other circumstantial evidence of the same kind.

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

Annex III

STANDARD FORM FOR REQUESTS FOR TAKING BACK

Request for taking back presented on the basis of the following Article of Council Regulation (EC) No 343/2003:

Article 4(5) (process of determining the Member State responsible is under way in the Member State where the application was lodged): ❑

Article 16(1)(c) (applicant is in the Member State without permission and his application is being examined in the Member State responsible): ❑

Article 16(1)(d) (applicant has made an application after withdrawing his application in the Member State responsible): ❑

Article 16(1)(e) (applicant is in the Member State without permission and his application has been rejected in the Member State responsible): ❑

Eurodac data: ❑ Eurodac No: ……

Reply requested urgently: ❑ No later than: ……..

Reason for urgency: …….....

……...

Photo

File number:

Personal particulars of aplicant

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	……
7. Sex	❑ Male ❑ Female
8. Name of father	……
9. Name of mother	……
10. Marital status	❑ Single ❑ Married ❑ Widowed ❑ Divorced ❑ Cohabitee

(*) In block capitals.

Previous asylum procedures	
11. Has the 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 ❑ Don't know ❑ Yes, application rejected
When was the decision taken	……
12. Does the applicant state that he left the territory of the Member States?	❑ Yes ❑ No Date of departure: …….. Date of return: ……
If yes:	
Which country(ies) did he go to?	……
Travel route:	…… …… ……
13. Documents submitted by the applicant	
Please enclose a list	…… …… …… …… …… ……

Comments:

Annex IV

Specimen laissez-passer for transfer of asylum applicants

LAISSEZ-PASSER

Reference No (*):

Issued pursuant to Articles 19 and 20 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States (1) by a third-country national.

Valid only for transfer from …… (2) to …….. (3) with the asylum applicant required to present him/herself at …….. (4) by …… (5).

Issued at:

SURNAME: ……..

FORENAMES: …….

PLACE AND DATE OF BIRTH: ……

NATIONALITY: ……..

Date of issue: ……

Photo

For the Ministry for the Interior: ……..

Seal

The bearer of this laissez-passer has been identified by the authorities …… (6) (7)

The document is issued pursuant to Articles 19 and 20 of Regulation (EC) No 343/2003 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.

(*) Reference number to be given by the country from which the transfer takes place.
(1) NB. Pursuant to the Agreement of 19 January 2001 between the European Community and the Republic of Iceland and the Kingdom of Norway, the words 'Member States' include Iceland and Norway.
(2) Member State from which transferred.
(3) Member State to which transferred.
(4) Place where the asylum applicant has to present him/herself upon arrival in the Member State responsible.
(5) Deadline by which the asylum applicant has to present him/herself upon arrival in the Member State responsible.
(6) On the basis of the following travel or identity documents presented to the authorities.
(7) On the basis of a statement by the asylum applicant or of document other than a travel or identity document.

Annex V

REQUEST FOR INFORMATION PURSUANT TO ARTICLE 21 OF COUNCIL REGULATION (EC) NO 343/2003

Date: ____ / _____ / _____

Reference No: ……..

Individual concerned:

– Surname: ……..

– Forename: ……

– Date of birth: ……

– Place of birth: ……..

– Nationality: ……

Indicative evidence enclosed: ❑ Yes ❑ No

(please specify) ……

……..

……..

This request for information concerns:

residence document:	❑	appeal:	❑
travel document:	❑	decision:	❑
visa:	❑	expulsion:	❑
application for asylum:	❑	other:	❑

Details: ……..

……

……..…..

……...……..

……...……..

……...……..

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COUNCIL DIRECTIVE 2003/86/EC OF 22 SEPTEMBER 2003 ON THE RIGHT TO FAMILY REUNIFICATION

Published in the Official Journal of the European Union OJ L 251, 03/10/2003 P. 0012 – 0018

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Having regard to the opinion of the Committee of the Regions[4],

Whereas:

1. With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.
2. Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.
3. The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure fair treatment of third country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.
4. Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.
5. Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.
6. To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.
7. Member States should be able to apply this Directive also when the family enters together.
8. Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.
9. Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

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[1] OJ C 116 E, 26.4.2000, p. 66, and OJ C 62 E, 27.2.2001, p. 99.
[2] OJ C 135, 7.5.2001, p. 174.
[3] OJ C 204, 18.7.2000, p. 40.
[4] OJ C 73, 26.3.2003, p. 16.

10. It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.
11. The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.
12. The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school.
13. A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.
14. Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.
15. The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.
16. Since the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
17. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.
18. In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

Has adopted this directive:

CHAPTER I

GENERAL PROVISIONS

Article 1

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

Article 2

For the purposes of this Directive:

(*a*) "Third country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(*b*) "Refugee" means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(*c*) "Sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(*d*) "Family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(*e*) "Residence permit" means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals[5];

(*f*) "Unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

Article 3

1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.
2. This Directive shall not apply where the sponsor is:
   (*a*) Applying for recognition of refugee status whose application has not yet given rise to a final decision;
   (*b*) Authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;
   (*c*) Authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.
3. This Directive shall not apply to members of the family of a Union citizen.
4. This Directive is without prejudice to more favourable provisions of:
   (*a*) Bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
   (*b*) The European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977.
5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

[5] OJ L 157, 15.6.2002, p. 1.

CHAPTER II

FAMILY MEMBERS

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

   (*a*) The sponsor's spouse;

   (*b*) The minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

   (*c*) The minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

   (*d*) The minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

   The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

   By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

   (*a*) First-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

   (*b*) The adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

   Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

   By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

6. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the

Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

CHAPTER III

SUBMISSION AND EXAMINATION OF THE APPLICATION

Article 5

1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

   If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

   When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

   By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

   In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

   Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

CHAPTER IV

REQUIREMENTS FOR THE EXERCISE OF THE RIGHT TO FAMILY REUNIFICATION

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

   When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 7

1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

   (*a*) Accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

   (*b*) Sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

   (*c*) Stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

   With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

Article 8

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

FAMILY REUNIFICATION OF REFUGEES

Article 9

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.
2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.
3. This Chapter is without prejudice to any rules granting refugee status to family members.

Article 10

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.
2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.
3. If the refugee is an unaccompanied minor, the Member States:

   (*a*) Shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(*b*) May authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.
2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

   Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

   Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.
2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

CHAPTER VI

ENTRY AND RESIDENCE OF FAMILY MEMBERS

Article 13

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.
2. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.
3. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:

   (*a*) Access to education;

   (*b*) Access to employment and self-employed activity;

   (*c*) Access to vocational guidance, initial and further training and retraining.
2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.
3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

Article 15

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

   Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

CHAPTER VII

PENALTIES AND REDRESS

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

   (*a*) Where the conditions laid down by this Directive are not or are no longer satisfied.

   When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

   (*b*) Where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

   (*c*) Where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

   (*a*) False or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

   (*b*) The marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

   When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Article 17

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Article 18

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

CHAPTER VIII

FINAL PROVISIONS

Article 19

Periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 3 October 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 21

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 22

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

DONE at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI

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COUNCIL DIRECTIVE 2004/83/EC OF 29 APRIL 2004 ON MINIMUM STANDARDS FOR THE QUALIFICATION AND STATUS OF THIRD-COUNTRY NATIONALS OR STATELESS PERSONS AS REFUGEES OR AS PERSONS WHO OTHERWISE NEED INTERNATIONAL PROTECTION AND THE CONTENT OF THE PROTECTION GRANTED

Published in the Official Journal of the European Union OJ L 304, 30/09/2004 P. 0012 – 0023

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular points 1(c), 2(a) and 3(a) of Article 63 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Having regard to the opinion of the Committee of the Regions[4],

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 (Geneva Convention), as supplemented by the New York Protocol of 31 January 1967 (Protocol), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.
3. The Geneva Convention and Protocol provide the cornerstone of the international legal regime for the protection of refugees.
4. The Tampere conclusions provide that a Common European Asylum System should include, in the short term, the approximation of rules on the recognition of refugees and the content of refugee status.
5. The Tampere conclusions also provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.
6. The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States.
7. The approximation of rules on the recognition and content of refugee and subsidiary protection status should help to limit the secondary movements of applicants for asylum between Member States, where such movement is purely caused by differences in legal frameworks.
8. It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person who otherwise needs international protection.

[1] OJ C 51 E, 26.2.2002, p. 325.
[2] OJ C 300 E, 11.12.2003, p. 25.
[3] OJ C 221, 17.9.2002, p. 43.
[4] OJ C 278, 14.11.2002, p. 44.

9. Those third country nationals or stateless persons, who are allowed to remain in the territories of the Member States for reasons not due to a need for international protection but on a discretionary basis on compassionate or humanitarian grounds, fall outside the scope of this Directive.

10. This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members.

11. With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

12. The "best interests of the child" should be a primary consideration of Member States when implementing this Directive.

13. This Directive is without prejudice to the Protocol on asylum for nationals of Member States of the European Union as annexed to the Treaty Establishing the European Community.

14. The recognition of refugee status is a declaratory act.

15. Consultations with the United Nations High Commissioner for Refugees may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention.

16. Minimum standards for the definition and content of refugee status should be laid down to guide the competent national bodies of Member States in the application of the Geneva Convention.

17. It is necessary to introduce common criteria for recognising applicants for asylum as refugees within the meaning of Article 1 of the Geneva Convention.

18. In particular, it is necessary to introduce common concepts of protection needs arising *sur place*; sources of harm and protection; internal protection; and persecution, including the reasons for persecution.

19. Protection can be provided not only by the State but also by parties or Organizations, including international Organizations, meeting the conditions of this Directive, which control a region or a larger area within the territory of the State.

20. It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution.

21. It is equally necessary to introduce a common concept of the persecution ground "membership of a particular social group".

22. Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations".

23. As referred to in Article 14, "status" can also include refugee status.

24. Minimum standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.

25. It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.

26. Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm.

27. Family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status.

28. The notion of national security and public order also covers cases in which a third country national belongs to an association which supports international terrorism or supports such an association.

29. While the benefits provided to family members of beneficiaries of subsidiary protection status do not necessarily have to be the same as those provided to the qualifying beneficiary, they need to be fair in comparison to those enjoyed by beneficiaries of subsidiary protection status.

30. Within the limits set out by international obligations, Member States may lay down that the granting of benefits with regard to access to employment, social welfare, health care and access to integration facilities requires the prior issue of a residence permit.

31. This Directive does not apply to financial benefits from the Member States which are granted to promote education and training.

32. The practical difficulties encountered by beneficiaries of refugee or subsidiary protection status concerning the authentication of their foreign diplomas, certificates or other evidence of formal qualification should be taken into account.

33. Especially to avoid social hardship, it is appropriate, for beneficiaries of refugee or subsidiary protection status, to provide without discrimination in the context of social assistance the adequate social welfare and means of subsistence.

34. With regard to social assistance and health care, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting the benefits for beneficiaries of subsidiary protection status to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy and parental assistance, in so far as they are granted to nationals according to the legislation of the Member State concerned.

35. Access to health care, including both physical and mental health care, should be ensured to beneficiaries of refugee or subsidiary protection status.

36. The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding *non-refoulement*, the evolution of the labour markets in the Member States as well as the development of common basic principles for integration.

37. Since the objectives of the proposed Directive, namely to establish minimum standards for the granting of international protection to third country nationals and stateless persons by Member States and the content of the protection granted, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

38. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 28 January 2002, its wish to take part in the adoption and application of this Directive.

39. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 13 February 2002, its wish to take part in the adoption and application of this Directive.

40. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

Has adopted this directive,

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Article 2

Definitions

For the purposes of this Directive:

(*a*) "International protection" means the refugee and subsidiary protection status as defined in (d) and (f);

(*b*) "Geneva Convention" means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967;

(*c*) "Refugee" means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(*d*) "Refugee status" means the recognition by a Member State of a third country national or a stateless person as a refugee;

(*e*) "Person eligible for subsidiary protection" means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

(*f*) "Subsidiary protection status" means the recognition by a Member State of a third country national or a stateless person as a person eligible for subsidiary protection;

(*g*) "Application for international protection" means a request made by a third country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of this Directive, that can be applied for separately;

(*h*) "Family members" means, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of refugee or subsidiary protection status who are present in the same Member State in relation to the application for international protection:

- The spouse of the beneficiary of refugee or subsidiary protection status or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens,
- The minor children of the couple referred to in the first indent or of the beneficiary of refugee or subsidiary protection status, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

(*i*) "Unaccompanied minors" means third-country nationals or stateless persons below the age of 18, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person; it

includes minors who are left unaccompanied after they have entered the territory of the Member States;

(*j*) "Residence permit" means any permit or authorisation issued by the authorities of a Member State, in the form provided for under that State's legislation, allowing a third country national or stateless person to reside on its territory;

(*k*) "Country of origin" means the country or countries of nationality or, for stateless persons, of former habitual residence.

Article 3

More favourable standards

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

CHAPTER II

ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Article 4

Assessment of facts and circumstances

1. Member States may consider it the duty of the applicant to submit as soon as possible all elements needed to substantiate the application for international protection. In cooperation with the applicant it is the duty of the Member State to assess the relevant elements of the application.

2. The elements referred to in of paragraph 1 consist of the applicant's statements and all documentation at the applicants disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes, identity and travel documents and the reasons for applying for international protection.

3. The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

   (*a*) All relevant facts as they relate to the country of origin at the time of taking a decision on the application; including laws and regulations of the country of origin and the manner in which they are applied;

   (*b*) The relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

   (*c*) The individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

   (*d*) Whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

   (*e*) Whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

4. The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

5. Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not

supported by documentary or other evidence, those aspects shall not need confirmation, when the following conditions are met:

(*a*) The applicant has made a genuine effort to substantiate his application;

(*b*) All relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(*c*) The applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(*d*) The applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and

(*e*) The general credibility of the applicant has been established.

Article 5

International protection needs arising sur place

1. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.

2. A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

3. Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin.

Article 6

Actors of persecution or serious harm

Actors of persecution or serious harm include:

(*a*) The State;

(*b*) Parties or Organizations controlling the State or a substantial part of the territory of the State;

(*c*) Non-State actors, if it can be demonstrated that the actors mentioned in (a) and (b), including international Organizations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

Article 7

Actors of protection

1. Protection can be provided by:

(*a*) The State; or

(*b*) Parties or Organizations, including international Organizations, controlling the State or a substantial part of the territory of the State.

2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3. When assessing whether an international Organization controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Council acts.

Article 8

Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9

Acts of persecution

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:

   (*a*) Be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

   (*b*) Be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, *inter alia*, take the form of:

   (*a*) Acts of physical or mental violence, including acts of sexual violence;

   (*b*) Legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

   (*c*) Prosecution or punishment, which is disproportionate or discriminatory;

   (*d*) Denial of judicial redress resulting in a disproportionate or discriminatory punishment;

   (*e*) Prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

   (*f*) Acts of a gender-specific or child-specific nature.

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

Article 10

Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:

   (*a*) The concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;

   (*b*) The concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(*c*) The concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(*d*) A group shall be considered to form a particular social group where in particular:

– Members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

– That group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

– Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

(*e*) The concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Article 11

Cessation

1. A third country national or a stateless person shall cease to be a refugee, if he or she:

(*a*) Has voluntarily re-availed himself or herself of the protection of the country of nationality; or

(*b*) Having lost his or her nationality, has voluntarily re-acquired it; or

(*c*) Has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or

(*d*) Has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

(*e*) Can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;

(*f*) Being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Article 12

Exclusion

1. A third country national or a stateless person is excluded from being a refugee, if:

(*a*) He or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Directive;

(*b*) He or she is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.

2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(*a*) He or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(*b*) He or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(*c*) He or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

CHAPTER IV

REFUGEE STATUS

Article 13

Granting of refugee status

Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.

Article 14

Revocation of, ending of or refusal to renew refugee status

1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

3. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:

(*a*) He or she should have been or is excluded from being a refugee in accordance with Article 12;

(*b*) His or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

(*a*) There are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;

(*b*) He or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

CHAPTER V

QUALIFICATION FOR SUBSIDIARY PROTECTION

Article 15

Serious harm

Serious harm consists of:

(*a*) Death penalty or execution; or

(*b*) Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(*c*) Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Article 16

Cessation

1. A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

2. In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

Article 17

Exclusion

1. A third country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that:

   (*a*) He or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

   (*b*) He or she has committed a serious crime;

   (*c*) He or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;

   (*d*) He or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

2. Paragraph 1 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

3. Member States may exclude a third country national or a stateless person from being eligible for subsidiary protection, if he or she prior to his or her admission to the Member State has committed one or more crimes, outside the scope of paragraph 1, which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

CHAPTER VI

SUBSIDIARY PROTECTION STATUS

Article 18

Granting of subsidiary protection status

Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

Article 19

Revocation of, ending of or refusal to renew subsidiary protection status

1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be eligible for subsidiary protection in accordance with Article 16.
2. Member States may revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if after having been granted subsidiary protection status, he or she should have been excluded from being eligible for subsidiary protection in accordance with Article 17(3).
3. Member States shall revoke, end or refuse to renew the subsidiary protection status of a third country national or a stateless person, if:

   (*a*) He or she, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection in accordance with Article 17(1) and (2);

   (*b*) His or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.
4. Without prejudice to the duty of the third country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted the subsidiary protection status, shall on an individual basis demonstrate that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.

CHAPTER VII

CONTENT OF INTERNATIONAL PROTECTION

Article 20

General rules

1. This Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. This Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.
3. When implementing this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.
5. The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors.

6. Within the limits set out by the Geneva Convention, Member States may reduce the benefits of this Chapter, granted to a refugee whose refugee status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a refugee.

7. Within the limits set out by international obligations of Member States, Member States may reduce the benefits of this Chapter, granted to a person eligible for subsidiary protection, whose subsidiary protection status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a person eligible for subsidiary protection.

Article 21

Protection from refoulement

1. Member States shall respect the principle of *non-refoulement* in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:

   (*a*) There are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

   (*b*) He or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

Article 22

Information

Member States shall provide persons recognised as being in need of international protection, as soon as possible after the respective protection status has been granted, with access to information, in a language likely to be understood by them, on the rights and obligations relating to that status.

Article 23

Maintaining family unity

1. Member States shall ensure that family unity can be maintained.

2. Member States shall ensure that family members of the beneficiary of refugee or subsidiary protection status, who do not individually qualify for such status, are entitled to claim the benefits referred to in Articles 24 to 34, in accordance with national procedures and as far as it is compatible with the personal legal status of the family member.

   In so far as the family members of beneficiaries of subsidiary protection status are concerned, Member States may define the conditions applicable to such benefits.

   In these cases, Member States shall ensure that any benefits provided guarantee an adequate standard of living.

3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from refugee or subsidiary protection status pursuant to Chapters III and V.

4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred therein for reasons of national security or public order.

5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time.

Article 24

Residence permits

1. As soon as possible after their status has been granted, Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least three years and renewable unless compelling reasons of national security or public order otherwise require, and without prejudice to Article 21(3).

   Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than three years and renewable.

2. As soon as possible after the status has been granted, Member States shall issue to beneficiaries of subsidiary protection status a residence permit which must be valid for at least one year and renewable, unless compelling reasons of national security or public order otherwise require.

Article 25

Travel document

1. Member States shall issue to beneficiaries of refugee status travel documents in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.

2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel, at least when serious humanitarian reasons arise that require their presence in another State, unless compelling reasons of national security or public order otherwise require.

Article 26

Access to employment

1. Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after the refugee status has been granted.

2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to beneficiaries of refugee status, under equivalent conditions as nationals.

3. Member States shall authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service immediately after the subsidiary protection status has been granted. The situation of the labour market in the Member States may be taken into account, including for possible prioritisation of access to employment for a limited period of time to be determined in accordance with national law. Member States shall ensure that the beneficiary of subsidiary protection status has access to a post for which the beneficiary has received an offer in accordance with national rules on prioritisation in the labour market.

4. Member States shall ensure that beneficiaries of subsidiary protection status have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under conditions to be decided by the Member States.

5. The law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

Article 27

Access to education

1. Member States shall grant full access to the education system to all minors granted refugee or subsidiary protection status, under the same conditions as nationals.

2. Member States shall allow adults granted refugee or subsidiary protection status access to the general education system, further training or retraining, under the same conditions as third country nationals legally resident.

3. Member States shall ensure equal treatment between beneficiaries of refugee or subsidiary protection status and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

Article 28

Social welfare

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status receive, in the Member State that has granted such statuses, the necessary social assistance, as provided to nationals of that Member State.

2. By exception to the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.

Article 29

Health care

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.

2. By exception to the general rule laid down in paragraph 1, Member States may limit health care granted to beneficiaries of subsidiary protection to core benefits which will then be provided at the same levels and under the same eligibility conditions as nationals.

3. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care to beneficiaries of refugee or subsidiary protection status who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.

Article 30

Unaccompanied minors

1. As soon as possible after the granting of refugee or subsidiary protection status Member States shall take the necessary measures, to ensure the representation of unaccompanied minors by legal guardianship or, where necessary, by an Organization responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or Court order.

2. Member States shall ensure that the minor's needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.

3. Member States shall ensure that unaccompanied minors are placed either:

(*a*) With adult relatives; or

(*b*) With a foster family; or

(*c*) In centres specialised in accommodation for minors; or

(*d*) In other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity.

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

5. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of the minor's family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.
6. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs.

Article 31

Access to accommodation

The Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to accommodation under equivalent conditions as other third country nationals legally resident in their territories.

Article 32

Freedom of movement within the Member State

Member States shall allow freedom of movement within their territory to beneficiaries of refugee or subsidiary protection status, under the same conditions and restrictions as those provided for other third country nationals legally resident in their territories.

Article 33

Access to integration facilities

1. In order to facilitate the integration of refugees into society, Member States shall make provision for integration programmes which they consider to be appropriate or create pre-conditions which guarantee access to such programmes.
2. Where it is considered appropriate by Member States, beneficiaries of subsidiary protection status shall be granted access to integration programmes.

Article 34

Repatriation

Member States may provide assistance to beneficiaries of refugee or subsidiary protection status who wish to repatriate.

CHAPTER VIII

ADMINISTRATIVE COOPERATION

Article 35

Cooperation

Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between the competent authorities.

Article 36

Staff

Member States shall ensure that authorities and other Organizations implementing this Directive have received the necessary training and shall be bound by the confidentiality principle, as defined in the national law, in relation to any information they obtain in the course of their work.

CHAPTER IX

FINAL PROVISIONS

Article 37

Reports

1. By 10 April 2008, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. These proposals for amendments shall be made by way of priority in relation to Articles 15, 26 and 33. Member States shall send the Commission all the information that is appropriate for drawing up that report by 10 October 2007.
2. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article 38

Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 10 October 2006. They shall forthwith inform the Commission thereof.

   When the Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 39

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 40

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

DONE at Luxembourg, 29 April 2004.

For the Council

The President

M. MC DOWELL

COUNCIL DIRECTIVE 2005/85/EC OF 1 DECEMBER 2005 ON MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS

Published in the Official Journal of the European Communities OJ L 326, 13.12.2005, p. 13–34

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular point (1) (d) of the first paragraph of Article 63 thereof.

Having regard to the proposal from the Commission[1]

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Whereas:

1. A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively 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 of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.
3. The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common standards for fair and efficient asylum procedures in the Member States and, in the longer term, Community rules leading to a common asylum procedure in the European Community.
4. The minimum standards laid down in this Directive on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures.
5. The main objective of this Directive is to introduce a minimum framework in the Community on procedures for granting and withdrawing refugee status.
6. The approximation of rules on the procedures for granting and withdrawing refugee status should help to limit the secondary movements of applicants for asylum between Member States, where such movement would be caused by differences in legal frameworks.
7. It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.
8. This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
9. With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.
10. It is essential that decisions on all applications for asylum be taken on the basis of the facts and, in the first instance, by authorities whose personnel has the appropriate knowledge or receives the necessary training in the field of asylum and refugee matters.

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[1] OJ C 62, 27.2.2001, p. 231 and OJ C 291, 26.11.2002, p. 143.

[2] OJ C 77, 28.3.2002, p. 94.

[3] OJ C 193, 10.7.2001, p. 77. Opinion delivered following non-compulsory consultation.

11. It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum. The Organization of the processing of applications for asylum should be left to the discretion of Member States, so that they may, in accordance with their national needs, prioritise or accelerate the processing of any application, taking into account the standards in this Directive.

12. The notion of public order may cover a conviction for committing a serious crime.

13. In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his/her case and sufficient procedural guarantees to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should normally provide an applicant at least with the right to stay pending a decision by the determining authority, access to the services of an interpreter for submitting his/her case if interviewed by the authorities, the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) or with any Organization working on its behalf, the right to appropriate notification of a decision, a motivation of that decision in fact and in law, the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand.

14. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.

15. Where an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige Member States to carry out a new full examination procedure. In these cases, Member States should have a choice of procedure involving exceptions to the guarantees normally enjoyed by the applicant.

16. Many asylum applications are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to keep existing procedures adapted to the specific situation of these applicants at the border. Common rules should be defined on possible exceptions made in these circumstances to the guarantees normally enjoyed by applicants. Border procedures should mainly apply to those applicants who do not meet the conditions for entry into the territory of the Member States.

17. A key consideration for the well-foundedness of an asylum application is the safety of the applicant in his/her country of origin. Where a third country can be regarded as a safe country of origin, Member States should be able to designate it as safe and presume its safety for a particular applicant, unless he/she presents serious counter-indications.

18. Given the level of harmonisation achieved on the qualification of third country nationals and stateless persons as refugees, common criteria for designating third countries as safe countries of origin should be established.

19. Where the Council has satisfied itself that those criteria are met in relation to a particular country of origin, and has consequently included it in the minimum common list of safe countries of origin to be adopted pursuant to this Directive, Member States should be obliged to consider applications of persons with the nationality of that country, or of stateless persons formerly habitually resident in that country, on the basis of the rebuttable presumption of the safety of that country. In the light of the political importance of the designation of safe countries of origin, in particular in view of the implications of an assessment of the human rights situation in a country of origin and its implications for the policies of the European Union in the field of external relations, the Council should take any decisions on the establishment or amendment of the list, after consultation of the European Parliament.

20. It results from the status of Bulgaria and Romania as candidate countries for accession to the European Union and the progress made by these countries towards membership that they should be regarded as constituting safe countries of origin for the purposes of this Directive until the date of their accession to the European Union.

21. The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

22. Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted[4], except where the present Directive provides otherwise, in particular where it can be reasonably assumed that another country would do the examination or provide sufficient protection. In particular, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be re-admitted to this country.

23. Member States should also not be obliged to assess the substance of an asylum application where the applicant, due to a connection to a third country as defined by national law, can reasonably be expected to seek protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In order to avoid secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

24. Furthermore, with respect to certain European third countries, which observe particularly high human rights and refugee protection standards, Member States should be allowed to not carry out, or not to carry out full examination of asylum applications regarding applicants who enter their territory from such European third countries. Given the potential consequences for the applicant of a restricted or omitted examination, this application of the safe third country concept should be restricted to cases involving third countries with respect to which the Council has satisfied itself that the high standards for the safety of the third country concerned, as set out in this Directive, are fulfilled. The Council should take decisions in this matter after consultation of the European Parliament.

25. It follows from the nature of the common standards concerning both safe third country concepts as set out in this Directive, that the practical effect of the concepts depends on whether the third country in question permits the applicant in question to enter its territory.

26. With respect to the withdrawal of refugee status, Member States should ensure that persons benefiting from refugee status are duly informed of a possible reconsideration of their status and have the opportunity to submit their point of view before the authorities can take a motivated decision to withdraw their status. However, dispensing with these guarantees should be allowed where the reasons for the cessation of the refugee status is not related to a change of the conditions on which the recognition was based.

27. It reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of refugee status are subject to an effective remedy before a court or tribunal within the meaning of Article 234 of the Treaty. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.

28. In accordance with Article 64 of the Treaty, this Directive does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

[4] OJ L 304, 30.9.2004, p. 12.

29. This Directive does not deal with procedures governed by Council Regulation (EC) No 343/2003 of 18 February 2003 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[5].

30. The implementation of this Directive should be evaluated at regular intervals not exceeding two years.

31. Since the objective of this Directive, namely to establish minimum standards on procedures in Member States for granting and withdrawing refugee status cannot be sufficiently attained by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

32. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom has notified, by letter of 24 January 2001, its wish to take part in the adoption and application of this Directive.

33. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has notified, by letter of 14 February 2001, its wish to take part in the adoption and application of this Directive.

34. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

Has adopted this directive:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

Article 2

Definitions

For the purposes of this Directive:

(*a*) 'Geneva Convention' means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(*b*) 'Application' or 'application for asylum' means an application made by a third country national or stateless person which can be understood as a request for international protection from a Member State under the Geneva Convention. Any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;

(*c*) 'Applicant' or 'applicant for asylum' means a third country national or stateless person who has made an application for asylum in respect of which a final decision has not yet been taken;

(*d*) 'Final decision' means a decision on whether the third country national or stateless person be granted refugee status by virtue of Directive 2004/83/EC and which is no longer subject to a remedy within the framework of

[5] OJ L 50, 25.2.2003, p. 1.

Chapter V of this Directive irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome, subject to Annex III to this Directive;

(*e*) 'Determining authority' means any quasi-judicial or administrative body in a Member State responsible for examining applications for asylum and competent to take decisions at first instance in such cases, subject to Annex I;

(*f*) 'Refugee' means a third country national or a stateless person who fulfils the requirements of Article 1 of the Geneva Convention as set out in Directive 2004/83/EC;

(*g*) 'Refugee status' means the recognition by a Member State of a third country national or stateless person as a refugee;

(*h*) 'Unaccompanied minor' means a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States;

(*i*) 'Representative' means a person acting on behalf of an Organization representing an unaccompanied minor as legal guardian, a person acting on behalf of a national Organization which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests;

(*j*) 'Withdrawal of refugee status' means the decision by a competent authority to revoke, end or refuse to renew the refugee status of a person in accordance with Directive 2004/83/EC;

(*k*) 'Remain in the Member State' means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for asylum has been made or is being examined.

Article 3

Scope

1. This Directive shall apply to all applications for asylum made in the territory, including at the border or in the transit zones of the Member States, and to the withdrawal of refugee status.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.

4. Moreover, Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection.

Article 4

Responsible authorities

1. Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of the applications in accordance with this Directive, in particular Articles 8(2) and 9.

   In accordance with Article 4(4) of Regulation (EC) No 343/2003, applications for asylum made in a Member State to the authorities of another Member State carrying out immigration controls there shall be dealt with by the Member State in whose territory the application is made.

2. However, Member States may provide that another authority is responsible for the purposes of:

   (*a*) Processing cases in which it is considered to transfer the applicant to another State according to the rules establishing criteria and mechanisms for determining which State is responsible for considering

an application for asylum, until the transfer takes place or the requested State has refused to take charge of or take back the applicant;

(*b*) Taking a decision on the application in the light of national security provisions, provided the determining authority is consulted prior to this decision as to whether the applicant qualifies as a refugee by virtue of Directive 2004/83/EC;

(*c*) Conducting a preliminary examination pursuant to Article 32, provided this authority has access to the applicant's file regarding the previous application;

(*d*) Processing cases in the framework of the procedures provided for in Article 35(1);

(*e*) Refusing permission to enter in the framework of the procedure provided for in Article 35(2) to (5), subject to the conditions and as set out therein;

(*f*) Establishing that an applicant is seeking to enter or has entered into the Member State from a safe third country pursuant to Article 36, subject to the conditions and as set out in that Article.

3. Where authorities are designated in accordance with paragraph 2, Member States shall ensure that the personnel of such authorities have the appropriate knowledge or receive the necessary training to fulfil their obligations when implementing this Directive.

Article 5

More favourable provisions

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

1. Member States may require that applications for asylum be made in person and/or at a designated place.
2. Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.
3. Member States may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

   Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted.
4. Member States may determine in national legislation:

   (*a*) The cases in which a minor can make an application on his/her own behalf;

   (*b*) The cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 17(1)(a);

   (*c*) The cases in which the lodging of an application for asylum is deemed to constitute also the lodging of an application for asylum for any unmarried minor.
5. Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.

Article 7

Right to remain in the Member State pending the examination of the application

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

2. Member States can make an exception only where, in accordance with Articles 32 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant[6] or otherwise, or to a third country, or to international criminal courts or tribunals.

Article 8

Requirements for the examination of applications

1. Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that:

   (*a*) Applications are examined and decisions are taken individually, objectively and impartially;

   (*b*) Precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

   (*c*) The personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

3. The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 2(b), necessary for the fulfilment of their task.

4. Member States may provide for rules concerning the translation of documents relevant for the examination of applications.

Article 9

Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for asylum are given in writing.

2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

   Member States need not state the reasons for not granting refugee status in a decision where the applicant is granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting refugee status are stated in the applicant's file and that the applicant has, upon request, access to his/her file.

   Moreover, Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant.

[6] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.1).

3. For the purposes of Article 6(3), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.

Article 10

Guarantees for applicants for asylum

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

   (*a*) They shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2004/83/EC. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 11;

   (*b*) They shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles 12 and 13 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

   (*c*) They shall not be denied the opportunity to communicate with the UNHCR or with any other Organization working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with that Member State;

   (*d*) They shall be given notice in reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

   (*e*) They shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 9(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants for asylum enjoy equivalent guarantees to the ones referred to in paragraph 1(b), (c) and (d) of this Article.

Article 11

Obligations of the applicants for asylum

1. Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

   (*a*) Applicants for asylum are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;

   (*b*) Applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports;

   (*c*) Applicants for asylum are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;

(*d*) The competent authorities may search the applicant and the items he/she carries with him/her;

(*e*) The competent authorities may take a photograph of the applicant; and

(*f*) The competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

Article 12

Personal interview

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview.

   Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3).

   Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

2. The personal interview may be omitted where:

   (*a*) The determining authority is able to take a positive decision on the basis of evidence available; or

   (*b*) The competent authority has already had a meeting with the applicant for the purpose of assisting him/her with completing his/her application and submitting the essential information regarding the application, in terms of Article 4(2) of Directive 2004/83/EC; or

   (*c*) The determining authority, on the basis of a complete examination of information provided by the applicant, considers the application to be unfounded in cases where the circumstances mentioned in Article 23(4)(a), (c), (g), (h) and (j) apply.

3. The personal interview may also be omitted where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.

   Where the Member State does not provide the applicant with the opportunity for a personal interview pursuant to this paragraph, or where applicable, to the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

4. The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for asylum.

5. The absence of a personal interview pursuant to paragraph 2(b) and (c) and paragraph 3 shall not adversely affect the decision of the determining authority.

6. Irrespective of Article 20(1), Member States, when deciding on the application for asylum, may take into account the fact that the applicant failed to appear for the personal interview, unless he/she had good reasons for the failure to appear.

Article 13

Requirements for a personal interview

1. A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

2. A personal interview shall take place under conditions which ensure appropriate confidentiality.

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

(*a*) Ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so; and

(*b*) Select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The communication need not necessarily take place in the language preferred by the applicant for asylum if there is another language which he/she may reasonably be supposed to understand and in which he/she is able to communicate.

4. Member States may provide for rules concerning the presence of third parties at a personal interview.

5. This Article is also applicable to the meeting referred to in Article 12(2)(b).

Article 14

Status of the report of a personal interview in the procedure

1. Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application, as presented by the applicant, in terms of Article 4(2) of Directive 2004/83/EC.

2. Member States shall ensure that applicants have timely access to the report of the personal interview. Where access is only granted after the decision of the determining authority, Member States shall ensure that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

3. Member States may request the applicant's approval of the contents of the report of the personal interview.

   Where an applicant refuses to approve the contents of the report, the reasons for this refusal shall be entered into the applicant's file.

   The refusal of an applicant to approve the contents of the report shall not prevent the determining authority from taking a decision on his/her application.

4. This Article is also applicable to the meeting referred to in Article 12(2)(b).

Article 15

Right to legal assistance and representation

1. Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3.

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:

   (*a*) Only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or

   (*b*) Only to those who lack sufficient resources; and/or

   (*c*) Only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or

   (*d*) Only if the appeal or review is likely to succeed.

   Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.

4. Rules concerning the modalities for filing and processing requests for legal assistance and/or representation may be provided by Member States.

5. Member States may also:

   (*a*) Impose monetary and/or time-limits on the provision of free legal assistance and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance and/or representation;

   (*b*) Provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

6. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

Article 16

Scope of legal assistance and representation

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, and who assists or represents an applicant for asylum under the terms of national law, shall enjoy access to such information in the applicant's file as is liable to be examined by the authorities referred to in Chapter V, insofar as the information is relevant to the examination of the application.

   Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the Organizations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. In these cases, access to the information or sources in question shall be available to the authorities referred to in Chapter V, except where such access is precluded in cases of national security.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant. Member States may only limit the possibility of visiting applicants in closed areas where such limitation is, by virtue of national legislation, objectively necessary for the security, public order or administrative management of the area, or in order to ensure an efficient examination of the application, provided that access by the legal adviser or other counsellor is not thereby severely limited or rendered impossible.

3. Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure, without prejudice to this Article or to Article 17(1)(b).

4. Member States may provide that the applicant is allowed to bring with him/her to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

   Member States may require the presence of the applicant at the personal interview, even if he/she is represented under the terms of national law by such a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

   The absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting the personal interview with the applicant.

Article 17

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:

   (*a*) As soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also

be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers[7];

(*b*) Ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2. Member States may refrain from appointing a representative where the unaccompanied minor:

(*a*) Will in all likelihood reach the age of maturity before a decision at first instance is taken; or

(*b*) Can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or

(*c*) Is married or has been married.

3. Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.

4. Member States shall ensure that:

(*a*) If an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 12, 13 and 14, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

(*b*) An official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for asylum.

In cases where medical examinations are used, Member States shall ensure that:

(*a*) Unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

(*b*) Unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minors concerned; and

(*c*) The decision to reject an application for asylum from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for asylum.

6. The best interests of the child shall be a primary consideration for Member States when implementing this Article.

Article 18

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.

[7] OJ L 31, 6.2.2003, p. 18.

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

Article 19

Procedure in case of withdrawal of the application

1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant for asylum explicitly withdraws his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application.

2. Member States may also decide that the determining authority can decide to discontinue the examination without taking a decision. In this case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

Article 20

Procedure in the case of implicit withdrawal or abandonment of the application

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.

   Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for asylum in particular when it is ascertained that:

   (*a*) He/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Directive 2004/83/EC or has not appeared for a personal interview as provided for in Articles 12, 13 and 14, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his control;

   (*b*) He/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not within a reasonable time complied with reporting duties or other obligations to communicate.

For the purposes of implementing these provisions, Member States may lay down time-limits or guidelines.

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened, unless the request is examined in accordance with Articles 32 and 34.

   Member States may provide for a time-limit after which the applicant's case can no longer be re-opened.

   Member States shall ensure that such a person is not removed contrary to the principle of *non-refoulement*.

   Member States may allow the determining authority to take up the examination at the stage where it was discontinued.

Article 21

The role of UNHCR

1. Member States shall allow the UNHCR:

   (*a*) To have access to applicants for asylum, including those in detention and in airport or port transit zones;

   (*b*) To have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees thereto;

(*c*) To present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

2. Paragraph 1 shall also apply to an Organization which is working in the territory of the Member State concerned on behalf of the UNHCR pursuant to an agreement with that Member State.

Article 22

Collection of information on individual cases

For the purposes of examining individual cases, Member States shall not:

(*a*) Directly disclose information regarding individual applications for asylum, or the fact that an application has been made, to the alleged actor(s) of persecution of the applicant for asylum;

(*b*) Obtain any information from the alleged actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 23

Examination procedure

1. Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

   Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:

   (*a*) Be informed of the delay; or

   (*b*) Receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time-frame.

3. Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.

4. Member States may also provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:

   (*a*) The applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC; or

   (*b*) The applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or

   (*c*) The application for asylum is considered to be unfounded:

(i) Because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31, or

(ii) Because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or

(*d*) The applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

(*e*) The applicant has filed another application for asylum stating other personal data; or

(*f*) The applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

(*g*) The applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC; or

(*h*) The applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or

(*i*) The applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or

(*j*) The applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or

(*k*) The applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles11(2)(a) and (b) and 20(1) of this Directive; or

(*l*) The applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or

(*m*) The applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or

(*n*) The applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or

(*o*) The application was made by an unmarried minor to whom Article 6(4)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

Article 24

Specific procedures

1. Member States may provide for the following specific procedures derogating from the basic principles and guarantees of Chapter II:

   (*a*) A preliminary examination for the purposes of processing cases considered within the framework set out in Section IV;

   (*b*) Procedures for the purposes of processing cases considered within the framework set out in Section V.

2. Member States may also provide a derogation in respect of Section VI.

SECTION II

Article 25

Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EC) No 343/2003, Member States are not required to examine whether the applicant qualifies as a refugee in accordance with Directive 2004/83/EC where an application is considered inadmissible pursuant to this Article.
2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:
   (*a*) Another Member State has granted refugee status;
   (*b*) A country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 26;
   (*c*) A country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;
   (*d*) The applicant is allowed to remain in the Member State concerned on some other grounds and as a result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC;
   (*e*) The applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);
   (*f*) The applicant has lodged an identical application after a final decision;
   (*g*) A dependant of the applicant lodges an application, after he/she has in accordance with Article 6(3) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.

Article 26

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant for asylum if:

(*a*) He/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection;

(*b*) He/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*;

Provided that he/she will be re-admitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant for asylum Member States may take into account Article 27(1).

Article 27

The safe third country concept

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned:
   (*a*) Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
   (*b*) The principle of *non-refoulement* in accordance with the Geneva Convention is respected;

(*c*) The prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and

(*d*) The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:

(*a*) Rules requiring a connection between the person seeking asylum and the third country concerned on the basis of which it would be reasonable for that person to go to that country;

(*b*) Rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;

(*c*) Rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

3. When implementing a decision solely based on this Article, Member States shall:

(*a*) Inform the applicant accordingly; and

(*b*) Provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant for asylum to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

SECTION III

Article 28

Unfounded applications

1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.

2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.

Article 29

Minimum common list of third countries regarded as safe countries of origin

1. The Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin in accordance with Annex II.

2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State to submit a proposal to amend the minimum common list.

3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international Organizations.

4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 31(2) shall be suspended with regard to the third country as of the day following the notification to the Council.

6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.

7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall in any case end where the Council rejects a proposal by the Commission to withdraw the third country from the list.

8. Upon request by the Council, the Commission shall report to the European Parliament and the Council on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report, the Commission may make such recommendations or proposals as it deems appropriate.

Article 30

National designation of third countries as safe countries of origin

1. Without prejudice to Article 29, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.

2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:

   (*a*) Persecution as defined in Article 9 of Directive 2004/83/EC; nor

   (*b*) Torture or inhuman or degrading treatment or punishment.

3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.

4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.

5. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international Organizations.

6. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

Article 31

The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with either Article 29 or 30 may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:

   (*a*) He/she has the nationality of that country; or

   (*b*) He/she is a stateless person and was formerly habitually resident in that country;

   And he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee in accordance with Directive 2004/83/EC.

2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 29.

3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

SECTION IV

Article 32

Subsequent application

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State may examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:

   (*a*) After his/her previous application has been withdrawn or abandoned by virtue of Articles 19 or 20;

   (*b*) After a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.

3. A subsequent application for asylum shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3 of this Article, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee by virtue of Directive 2004/83/EC, the application shall be further examined in conformity with Chapter II.

5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons why a procedure has to be re-opened.

6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 39.

7. The procedure referred to in this Article may also be applicable in the case of a dependant who lodges an application after he/she has, in accordance with Article 6(3), consented to have his/her case be part of an application made on his/her behalf. In this case the preliminary examination referred to in paragraph 3 of this Article will consist of examining whether there are facts relating to the dependant's situation which justify a separate application.

Article 33

Failure to appear

Member States may retain or adopt the procedure provided for in Article 32 in the case of an application for asylum filed at a later date by an applicant who, either intentionally or owing to gross negligence, fails to go to a reception centre or appear before the competent authorities at a specified time.

Article 34

Procedural rules

1. Member States shall ensure that applicants for asylum whose application is subject to a preliminary examination pursuant to Article 32 enjoy the guarantees provided for in Article 10(1).
2. Member States may lay down in national law rules on the preliminary examination pursuant to Article 32. Those rules may, *inter alia*:
   (*a*) Oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;
   (*b*) Require submission of the new information by the applicant concerned within a time-limit after he/she obtained such information;
   (*c*) Permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview.

   The conditions shall not render impossible the access of applicants for asylum to a new procedure or result in the effective annulment or severe curtailment of such access.
3. Member States shall ensure that:
   (*a*) The applicant is informed in an appropriate manner of the outcome of the preliminary examination and, in case the application will not be further examined, of the reasons for this and the possibilities for seeking an appeal or review of the decision;
   (*b*) If one of the situations referred to in Article 32(2) applies, the determining authority shall further examine the subsequent application in conformity with the provisions of Chapter II as soon as possible.

SECTION V

Article 35

Border procedures

1. Member States may provide for procedures, in accordance with the basic principles and guarantees of Chapter II, in order to decide at the border or transit zones of the Member State on applications made at such locations.
2. However, when procedures as set out in paragraph 1 do not exist, Member States may maintain, subject to the provisions of this Article and in accordance with the laws or regulations in force on 1 December 2005, procedures derogating from the basic principles and guarantees described in Chapter II, in order to decide at the border or in transit zones as to whether applicants for asylum who have arrived and made an application for asylum at such locations, may enter their territory.

3. The procedures referred to in paragraph 2 shall ensure in particular that the persons concerned:

   (*a*) Are allowed to remain at the border or transit zones of the Member State, without prejudice to Article 7;

   (*b*) Are to be immediately informed of their rights and obligations, as described in Article 10(1)(a);

   (*c*) Have access, if necessary, to the services of an interpreter, as described in Article 10(1)(b);

   (*d*) Are interviewed, before the competent authority takes a decision in such procedures, in relation to their application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law, as described in Articles 12, 13 and 14;

   (*e*) Can consult a legal adviser or counsellor admitted or permitted as such under national law, as described in Article 15(1); and

   (*f*) Have a representative appointed in the case of unaccompanied minors, as described in Article 17(1), unless Article 17(2) or (3) applies.

   Moreover, in case permission to enter is refused by a competent authority, this competent authority shall state the reasons in fact and in law why the application for asylum is considered as unfounded or as inadmissible.

4. Member States shall ensure that a decision in the framework of the procedures provided for in paragraph 2 is taken within a reasonable time. When a decision has not been taken within four weeks, the applicant for asylum shall be granted entry to the territory of the Member State in order for his/her application to be processed in accordance with the other provisions of this Directive.

5. In the event of particular types of arrivals, or arrivals involving a large number of third country nationals or stateless persons lodging applications for asylum at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 or the specific procedure set out in paragraphs 2 and 3, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

SECTION VI

Article 36

The European safe third countries concept

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

   (*a*) It has ratified and observes the provisions of the Geneva Convention without any geographical limitations;

   (*b*) It has in place an asylum procedure prescribed by law;

   (*c*) It has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies; and

   (*d*) It has been so designated by the Council in accordance with paragraph 3.

3. The Council shall, acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.

4. The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of *non-refoulement* under the Geneva Convention, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

5. When implementing a decision solely based on this Article, the Member States concerned shall:

   (*a*) Inform the applicant accordingly; and

   (*b*) Provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

6. Where the safe third country does not re-admit the applicant for asylum, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

7. Member States which have designated third countries as safe countries in accordance with national legislation in force on 1 December 2005 and on the basis of the criteria in paragraph 2(a), (b) and (c), may apply paragraph 1 to these third countries until the Council has adopted the common list pursuant to paragraph 3.

CHAPTER IV

PROCEDURES FOR THE WITHDRAWAL OF REFUGEE STATUS

Article 37

Withdrawal of refugee status

Member States shall ensure that an examination to withdraw the refugee status of a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his/her refugee status.

Article 38

Procedural rules

1. Member States shall ensure that, where the competent authority is considering withdrawing the refugee status of a third country national or stateless person in accordance with Article 14 of Directive 2004/83/EC, the person concerned shall enjoy the following guarantees:

   (*a*) To be informed in writing that the competent authority is reconsidering his or her qualification for refugee status and the reasons for such a reconsideration; and

   (*b*) To be given the opportunity to submit, in a personal interview in accordance with Article 10(1)(b) and Articles 12, 13 and 14 or in a written statement, reasons as to why his/her refugee status should not be withdrawn.

In addition, Member States shall ensure that within the framework of such a procedure:

   (*c*) The competent authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and

   (*d*) Where information on an individual case is collected for the purposes of reconsidering the refugee status, it is not obtained from the actor(s) of persecution in a manner that would result in such actor(s) being directly informed of the fact that the person concerned is a refugee whose status is under reconsideration, nor jeopardise the physical integrity of the person and his/her dependants, or the liberty and security of his/her family members still living in the country of origin.

2. Member States shall ensure that the decision of the competent authority to withdraw the refugee status is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.

3. Once the competent authority has taken the decision to withdraw the refugee status, Article 15, paragraph 2, Article 16, paragraph 1 and Article 21 are equally applicable.

4. By derogation to paragraphs 1, 2 and 3 of this Article, Member States may decide that the refugee status shall lapse by law in case of cessation in accordance with Article 11(1)(a) to (d) of Directive 2004/83/EC or if the refugee has unequivocally renounced his/her recognition as a refugee.

CHAPTER V

APPEALS PROCEDURES

Article 39

The right to an effective remedy

1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:

   (*a*) A decision taken on their application for asylum, including a decision:

   (i) To consider an application inadmissible pursuant to Article 25(2),

   (ii) Taken at the border or in the transit zones of a Member State as described in Article 35(1),

   (iii) Not to conduct an examination pursuant to Article 36;

   (*b*) A refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20;

   (*c*) A decision not to further examine the subsequent application pursuant to Articles 32 and 34;

   (*d*) A decision refusing entry within the framework of the procedures provided for under Article 35(2);

   (*e*) A decision to withdraw refugee status pursuant to Article 38.

2. Member States shall provide for time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:

   (*a*) The question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;

   (*b*) The possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex-officio remedy; and

   (*c*) The grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).

4. Member States may lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

5. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC, the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.

6. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 40

Challenge by public authorities

This Directive does not affect the possibility for public authorities of challenging the administrative and/or judicial decisions as provided for in national legislation.

Article 41

Confidentiality

Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work.

Article 42

Report

No later than 1 December 2009, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up this report. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every two years.

Article 43

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2007. Concerning Article 15, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 December 2008. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 44

Transition

Member States shall apply the laws, regulations and administrative provisions set out in Article 43 to applications for asylum lodged after 1 December 2007 and to procedures for the withdrawal of refugee status started after 1 December 2007.

Article 45

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 46

Addressees

This Directive is addressed to the Member States in conformity with the Treaty establishing the European Community.

DONE at Brussels, 1 December 2005.

For the Council

The President

Ashton of UPHOLLAND

ANNEX I

Definition of 'determining authority'

When implementing the provision of this Directive, Ireland may, insofar as the provisions of section 17(1) of the *Refugee Act* 1996 (as amended) continue to apply, consider that:

– 'Determining authority' provided for in Article 2(e) of this Directive shall, insofar as the examination of whether an applicant should or, as the case may be, should not be declared to be a refugee is concerned, mean the *Office of the Refugee Applications Commissioner*; and

– 'Decisions at first instance' provided for in Article 2(e) of this Directive shall include recommendations of the *Refugee Applications Commissioner* as to whether an applicant should or, as the case may be, should not be declared to be a refugee.

Ireland will notify the Commission of any amendments to the provisions of section 17(1) of the *Refugee Act* 1996 (as amended).

ANNEX II

Designation of safe countries of origin for the purposes of Articles 29 and 30(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2004/83/EC, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or mistreatment by:

(*a*) The relevant laws and regulations of the country and the manner in which they are applied;

(*b*) Observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(*c*) Respect of the *non-refoulement* principle according to the Geneva Convention;

(*d*) Provision for a system of effective remedies against violations of these rights and freedoms.

ANNEX III

Definition of 'applicant' or 'applicant for asylum'

When implementing the provisions of this Directive Spain may, insofar as the provisions of *'Ley 30/1992 de Régimen jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común'* of 26 November 1992 and *'Ley 29/1998 reguladora de la Jurisdicción Contencioso-Administrativa'* of 13 July 1998 continue to apply, consider that, for the purposes of Chapter V, the definition of 'applicant' or 'applicant for asylum' in Article 2(c) of this Directive shall include *'recurrente'* as established in the above mentioned Acts.

A '*recurrente*' shall be entitled to the same guarantees as an 'applicant' or an 'applicant for asylum' as set out in this Directive for the purposes of exercising his/her right to an effective remedy in Chapter V.

Spain will notify the Commission of any relevant amendments to the abovementioned Act.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000

Text: Official Journal of the European Communities OJ C 364/1 of 18.12.2000

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values. Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the Organization of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights. Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

– The free and informed consent of the person concerned, according to the procedures laid down by law,
– The prohibition of eugenic practices, in particular those aiming at the selection of persons,
– The prohibition on making the human body and its parts as such a source of financial gain,
– The prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective Organizations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
   - The right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
   - The right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
   - The obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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COUNCIL DIRECTIVE 2001/40/EC

OF 28 MAY 2001

ON THE MUTUAL RECOGNITION OF DECISIONS ON THE EXPULSION OF THIRD COUNTRY NATIONALS

Published in the Official Journal of the European Communities OJ L 149, 2.6.2001, p. 34–36

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) thereof,

Having regard to the initiative of the French Republic[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

1. The Treaty stipulates that the Council is to adopt measures on immigration policy within areas comprising conditions of entry and residence as well as illegal immigration and illegal residence.
2. The Tampere European Council on 15 and 16 October 1999 reaffirmed its resolve to create an area of freedom, security and justice. For that purpose, a common European policy on asylum and migration should aim both at fair treatment of third country nationals and better management of migration flows.
3. The need to ensure greater effectiveness in enforcing expulsion decisions and better cooperation between Member States entails mutual recognition of expulsion decisions.
4. Decisions on the expulsion of third country nationals have to be adopted in accordance with fundamental rights, as safeguarded by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, in particular Articles 3 and 8 thereof, and the Geneva Convention relating to the Status of Refugees of 28 July 1951 and as they result from the constitutional principles common to the Member States.
5. In accordance with the principle of subsidiarity, the objective of the proposed action, namely cooperation between Member States on expulsion of third country nationals, cannot be sufficiently achieved by the Member States and can therefore, by reason of the effects of the envisaged action, be better achieved by the Community. This Directive does not go beyond what is necessary to achieve that objective.
6. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom has given notice by letter of 18 October 2000 of its wish to take part in the adoption and application of this Directive.
7. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it or subject to its application. Given that this Directive aims to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, in accordance with Article 5 of the abovementioned Protocol, Denmark will decide within a period of six months after the Council has adopted this Directive whether it will transpose this decision into its national law.
8. As regards the Republic of Iceland and the Kingdom of Norway, this Directive constitutes a development of the Schengen acquis within the meaning of the agreement concluded on 18 May 1999 between the Council of the European Union and those two States. As a result of the procedures laid down in the agreement, the rights and obligations arising from this Directive should also apply to those two States and in relations between those two States and the Member States of the European Community to which this Directive is addressed,

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[1] OJ C 243, 24.8.2000, p. 1.
[2] Opinion delivered on 13 March 2001 (not yet published in the Official Journal).

Has adopted this directive:

Article 1

1. Without prejudice to the obligations arising from Article 23 and to the application of Article 96 of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990, hereinafter referred to as the "Schengen Convention", the purpose of this Directive is to make possible the recognition of an expulsion decision issued by a competent authority in one Member State, hereinafter referred to as the "issuing Member State", against a third country national present within the territory of another Member State, hereinafter referred to as the "enforcing Member State".
2. Any decision taken pursuant to paragraph 1 shall be implemented according to the applicable legislation of the enforcing Member State.
3. This Directive shall not apply to family members of citizens of the Union who have exercised their right of free movement.

Article 2

For the purposes of this Directive,

(*a*) "third country national" shall mean anyone who is not a national of any of the Member States;

(*b*) "expulsion decision" shall mean any decision which orders an expulsion taken by a competent administrative authority of an issuing Member State;

(*c*) "enforcement measure" shall mean any measure taken by the enforcing Member State with a view to implementing an expulsion decision.

Article 3

1. The expulsion referred to in Article 1 shall apply to the following cases:

   (*a*) a third country national is the subject of an expulsion decision based on a serious and present threat to public order or to national security and safety, taken in the following cases:

   – conviction of a third country national by the issuing Member State for an offence punishable by a penalty involving deprivation of liberty of at least one year,

   – the existence of serious grounds for believing that a third country national has committed serious criminal offences or the existence of solid evidence of his intention to commit such offences within the territory of a Member State.

   Without prejudice to Article 25(2) of the Schengen Convention, if the person concerned holds a residence permit issued by the enforcing Member State or by another Member State, the enforcing State shall consult the issuing State and the State which issued the permit. The existence of an expulsion decision taken under this point shall allow for the residence permit to be withdrawn if this is authorised by the national legislation of the State which issued the permit;

   (*b*) a third country national is the subject of an expulsion decision based on failure to comply with national rules on the entry or residence of aliens.

   In the two cases referred to in (a) and (b), the expulsion decision must not have been rescinded or suspended by the issuing Member State.

2. Member States shall apply this Directive with due respect for human rights and fundamental freedoms.
3. This Directive shall be applied without prejudice to the provisions of the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities and readmission agreements between Member States.

Article 4

The Member States shall ensure that the third country national concerned may, in accordance with the enforcing Member State's legislation, bring proceedings for a remedy against any measure referred to in Article 1(2).

Article 5

Protection of personal data and data security shall be ensured in accordance with Directive 95/46/EC of the European Parliament and of 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[3].

Without prejudice to Articles 101 and 102 of the Schengen Convention, personal data files shall be used in the context of this Directive only for the purposes laid down therein.

Article 6

The authorities of the issuing Member State and of the enforcing Member State shall make use of all appropriate means of cooperation and of exchanging information to implement this Directive.

The issuing Member State shall provide the enforcing Member State with all documents needed to certify the continued enforceability of the decision by the fastest appropriate means, where appropriate in accordance with the relevant provisions of the SIRENE Manual.

The enforcing Member State shall first examine the situation of the person concerned to ensure that neither the relevant international instruments nor the national rules applicable conflict with the enforcement of the expulsion decision.

After implementation of the enforcement measure, the enforcing Member State shall inform the issuing Member State.

Article 7

Member States shall compensate each other for any financial imbalances which may result from application of this Directive where expulsion cannot be effected at the expense of the national(s) of the third country concerned.

In order to enable this Article to be implemented, the Council, acting on a proposal from the Commission, shall adopt appropriate criteria and practical arrangements before 2 December 2002. These criteria and practical arrangements shall also apply to the implementation of Article 24 of the Schengen Convention.

Article 8

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 2 December 2002. They shall forthwith inform the Commission thereof.

   When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 9

This Directive shall enter into force the day of its publication in the *Official Journal of the European Communities*.

Article 10

This Directive is addressed to the Member States, in accordance with the Treaty establishing the European Community.

DONE at Brussels, 28 May 2001.

For the Council
The President
T. BODSTRÖM

[3] OJ L 281, 23.11.1995, p. 31.

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COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 ON THE EUROPEAN ARREST WARRANT AND THE SURRENDER PROCEDURES BETWEEN MEMBER STATES

Published in the Official Journal of the European Communities OJ L 190, 18/07/2002 P. 0001 – 0020

The Council of the European Union,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

1. According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.
2. The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000[3], addresses the matter of mutual enforcement of arrest warrants.
3. All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.
4. In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union acquis: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders[4] (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union[5] and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union[6].
5. The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.
6. The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.
7. Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may

[1] OJ C 332 E, 27.11.2001, p. 305.
[2] Opinion delivered on 9 January 2002 (not yet published in the Official Journal).
[3] OJ C 12 E, 15.1.2001, p. 10.
[4] OJ L 239, 22.9.2000, p. 19.
[5] OJ C 78, 30.3.1995, p. 2.
[6] OJ C 313, 13.10.1996, p. 12.

adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

8. Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

9. The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

10. The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

11. In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.

12. This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union[7], in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

    This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

13. No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

14. Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

Has adopted this framework decision:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

[7] OJ C 364, 18.12.2000, p. 1.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:
   - Participation in a criminal organisation,
   - Terrorism,
   - Trafficking in human beings,
   - Sexual exploitation of children and child pornography,
   - Illicit trafficking in narcotic drugs and psychotropic substances,
   - Illicit trafficking in weapons, munitions and explosives,
   - Corruption,
   - Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
   - Laundering of the proceeds of crime,
   - Counterfeiting currency, including of the euro,
   - Computer-related crime,
   - Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
   - Facilitation of unauthorised entry and residence,
   - Murder, grievous bodily injury,
   - Illicit trade in human organs and tissue,
   - Kidnapping, illegal restraint and hostage-taking,
   - Racism and xenophobia,
   - Organised or armed robbery,
   - Illicit trafficking in cultural goods, including antiques and works of art,
   - Swindling,
   - Racketeering and extortion,
   - Counterfeiting and piracy of products,
   - Forgery of administrative documents and trafficking therein,
   - Forgery of means of payment,
   - Illicit trafficking in hormonal substances and other growth promoters,
   - Illicit trafficking in nuclear or radioactive materials,
   - Trafficking in stolen vehicles,
   - Rape,
   - Arson,

– Crimes within the jurisdiction of the International Criminal Court,
– Unlawful seizure of aircraft/ships,
– Sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.
4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

1. If the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. If the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;
3. If the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. If, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. Where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. Where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. Where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. If the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. If the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing

Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. Where the European arrest warrant relates to offences which:

(*a*) Are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(*b*) Have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. Where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia,* surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;

2. If the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3. Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

   (*a*) The identity and nationality of the requested person;

   (*b*) The name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

   (*c*) Evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

   (*d*) The nature and legal classification of the offence, particularly in respect of Article 2;

   (*e*) A description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

   (*f*) The penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

   (*g*) If possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

   For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network[8], in order to obtain that information from the executing Member State.
2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.
3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.
4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.
5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.
6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.
2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

[8] Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust[9] when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

[9] Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.
2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.
3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.
4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.
5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.
6. Reasons must be given for any refusal to execute a European arrest warrant.
7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

   (*a*) Either agree that the requested person should be heard according to Article 19;

   (*b*) Or agree to the temporary transfer of the requested person.
2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.
3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.
2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.
3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.
2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

   (*a*) The identity and nationality of the person subject to the European arrest warrant;

   (*b*) The existence of a European arrest warrant;

   (*c*) The nature and legal classification of the offence;

   (*d*) The description of the circumstances of the offence, including the date and place.

   Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression “European arrest warrant” shall be deemed to be replaced by “extradition request”.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.
3. Paragraph 2 does not apply in the following cases:
   (*a*) When the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
   (*b*) The offence is not punishable by a custodial sentence or detention order;
   (*c*) The criminal proceedings do not give rise to the application of a measure restricting personal liberty;
   (*d*) When the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
   (*e*) When the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
   (*f*) When the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
   (*g*) Where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.
4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

   For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

(*a*) Where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(*b*) Where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(*c*) Where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(*a*) The request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(*b*) Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(*c*) The decision shall be taken no later than 30 days after receipt of the request;

(*d*) Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

(*a*) May be required as evidence, or

(*b*) Has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Article 30

Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS

Article 31

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

   (*a*) The European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

   (*b*) The Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

   (*c*) The Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;

   (*d*) The Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

   (*e*) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

   Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

   The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

   Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

   Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the "Auslieferungs- und Rechtshilfegesetz" and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.
2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.
2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

   The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the Official Journal of the European Communities.
3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.
4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

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

DONE at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

Annex

EUROPEAN ARREST WARRANT[1]

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

(a) Information regarding the identity of the requested person: …….

Name: ……..

Forename(s): ……

Maiden name, where applicable: …….

Aliases, where applicable: ……...

Sex: …….

Nationality: ……..

Date of birth: ……

Place of birth: ……..

Residence and/or known address: ……

Language(s) which the requested person understands (if known): ……..

……..

Distinctive marks/description of the requested person: ……

……..

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect: ……..

   Type: …….

2. Enforceable judgement: ……..

   ……

   Reference: ……..

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s): ……...

[1] This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

……

2. Length of the custodial sentence or detention order imposed:

……

Remaining sentence to be served: ……...

……

……

(d) Decision rendered in absentia and:

– the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia,

or

– the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance)

Specify the legal guarantees

……

……

……

(e) Offences:

This warrant relates to in total: ……. offences

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

……

……

……

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

……

……

……

……

……

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

❑ participation in a criminal organisation;

❑ terrorism;

❑ trafficking in human beings;

❑ sexual exploitation of children and child pornography;

❑ illicit trafficking in narcotic drugs and psychotropic substances;

❑ illicit trafficking in weapons, munitions and explosives;

❑ corruption;

❑ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;

❑ laundering of the proceeds of crime;

❑ counterfeiting of currency, including the euro;

❑ computer-related crime;

❑ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;

❑ facilitation of unauthorised entry and residence;

❑ murder, grievous bodily injury;

❑ illicit trade in human organs and tissue;

❑ kidnapping, illegal restraint and hostage-taking;

❑ racism and xenophobia;

❑ organised or armed robbery;

❑ illicit trafficking in cultural goods, including antiques and works of art;

❑ swindling;

❑ raketeering and extorsion;

❑ counterfeiting and piracy of products;

❑ forgery of administrative documents and trafficking therein;

❑ forgery of means of payment;

❑ illicit trafficking in hormonal substances and other growth promoters;

❑ illicit trafficking in nuclear or radioactive materials;

❑ trafficking in stolen vehicles;

❑ rape;

❑ arson;

❑ crimes within the jurisdiction of the International Criminal Court;

❑ unlawful seizure of aircraft/ships;

❑ sabotage.

II. Full descriptions of offence(s) not covered by section I above:

……

……

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

……

……

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

……

……

……

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

– the legal system of the issuing Member State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,

and/or

– the legal system of the issuing Member State allows for the application of measures of clemency to which that person is entitled under the law or practice of the issuing Member State, aiming at the non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ([2]): ……

……

Post held (title/grade): ……

……

File reference: ……

Address: ……

……

Tel: (country code) (area/city code) (…) ……

Fax: (country code) (area/city code) (…) ……

E-mail: ……

Contact details of the person to contact to make the necessary practical arrangements for the surrender: ……

……

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority:

……

[2] In the different language versions a reference to the 'holder' of the judicial authority will be included.

Contact person, if applicable (title/grade and name):

……..……..

Address: ……..……..

……..……..

Tel: (country code) (area/city code) (…) ……..

Fax: (country code) (area/city code) (…) …….

E-mail: ……...…….

Signature of the issuing judicial authority and/or its representative:

……..……..

Name: ……..

Post held (title/grade): …….

Date: ……

Official stamp (if available)

Statements made by certain Member States on the adoption of the Framework Decision

Statements provided for in Article 32

Statement by France:

Pursuant to Article 32 of the framework decision on the European arrest warrant and the surrender procedures between Member States, France states that as executing Member State it will continue to deal with requests relating to acts committed before 1 November 1993, the date of entry into force of the Treaty on European Union signed in Maastricht on 7 February 1992, in accordance with the extradition system applicable before 1 January 2004.

Statement by Italy:

Italy will continue to deal in accordance with the extradition rules in force with all requests relating to acts committed before the date of entry into force of the framework decision on the European arrest warrant, as provided for in Article 32 thereof.

Statement by Austria:

Pursuant to Article 32 of the framework decision on the European arrest warrant and the surrender procedures between Member States, Austria states that as executing Member State it will continue to deal with requests relating to punishable acts committed before the date of entry into force of the framework decision in accordance with the extradition system applicable before that date.

Statements provided for in Article 13(4)

Statement by Belgium:

The consent of the person concerned to his or her surrender may be revoked until the time of surrender.

Statement by Denmark:

Consent to surrender and express renunciation of entitlement to the speciality rule may be revoked in accordance with the relevant rules applicable at any time under Danish law.

Statement by Ireland:

In Ireland, consent to surrender and, where appropriate, express renunciation of the entitlement to the "specialty" rule referred to in Article 27(2) may be revoked. Consent may be revoked in accordance with domestic law until surrender has been executed.

Statement by Finland:

In Finland, consent to surrender and, where appropriate, express renunciation of entitlement to the "speciality rule" referred to in Article 27(2) may be revoked. Consent may be revoked in accordance with domestic law until surrender has been executed.

Statement by Sweden:

Consent or renunciation within the meaning of Article 13(1) may be revoked by the party whose surrender has been requested. Revocation must take place before the decision on surrender is executed.

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COUNCIL FRAMEWORK DECISION OF 19 JULY 2002 ON COMBATING TRAFFICKING IN HUMAN BEINGS

Published in the Official Journal of the European Communities OJ L 203, 01/08/2002 P. 0001 – 0004

The Council of the European Union,

Having regard to the Treaty on European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal of the Commission[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

1. The Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice[3], the Tampere European Council on 15 and 16 October 1999, the Santa Maria da Feira European Council on 19 and 20 June 2000, as listed in the Scoreboard, and the European Parliament in its Resolution of 19 May 2000 on the communication from the Commission "for further actions in the fight against trafficking in women" indicate or call for legislative action against trafficking in human beings, including common definitions, incriminations and sanctions.
2. Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children[4] needs to be followed by further legislative action addressing the divergence of legal approaches in the Member States and contributing to the development of an efficient judicial and law enforcement cooperation against trafficking in human beings.
3. Trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.
4. The UN protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organised crimes, represents a decisive step towards international cooperation in this field.
5. Children are more vulnerable and are therefore at greater risk of falling victim to trafficking.
6. The important work performed by international Organizations, in particular the UN, must be complemented by that of the European Union.
7. It is necessary that the serious criminal offence of trafficking in human beings be addressed not only through individual action by each Member State but by a comprehensive approach in which the definition of constituent elements of criminal law common to all Member States, including effective, proportionate and dissuasive sanctions, forms an integral part. In accordance with the principles of subsidiarity and proportionality, this Framework Decision confines itself to the minimum required in order to achieve those objectives at European level and does not go beyond what is necessary for that purpose.
8. It is necessary to introduce sanctions on perpetrators sufficiently severe to allow for trafficking in human beings to be included within the scope of instruments already adopted for the purpose of combating organised crime such as Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime[5] and Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal Organization in the Member States of the European Union[6].

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[1] OJ C 62 E, 27.2.2001, p. 324.
[2] OJ C 35 E, 28.2.2002, p. 114.
[3] OJ C 19, 23.1.1999, p. 1.
[4] OJ L 63, 4.3.1997, p. 2.
[5] OJ L 333, 9.12.1998, p. 1. Joint Action as last amended by Framework Decision 2001/500/JHA (OJ L 182, 5.7.2001, p. 1).
[6] OJ L 351, 29.12.1998, p. 1.

9. This Framework Decision should contribute to the fight against and prevention of trafficking in human beings by complementing the instruments adopted in this area such as Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and sexual exploitation of children (STOP)[7], Council Joint Action 96/748/JHA of 16 December 1996 extending the mandate given to the Europol Drugs Unit[8], Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000 adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women[9], Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network[10], Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union[11] and Council Joint Action 98/427/JHA of 29 June 1998 on good practice in mutual legal assistance in criminal matters[12].

10. Council Joint Action 97/154/JHA should accordingly cease to apply in so far as it concerns trafficking in human beings,

Has adopted this framework decision:

Article 1

Offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation

1. Each Member State shall take the necessary measures to ensure that the following acts are punishable:

The recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where:

(*a*) Use is made of coercion, force or threat, including abduction, or

(*b*) Use is made of deceit or fraud, or

(*c*) There is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or

(*d*) Payments or benefits are given or received to achieve the consent of a person having control over another person

For the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or

For the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography.

2. The consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used.

3. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used.

4. For the purpose of this Framework Decision, "child" shall mean any person below 18 years of age.

[7] OJ L 322, 12.12.1996, p. 7.
[8] OJ L 342, 31.12.1996, p. 4.
[9] OJ L 34, 9.2.2000, p. 1.
[10] OJ L 191, 7.7.1998, p. 4.
[11] OJ L 105, 27.4.1996, p. 1.
[12] OJ L 191, 7.7.1998, p. 1.

Article 2

Instigation, aiding, abetting and attempt

Each Member State shall take the necessary measures to ensure that the instigation of, aiding, abetting or attempt to commit an offence referred to in Article 1 is punishable.

Article 3

Penalties

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 1 and 2 is punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.
2. Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is not less than eight years where it has been committed in any of the following circumstances:

   (*a*) The offence has deliberately or by gross negligence endangered the life of the victim;

   (*b*) The offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography;

   (*c*) The offence has been committed by use of serious violence or has caused particularly serious harm to the victim;

   (*d*) The offence has been committed within the framework of a criminal Organization as defined in Joint Action 98/733/JHA, apart from the penalty level referred to therein.

Article 4

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 1 and 2, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

   (*a*) A power of representation of the legal person, or

   (*b*) An authority to take decisions on behalf of the legal person, or

   (*c*) An authority to exercise control within the legal person.
2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 have rendered possible the commission of an offence referred to in Articles 1 and 2 for the benefit of that legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 1 and 2.
4. For the purpose of this Framework Decision, legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international Organizations.

Article 5

Sanctions on legal persons

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 4 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(*a*) Exclusion from entitlement to public benefits or aid, or

(*b*) Temporary or permanent disqualification from the practice of commercial activities, or

(*c*) Placing under judicial supervision, or

(*d*) A judicial winding-up order, or

(*e*) Temporary or permanent closure of establishments which have been used for committing the offence.

Article 6

Jurisdiction and prosecution

1. Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where:

   (*a*) The offence is committed in whole or in part within its territory, or

   (*b*) The offender is one of its nationals, or

   (*c*) The offence is committed for the benefit of a legal person established in the territory of that Member State.

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.

3. A Member State which, under its laws, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over and to prosecute, where appropriate, an offence referred to in Articles 1 and 2 when it is committed by its own nationals outside its territory.

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 7

Protection of and assistance to victims

1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.

2. Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings[13].

3. Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to.

Article 8

Territorial scope

This Framework Decision shall apply to Gibraltar.

Article 9

Application of Joint Action 97/154/JHA

Joint Action 97/154/JHA shall cease to apply in so far as it concerns trafficking in human beings.

[13] OJ L 82, 22.3.2001, p. 1.

Article 10

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision before 1 August 2004.

2. By the date referred to in paragraph 1, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. The Council will, by 1 August 2005 at the latest, on the basis of a report established on the basis of this information and a written report transmitted by the Commission, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Article 11

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

DONE at Brussels, 19 July 2002.

For the Council

The President

T. PEDERSEN

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COUNCIL FRAMEWORK DECISION

OF 28 NOVEMBER 2002

ON THE STRENGTHENING OF THE PENAL FRAMEWORK TO PREVENT THE FACILITATION OF UNAUTHORISED ENTRY, TRANSIT AND RESIDENCE

(2002/946/JHA)

Published in the Official Journal of the European Union OJ L 328, 5.12.2002, p. 1–3

The Council of the European Union,

Having regard to the Treaty establishing the European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the initiative of the French Republic[1],

Having regard to the opinion of the European Parliament[2],

Whereas:

1. One of the objectives of the European Union is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters.
2. In this framework, measures should be taken to combat the aiding of illegal immigration both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings.
3. To that end it is essential to approximate existing legal provisions, in particular, on the one hand, the precise definition of the infringement in question and the cases of exemption, which is the subject of Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence[3] and, on the other hand, minimum rules for penalties, liability of legal persons and jurisdiction, which is the subject of this framework Decision.
4. It is likewise essential not to confine possible actions to natural persons only but to provide for measures relating to the liability of legal persons.
5. This framework Decision supplements other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children.
6. As regards Iceland and Norway, this framework Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*[4], which fall within the area referred to in Article 1(E) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement[5].
7. The United Kingdom is taking part in this framework Decision in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*[6].

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[1] OJ C 253, 4.9.2000, p. 6.
[2] OJ C 276, 1.10.2001, p. 244.
[3] See page 17 of this Official Journal.
[4] OJ L 176, 10.7.1999, p. 36.
[5] OJ L 176, 10.7.1999, p. 31.
[6] OJ L 131, 1.6.2000, p. 43.

8. Ireland is taking part in this framework Decision in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*[7],

Has adopted this framework decision:

Article 1
Penalties

1. Each Member State shall take the measures necessary to ensure that the infringements defined in Articles 1 and 2 of Directive 2002/90/EC are punishable by effective, proportionate and dissuasive criminal penalties which may entail extradition.
2. Where appropriate, the criminal penalties covered in paragraph 1 may be accompanied by the following measures:
   - confiscation of the means of transport used to commit the offence,
   - a prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the offence was committed,
   - deportation.
3. Each Member State shall take the measures necessary to ensure that, when committed for financial gain, the infringements defined in Article 1(1)(a) and, to the extent relevant, Article 2(a) of Directive 2002/90/EC are punishable by custodial sentences with a maximum sentence of not less than eight years where they are committed in any of the following circumstances:
   - the offence was committed as an activity of a criminal organisation as defined in Joint Action 98/733/JHA[8],
   - the offence was committed while endangering the lives of the persons who are the subject of the offence.
4. If imperative to preserve the coherence of the national penalty system, the actions defined in paragraph 3 shall be punishable by custodial sentences with a maximum sentence of not less than six years, provided that it is among the most severe maximum sentences available for crimes of comparable gravity.

Article 2
Liability of legal persons

1. Each Member State shall take the measures necessary to ensure that legal persons can be held liable for the infringements referred to in Article 1(1) and which are committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
   - a power of representation of the legal person,
   - an authority to take decisions on behalf of the legal person, or
   - an authority to exercise control within the legal person.
2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the infringements referred to in Article 1(1) for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators or instigators of or accessories in the offences referred to in paragraph 1.

[7] OJ L 64, 7.3.2002, p. 20.
[8] OJ L 351, 29.12.1998, p. 1.

Article 3
Sanctions for legal persons

1. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 2(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

   (*a*) exclusion from entitlement to public benefits or aid;

   (*b*) temporary or permanent disqualification from the practice of commercial activities;

   (*c*) placing under judicial supervision;

   (*d*) a judicial winding-up order.

2. Each Member State shall take the measures necessary to ensure that a legal person held liable pursuant to Article 2(2) is punishable by effective, proportionate and dissuasive sanctions or measures.

Article 4
Jurisdiction

1. Each Member State shall take the measures necessary to establish its jurisdiction with regard to the infringements referred to in Article 1(1) and committed

   (*a*) in whole or in part within its territory;

   (*b*) by one of its nationals, or

   (*c*) for the benefit of a legal person established in the territory of that Member State.

2. Subject to the provisions of Article 5, any Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rule set out in:

   – paragraph 1(b),

   – paragraph 1(c).

3. Each Member State shall inform the Secretary-General of the Council in writing if it decides to apply paragraph 2, where appropriate with an indication of the specific circumstances or conditions in which its decision applies.

Article 5
Extradition and prosecution

1. (*a*) Any Member State which, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the infringements referred to in Article 1(1) when such infringements are committed by its own nationals outside its territory.

   (*b*) Each Member State shall, when one of its nationals is alleged to have committed in another Member State the infringements referred to in Article 1(1) and it does not extradite that person to that other Member State solely on the ground of his nationality, submit the case to its competent authorities for the purpose of prosecution, if appropriate. In order to enable prosecution to take place, the files, information and exhibits relating to the offence shall be transmitted in accordance with the procedures laid down in Article 6(2) of the European Convention on Extradition of 13 December 1957. The requesting Member State shall be informed of the prosecution initiated and of its outcome.

2. For the purpose of this Article, a "national" of a Member State shall be construed in accordance with any declaration made by that State under Article 6(1)(b) and (c) of the European Convention on Extradition, where appropriate as amended by any declarations made with respect to the Convention relating to extradition between the Member States of the European Union[9].

[9] OJ C 313, 23.10.1996, p. 12.

Article 6

International law on refugees

This framework Decision shall apply without prejudice to the protection afforded refugees and asylum seekers in accordance with international law on refugees or other international instruments relating to human rights, in particular Member States' compliance with their international obligations pursuant to Articles 31 and 33 of the 1951 Convention relating to the status of refugees, as amended by the Protocol of New York of 1967.

Article 7

Communication of information between the Member States

1. If a Member State is informed of infringements referred to in Article 1(1) which are in breach of the law on the entry and residence of aliens of another Member State, it shall inform the latter accordingly.
2. Any Member State which requests another Member State to prosecute, on the grounds of a breach of its own laws on the entry and residence of aliens, infringements referred to in Article 1(1) must specify, by means of an official report or a certificate from the competent authorities, the provisions of its law which have been breached.

Article 8

Territorial application

This framework Decision shall apply to Gibraltar.

Article 9

Implementation

1. Member States shall adopt the measures necessary to comply with the provisions of this framework Decision before 5 December 2004.
2. By the same date, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them by this framework Decision. On the basis of a report established using this information by the Commission, the Council shall, before 5 June 2005, assess the extent to which Member States have complied with the provisions of this framework Decision.

Article 10

Repeal

The provisions of Article 27(2) and (3) of the 1990 Schengen Convention shall be repealed as from 5 December 2004. Where a Member State implements this framework Decision pursuant to Article 9(1) in advance of that date, the said provisions shall cease to apply to that Member State from the date of implementation.

Article 11

Entry into force

This framework Decision shall enter into force on the day of its publication in the Official Journal.

DONE at Brussels, 28 November 2002.

For the Council

The President

B. HAARDER

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COUNCIL DIRECTIVE 2003/109/EC OF 25 NOVEMBER 2003 CONCERNING THE STATUS OF THIRD-COUNTRY NATIONALS WHO ARE LONG-TERM RESIDENTS

Published in the Official Journal of the European Union L 016, 23/01/2004 P. 0044 – 0053

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) and (4) thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Having regard to the opinion of the Committee of the Regions[4],

Whereas:

1. With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.
2. The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.
3. This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the Charter of Fundamental Rights of the European Union.
4. The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.
5. Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.
6. The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.
7. To acquire long-term resident status, third-country nationals should prove that they have adequate resources and sickness insurance, to avoid becoming a burden for the Member State. Member States, when making an assessment of the possession of stable and regular resources may take into account factors such as contributions to the pension system and fulfilment of tax obligations.
8. Moreover, third-country nationals who wish to acquire and maintain long-term resident status should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime.

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[1] OJ C 240 E, 28.8.2001, p. 79.
[2] OJ C 284 E, 21.11.2002, p. 102.
[3] OJ C 36, 8.2.2002, p. 59.
[4] OJ C 19, 22.1.2002, p. 18.

9. Economic considerations should not be a ground for refusing to grant long-term resident status and shall not be considered as interfering with the relevant conditions.

10. A set of rules governing the procedures for the examination of application for long-term resident status should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as being transparent and fair, in order to offer appropriate legal certainty to those concerned. They should not constitute a means of hindering the exercise of the right of residence.

11. The acquisition of long-term resident status should be certified by residence permits enabling those concerned to prove their legal status easily and immediately. Such residence permits should also satisfy high-level technical standards, notably as regards protection against falsification and counterfeiting, in order to avoid abuses in the Member State in which the status is acquired and in Member States in which the right of residence is exercised.

12. In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.

13. With regard to social assistance, the possibility of limiting the benefits for long-term residents to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care. The modalities for granting such benefits should be determined by national law.

14. The Member States should remain subject to the obligation to afford access for minors to the educational system under conditions similar to those laid down for their nationals.

15. The notion of study grants in the field of vocational training does not cover measures which are financed under social assistance schemes. Moreover, access to study grants may be dependent on the fact that the person who applies for such grants fulfils on his/her own the conditions for acquiring long-term resident status. As regards the issuing of study grants, Member States may take into account the fact that Union citizens may benefit from this same advantage in the country of origin.

16. Long-term residents should enjoy reinforced protection against expulsion. This protection is based on the criteria determined by the decisions of the European Court of Human Rights. In order to ensure protection against expulsion Member States should provide for effective legal redress.

17. Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States. Certain Member States issue permits with a permanent or unlimited validity on conditions that are more favourable than those provided for by this Directive. The possibility of applying more favourable national provisions is not excluded by the Treaty. However, for the purposes of this Directive, it should be provided that permits issued on more favourable terms do not confer the right to reside in other Member States.

18. Establishing the conditions subject to which the right to reside in another Member State may be acquired by third-country nationals who are long-term residents should contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured. It could also constitute a major factor of mobility, notably on the Union's employment market.

19. Provision should be made that the right of residence in another Member State may be exercised in order to work in an employed or self-employed capacity, to study or even to settle without exercising any form of economic activity.

20. Family members should also be able to settle in another Member State with a long-term resident in order to preserve family unity and to avoid hindering the exercise of the long-term resident's right of residence. With regard to the family members who may be authorised to accompany or to join the long-term residents, Member States should pay special attention to the situation of disabled adult children and of first-degree relatives in the direct ascending line who are dependent on them.

21. The Member State in which a long-term resident intends to exercise his/her right of residence should be able to check that the person concerned meets the conditions for residing in its territory. It should also be able to check that the person concerned does not constitute a threat to public policy, public security or public health.

22. To avoid rendering the right of residence nugatory, long-term residents should enjoy in the second Member State the same treatment, under the conditions defined by this Directive, they enjoy in the Member State in which they acquired the status. The granting of benefits under social assistance is without prejudice to the possibility for the Member States to withdraw the residence permit if the person concerned no longer fulfils the requirements set by this Directive.

23. Third-country nationals should be granted the possibility of acquiring long-term resident status in the Member State where they have moved and have decided to settle under comparable conditions to those required for its acquisition in the first Member State.

24. Since the objectives of the proposed action, namely the determination of terms for granting and withdrawing long-term resident status and the rights pertaining thereto and terms for the exercise of rights of residence by long-term residents in other Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

25. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

26. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

Has adopted this directive:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive determines:

(*a*) The terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and

(*b*) The terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.

Article 2

Definitions

For the purposes of this Directive:

(*a*) "Third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(*b*) "Long-term resident" means any third-country national who has long-term resident status as provided for under Articles 4 to 7;

(*c*) "First Member State" means the Member State which for the first time granted long-term resident status to a third-country national;

(*d*) "Second Member State" means any Member State other than the one which for the first time granted long-term resident status to a third-country national and in which that long-term resident exercises the right of residence;

(*e*) "Family members" means the third-country nationals who reside in the Member State concerned in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification[5];

(*f*) "Refugee" means any third-country national enjoying refugee status within the meaning of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(*g*) "Long-term resident's EC residence permit" means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status.

Article 3

Scope

1. This Directive applies to third-country nationals residing legally in the territory of a Member State.

2. This Directive does not apply to third-country nationals who:

(*a*) Reside in order to pursue studies or vocational training;

(*b*) Are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

(*c*) Are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

(*d*) Are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;

(*e*) Reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited;

(*f*) Enjoy a legal status governed by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 1975.

3. This Directive shall apply without prejudice to more favourable provisions of:

(*a*) Bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

(*b*) Bilateral agreements already concluded between a Member State and a third country before the date of entry into force of this Directive;

(*c*) The European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

[5] OJ L 251, 3.10.2003, p. 12.

CHAPTER II

LONG-TERM RESIDENT STATUS IN A MEMBER STATE

Article 4

Duration of residence

1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

2. Periods of residence for the reasons referred to in Article 3(2)(e) and (f) shall not be taken into account for the purposes of calculating the period referred to in paragraph 1.

   Regarding the cases covered in Article 3(2)(a), where the third-country national concerned has acquired a title of residence which will enable him/her to be granted long-term resident status, only half of the periods of residence for study purposes or vocational training may be taken into account in the calculation of the period referred to in paragraph 1.

3. Periods of absence from the territory of the Member State concerned shall not interrupt the period referred to in paragraph 1 and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed in total 10 months within the period referred to in paragraph 1.

   In cases of specific or exceptional reasons of a temporary nature and in accordance with their national law, Member States may accept that a longer period of absence than that which is referred to in the first subparagraph shall not interrupt the period referred to in paragraph 1. In such cases Member States shall not take into account the relevant period of absence in the calculation of the period referred to in paragraph 1.

   By way of derogation from the second subparagraph, Member States may take into account in the calculation of the total period referred to in paragraph 1 periods of absence relating to secondment for employment purposes, including the provision of cross-border services.

Article 5

Conditions for acquiring long-term resident status

1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

   (*a*) Stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;

   (*b*) Sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.

Article 6

Public policy and public security

1. Member States may refuse to grant long-term resident status on grounds of public policy or public security.

   When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having proper regard to the duration of residence and to the existence of links with the country of residence.

2. The refusal referred to in paragraph 1 shall not be founded on economic considerations.

Article 7

Acquisition of long-term resident status

1. To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he/she resides. The application shall be accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 4 and 5 as well as, if required, by a valid travel document or its certified copy.

   The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.

2. The competent national authorities shall give the applicant written notification of the decision as soon as possible and in any event no later than six months from the date on which the application was lodged. Any such decision shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation.

   In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

   In addition, the person concerned shall be informed about his/her rights and obligations under this Directive.

   Any consequences of no decision being taken by the end of the period provided for in this provision shall be determined by national legislation of the relevant Member State.

3. If the conditions provided for by Articles 4 and 5 are met, and the person does not represent a threat within the meaning of Article 6, the Member State concerned shall grant the third-country national concerned long-term resident status.

Article 8

Long-term resident's EC residence permit

1. The status as long-term resident shall be permanent, subject to Article 9.

2. Member States shall issue a long-term resident's EC residence permit to long-term residents. The permit shall be valid at least for five years; it shall, upon application if required, be automatically renewable on expiry.

3. A long-term resident's EC residence permit may be issued in the form of a sticker or of a separate document. It shall be issued in accordance with the rules and standard model as set out in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals[6]. Under the heading "type of permit", the Member States shall enter "long-term resident – EC".

Article 9

Withdrawal or loss of status

1. Long-term residents shall no longer be entitled to maintain long-term resident status in the following cases:

   (*a*) Detection of fraudulent acquisition of long-term resident status;

   (*b*) Adoption of an expulsion measure under the conditions provided for in Article 12;

   (*c*) In the event of absence from the territory of the Community for a period of 12 consecutive months.

2. By way of derogation from paragraph 1(c), Member States may provide that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of status.

3. Member States may provide that the long-term resident shall no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy, in consideration of the seriousness of the offences he/she committed, but such threat is not a reason for expulsion within the meaning of Article 12.

[6] OJ L 157, 15.6.2002, p. 1.

4. The long-term resident who has resided in another Member State in accordance with Chapter III shall no longer be entitled to maintain his/her long-term resident status acquired in the first Member State when such a status is granted in another Member State pursuant to Article 23.

   In any case after six years of absence from the territory of the Member State that granted long-term resident status the person concerned shall no longer be entitled to maintain his/her long term resident status in the said Member State.

   By way of derogation from the second subparagraph the Member State concerned may provide that for specific reasons the long-term resident shall maintain his/her status in the said Member State in case of absences for a period exceeding six years.

5. With regard to the cases referred to in paragraph 1(c) and in paragraph 4, Member States who have granted the status shall provide for a facilitated procedure for the re-acquisition of long-term resident status.

   The said procedure shall apply in particular to the cases of persons that have resided in a second Member State on grounds of pursuit of studies.

   The conditions and the procedure for the re-acquisition of long-term resident status shall be determined by national law.

6. The expiry of a long-term resident's EC residence permit shall in no case entail withdrawal or loss of long-term resident status.

7. Where the withdrawal or loss of long-term resident status does not lead to removal, the Member State shall authorise the person concerned to remain in its territory if he/she fulfils the conditions provided for in its national legislation and/or if he/she does not constitute a threat to public policy or public security.

Article 10

Procedural guarantees

1. Reasons shall be given for any decision rejecting an application for long-term resident status or withdrawing that status. Any such decision shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the redress procedures available and the time within which he/she may act.

2. Where an application for long-term resident status is rejected or that status is withdrawn or lost or the residence permit is not renewed, the person concerned shall have the right to mount a legal challenge in the Member State concerned.

Article 11

Equal treatment

1. Long-term residents shall enjoy equal treatment with nationals as regards:

   (*a*) Access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;

   (*b*) Education and vocational training, including study grants in accordance with national law;

   (*c*) Recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures;

   (*d*) Social security, social assistance and social protection as defined by national law;

   (*e*) Tax benefits;

   (*f*) Access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;

   (*g*) Freedom of association and affiliation and membership of an Organization representing workers or employers or of any Organization whose members are engaged in a specific occupation, including the

benefits conferred by such Organizations, without prejudice to the national provisions on public policy and public security;

(*h*) Free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security.

2. With respect to the provisions of paragraph 1, points (b), (d), (e), (f) and (g), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned.

3. Member States may restrict equal treatment with nationals in the following cases:

(*a*) Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens;

(*b*) Member States may require proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites.

4. Member States may limit equal treatment in respect of social assistance and social protection to core benefits.

5. Member States may decide to grant access to additional benefits in the areas referred to in paragraph 1.

Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1.

Article 12

Protection against expulsion

1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

(*a*) The duration of residence in their territory;

(*b*) The age of the person concerned;

(*c*) The consequences for the person concerned and family members;

(*d*) Links with the country of residence or the absence of links with the country of origin.

4. Where an expulsion decision has been adopted, a judicial redress procedure shall be available to the long-term resident in the Member State concerned.

5. Legal aid shall be given to long-term residents lacking adequate resources, on the same terms as apply to nationals of the State where they reside.

Article 13

More favourable national provisions

Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter III of this Directive.

CHAPTER III

RESIDENCE IN THE OTHER MEMBER STATES

Article 14

Principle

1. A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.
2. A long-term resident may reside in a second Member State on the following grounds:

   (*a*) Exercise of an economic activity in an employed or self-employed capacity;

   (*b*) Pursuit of studies or vocational training;

   (*c*) Other purposes.
3. In cases of an economic activity in an employed or self-employed capacity referred to in paragraph 2(a), Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for, respectively, filling a vacancy, or for exercising such activities.

   For reasons of labour market policy, Member States may give preference to Union citizens, to third-country nationals, when provided for by Community legislation, as well as to third-country nationals who reside legally and receive unemployment benefits in the Member State concerned.
4. By way of derogation from the provisions of paragraph 1, Member States may limit the total number of persons entitled to be granted right of residence, provided that such limitations are already set out for the admission of third-country nationals in the existing legislation at the time of the adoption of this Directive.
5. This chapter does not concern the residence of long-term residents in the territory of the Member States:

   (*a*) As employed workers posted by a service provider for the purposes of cross-border provision of services;

   (*b*) As providers of cross-border services.

Member States may decide, in accordance with national law, the conditions under which long-term residents who wish to move to a second Member State with a view to exercising an economic activity as seasonal workers may reside in that Member State. Cross-border workers may also be subject to specific provisions of national law.

6. This Chapter is without prejudice to the relevant Community legislation on social security with regard to third-country nationals.

Article 15

Conditions for residence in a second Member State

1. As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit.

   Member States may accept that the long-term resident submits the application for a residence permit to the competent authorities of the second Member State while still residing in the territory of the first Member State.
2. Member States may require the persons concerned to provide evidence that they have:

   (*a*) Stable and regular resources which are sufficient to maintain themselves and the members of their families, without recourse to the social assistance of the Member State concerned. For each of the categories referred to in Article 14(2), Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions;

(*b*) Sickness insurance covering all risks in the second Member State normally covered for its own nationals in the Member State concerned.

3. Member States may require third-country nationals to comply with integration measures, in accordance with national law.

This condition shall not apply where the third-country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 5(2).

Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses.

4. The application shall be accompanied by documentary evidence, to be determined by national law, that the persons concerned meets the relevant conditions, as well as by their long-term resident permit and a valid travel document or their certified copies.

The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.

In particular:

(*a*) In case of exercise of an economic activity the second Member State may require the persons concerned to provide evidence:

(i) If they are in an employed capacity, that they have an employment contract, a statement by the employer that they are hired or a proposal for an employment contract, under the conditions provided for by national legislation. Member States shall determine which of the said forms of evidence is required;

(ii) If they are in a self-employed capacity, that they have the appropriate funds which are needed, in accordance with national law, to exercise an economic activity in such capacity, presenting the necessary documents and permits;

(*b*) In case of study or vocational training the second Member State may require the persons concerned to provide evidence of enrolment in an accredited establishment in order to pursue studies or vocational training.

Article 16

Family members

1. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, who fulfil the conditions referred to in Article 4(1) of Directive 2003/86/EC shall be authorised to accompany or to join the long-term resident.

2. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, other than those referred to in Article 4(1) of Directive 2003/86/EC may be authorised to accompany or to join the long-term resident.

3. With respect to the submission of the application for a residence permit, the provisions of Article 15(1) apply.

4. The second Member State may require the family members concerned to present with their application for a residence permit:

(*a*) Their long-term resident's EC residence permit or residence permit and a valid travel document or their certified copies;

(*b*) Evidence that they have resided as members of the family of the long-term resident in the first Member State;

(*c*) Evidence that they have stable and regular resources which are sufficient to maintain themselves without recourse to the social assistance of the Member State concerned or that the long-term resident has such resources and insurance for them, as well as sickness insurance covering all risks in the second Member State. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions.

5. Where the family was not already constituted in the first Member State, Directive 2003/86/EC shall apply.

Article 17

Public policy and public security

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public policy or public security.

   When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security committed by the long-term resident or his/her family member(s), or the danger that emanates from the person concerned.

2. The decision referred to in paragraph 1 shall not be based on economic considerations.

Article 18

Public health

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public health.

2. The only diseases that may justify a refusal to allow entry or the right of residence in the territory of the second Member State shall be the diseases as defined by the relevant applicable instruments of the World Health Organization's and such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to nationals in the host country. Member States shall not introduce new more restrictive provisions or practices.

3. Diseases contracted after the first residence permit was issued in the second Member State shall not justify a refusal to renew the permit or expulsion from the territory.

4. A Member State may require a medical examination, for persons to whom this Directive applies, in order to certify that they do not suffer from any of the diseases referred to in paragraph 2. Such medical examinations, which may be free of charge, shall not be performed on a systematic basis.

Article 19

Examination of applications and issue of a residence permit

1. The competent national authorities shall process applications within four months from the date that these have been lodged.

   If an application is not accompanied by the documentary evidence listed in Articles 15 and 16, or in exceptional circumstances linked with the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended for a period not exceeding three months. In such cases the competent national authorities shall inform the applicant thereof.

2. If the conditions provided for in Articles 14, 15 and 16 are met, then, subject to the provisions relating to public policy, public security and public health in Articles 17 and 18, the second Member State shall issue the long-term resident with a renewable residence permit. This residence permit shall, upon application, if required, be renewable on expiry. The second Member State shall inform the first Member State of its decision.

3. The second Member State shall issue members of the long-term resident's family with renewable residence permits valid for the same period as the permit issued to the long-term resident.

Article 20

Procedural guarantees

1. Reasons shall be given for any decision rejecting an application for a residence permit. It shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.

   Any consequences of no decision being taken by the end of the period referred to in Article 19(1) shall be determined by the national legislation of the relevant Member State.

2. Where an application for a residence permit is rejected, or the permit is not renewed or is withdrawn, the person concerned shall have the right to mount a legal challenge in the Member State concerned.

Article 21

Treatment granted in the second Member State

1. As soon as they have received the residence permit provided for by Article 19 in the second Member State, long-term residents shall in that Member State enjoy equal treatment in the areas and under the conditions referred to in Article 11.

2. Long-term residents shall have access to the labour market in accordance with the provisions of paragraph 1.

   Member States may provide that the persons referred to in Article 14(2)(a) shall have restricted access to employed activities different than those for which they have been granted their residence permit under the conditions set by national legislation for a period not exceeding 12 months.

   Member States may decide in accordance with national law the conditions under which the persons referred to in Article 14(2)(b) or (c) may have access to an employed or self-employed activity.

3. As soon as they have received the residence permit provided for by Article 19 in the second Member State, members of the family of the long-term resident shall in that Member State enjoy the rights listed in Article 14 of Directive 2003/86/EC.

Article 22

Withdrawal of residence permit and obligation to readmit

1. Until the third-country national has obtained long-term resident status, the second Member State may decide to refuse to renew or to withdraw the resident permit and to oblige the person concerned and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory in the following cases:

   (*a*) On grounds of public policy or public security as defined in Article 17;

   (*b*) Where the conditions provided for in Articles 14, 15 and 16 are no longer met;

   (*c*) Where the third-country national is not lawfully residing in the Member State concerned.

2. If the second Member State adopts one of the measures referred to in paragraph 1, the first Member State shall immediately readmit without formalities the long-term resident and his/her family members. The second Member State shall notify the first Member State of its decision.

3. Until the third-country national has obtained long-term resident status and without prejudice to the obligation to readmit referred to in paragraph 2, the second Member State may adopt a decision to remove the third-country national from the territory of the Union, in accordance with and under the guarantees of Article 12, on serious grounds of public policy or public security.

   In such cases, when adopting the said decision the second Member State shall consult the first Member State.

   When the second Member State adopts a decision to remove the third-country national concerned, it shall take all the appropriate measures to effectively implement it. In such cases the second Member State shall

provide to the first Member State appropriate information with respect to the implementation of the removal decision.

4. Removal decisions may not be accompanied by a permanent ban on residence in the cases referred to in paragraph 1(b) and (c).

5. The obligation to readmit referred to in paragraph 2 shall be without prejudice to the possibility of the long-term resident and his/her family members moving to a third Member State.

Article 23

Acquisition of long-term resident status in the second Member State

1. Upon application, the second Member State shall grant long-term residents the status provided for by Article 7, subject to the provisions of Articles 3, 4, 5 and 6. The second Member State shall notify its decision to the first Member State.

2. The procedure laid down in Article 7 shall apply to the presentation and examination of applications for long-term resident status in the second Member State. Article 8 shall apply for the issuance of the residence permit. Where the application is rejected, the procedural guarantees provided for by Article 10 shall apply.

CHAPTER IV

FINAL PROVISIONS

Article 24

Report and rendez-vous clause

Periodically, and for the first time no later than 23 January 2011, the Commission shall report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose such amendments as may be necessary. These proposals for amendments shall be made by way of priority in relation to Articles 4, 5, 9, 11 and to Chapter III.

Article 25

Contact points

Member States shall appoint contact points who will be responsible for receiving and transmitting the information referred to in Article 19(2), Article 22(2) and Article 23(1).

Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in the first paragraph.

Article 26

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 January 2006 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 27

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 28

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

DONE at Brussels, 25 November 2003.

For the Council

The President

G. TREMONTI

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COUNCIL DIRECTIVE 2004/81/EC OF 29 APRIL 2004 ON THE RESIDENCE PERMIT ISSUED TO THIRD-COUNTRY NATIONALS WHO ARE VICTIMS OF TRAFFICKING IN HUMAN BEINGS OR WHO HAVE BEEN THE SUBJECT OF AN ACTION TO FACILITATE ILLEGAL IMMIGRATION, WHO COOPERATE WITH THE COMPETENT AUTHORITIES

Published in the Official Journal of the European Union L 261, 06/08/2004 P. 0019 – 0023

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular point 3 of Article 63 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Having consulted the Committee of the Regions,

Whereas:

1. The framing of a common immigration policy, including the definition of the conditions of entry and residence for foreigners and measures to combat illegal immigration, is a constituent element of the European Union's objective of creating an area of freedom, security and justice.
2. At its special meeting in Tampere on 15 and 16 October 1999, the European Council expressed its determination to tackle illegal immigration at source, for example by targeting those who engage in trafficking of human beings and the economic exploitation of migrants. It called on the Member States to concentrate their efforts on detecting and dismantling criminal networks while protecting the rights of victims.
3. An indication of the growing concern about this phenomenon at international level was the adoption by the United Nations General Assembly of a Convention against Transnational Organised Crime, supplemented by a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and a Protocol Against the Smuggling of Migrants by Land, Sea and Air. These were signed by the Community and the 15 Member States in December 2000.
4. This Directive is without prejudice to the protection granted to refugees, to beneficiaries of subsidiary protection and persons seeking international protection under international refugee law and without prejudice to other human rights instruments.
5. This Directive is without prejudice to other provisions on the protection of victims, witnesses or persons who are particularly vulnerable. Nor does it detract from the prerogatives of the Member States as regards the right of residence granted on humanitarian or other grounds.
6. This Directive respects fundamental rights and complies with the principles recognised for example by the Charter of Fundamental Rights of the European Union.
7. Member States should give effect to the provision of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.
8. At European level, Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence[4] and Council Framework Decision 2002/629/JHA of 19 July

[1] OJ C 126 E, 28.5.2002, p. 393.
[2] Opinion delivered on 5 December 2002 (not yet published in the Official Journal).
[3] OJ C 221, 17.9.2002, p. 80.
[4] OJ L 328, 5.12.2002, p. 17.

2002 on combating trafficking in human beings[5] were adopted to strengthen the prevention and the fight against the above offences.

9. This Directive introduces a residence permit intended for victims of trafficking in human beings or, if a Member State decides to extend the scope of this Directive, to third-country nationals who have been the subject of an action to facilitate illegal immigration to whom the residence permit offers a sufficient incentive to cooperate with the competent authorities while including certain conditions to safeguard against abuse.

10. To this end, it is necessary to lay down the criteria for issuing a residence permit, the conditions of stay and the grounds for non-renewal and withdrawal. The right to stay under this Directive is subject to conditions and is of provisional nature.

11. The third country nationals concerned should be informed of the possibility of obtaining this residence permit and be given a period in which to reflect on their position. This should help put them in a position to reach a well-informed decision as to whether or not to cooperate with the competent authorities, which may be the police, prosecution and judicial authorities (in view of the risks this may entail), so that they cooperate freely and hence more effectively.

12. Given their vulnerability, the third-country nationals concerned should be granted the assistance provided by this Directive. This assistance should allow them to recover and escape the influence of the perpetrators of the offences. The medical treatment to be provided to the third-country nationals covered by this Directive also includes, where appropriate, psychotherapeutical care.

13. A decision on the issue of a residence permit for at least six months or its renewal has to be taken by the competent authorities, who should consider if the relevant conditions are fulfilled.

14. This Directive should apply without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating the offences concerned.

15. Member States should consider authorising the stay on other grounds, according to their national legislation, for third-country nationals who may fall within the scope of this Directive, but who do not, or no longer, fulfil the conditions set by it, for the members of his/her family or for persons treated as members of his/her family.

16. To enable the third-country nationals concerned to gain their independence and not return to the criminal network, the holders of the residence permit should be authorised, under the conditions set by this Directive, to have access to the labour market and pursue vocational training and education. In authorising access of the holders of the residence permit to vocational training and education, Member States should consider in particular the likely duration of stay.

17. The participation of the third-country nationals concerned to programmes and schemes, already existing or to be introduced, should contribute to their recovery of a normal social life.

18. If the third-country nationals concerned submit an application for another kind of residence permit, Member States take a decision on the basis of ordinary national aliens' law. When examining such an application, Member States should consider the fact that the third-country nationals concerned have been granted the residence permit issued under this Directive.

19. Member States should provide the Commission, with respect to the implementation of this Directive, with the information which has been identified in the framework of the activities developed with regard to the collection and treatment of statistical data concerning matters falling within the area of Justice and Home Affairs.

20. Since the objective of introducing a residence permit for the third-country nationals concerned who cooperate in the fight against trafficking in human beings cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at the Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

[5] OJ L 203, 1.8.2002, p. 1.

21. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol, these Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

22. In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive and is not bound by it or subject to its application,

Has adopted this directive:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

Article 2

Definitions

For the purposes of this Directive:

(*a*) "Third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(*b*) "Action to facilitate illegal immigration" covers cases such as those referred to in Articles 1 and 2 of Directive 2002/90/EC;

(*c*) "Trafficking in human beings" covers cases such as those referred to in Articles 1, 2 and 3 of Framework Decision 2002/629/JHA;

(*d*) "Measure to enforce an expulsion order" means any measure taken by a Member State to enforce the decision of the competent authorities ordering the expulsion of a third-country national;

(*e*) "Residence permit" means any authorisation issued by a Member State, allowing a third-country national who fulfils the conditions set by this Directive to stay legally on its territory.

(*f*) "Unaccompanied minors" means third-country nationals below the age of eighteen, who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member State.

Article 3

Scope

1. Member States shall apply this Directive to the third-country nationals who are, or have been victims of offences related to the trafficking in human beings, even if they have illegally entered the territory of the Member States.

2. Member States may apply this Directive to the third-country nationals who have been the subject of an action to facilitate illegal immigration.

3. This Directive shall apply to the third-country nationals concerned having reached the age of majority set out by the law of the Member State concerned.

By way of derogation, Member States may decide to apply this Directive to minors under the conditions laid down in their national law.

Article 4

More favourable provisions

This Directive shall not prevent Member States from adopting or maintaining more favourable provisions for the persons covered by this Directive.

CHAPTER II

PROCEDURE FOR ISSUING THE RESIDENCE PERMIT

Article 5

Information given to the third-country nationals concerned

When the competent authorities of the Member States take the view that a third-country national may fall into the scope of this Directive, they shall inform the person concerned of the possibilities offered under this Directive.

Member States may decide that such information may also be provided by a non-governmental Organization or an association specifically appointed by the Member State concerned.

Article 6

Reflection period

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

   The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

3. The reflection period shall not create any entitlement to residence under this Directive.

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

Article 7

Treatment granted before the issue of the residence permit

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

Article 8

Issue and renewal of the residence permit

1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:

   (*a*) The opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and

   (*b*) Whether he/she has shown a clear intention to cooperate and

   (*c*) Whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.

3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

CHAPTER III

TREATMENT OF HOLDERS OF THE RESIDENCE PERMIT

Article 9

Treatment granted after the issue of the residence permit

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

Article 10

Minors

If Member States have recourse to the option provided for in Article 3(3), the following provisions shall apply:

(*a*) Member States shall take due account of the best interests of the child when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. In particular, if they consider that it is in the best interest of the child, they may extend the reflection period.

(*b*) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

(*c*) In the case of third-country nationals who are unaccompanied minors, Member States shall take the necessary steps to establish their identity, nationality and the fact that they are unaccompanied. They shall make every effort to locate their families as quickly as possible and take the necessary steps immediately to ensure legal representation, including representation in criminal proceedings, if necessary, in accordance with national law.

Article 11

Work, vocational training and education

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

   Such access shall be limited to the duration of the residence permit.

2. The conditions and the procedures for authorising access to the labour market, to vocational training and education shall be determined, under the national legislation, by the competent authorities.

Article 12

Programmes or schemes for the third-country nationals concerned

1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental Organizations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

   Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

CHAPTER IV

NON-RENEWAL AND WITHDRAWAL

Article 13

Non-renewal

1. The residence permit issued on the basis of this Directive shall not be renewed if the conditions of Article 8(2) cease to be satisfied or if a decision adopted by the competent authorities has terminated the relevant proceedings.

2. When the residence permit issued on the basis of this Directive expires ordinary aliens' law shall apply.

Article 14

Withdrawal

The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

(*a*) If the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or

(*b*) If the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or

(*c*) For reasons relating to public policy and to the protection of national security; or

(*d*) When the victim ceases to cooperate; or

(*e*) When the competent authorities decide to discontinue the proceedings.

CHAPTER V

FINAL PROVISIONS

Article 15

Safeguard clause

This Directive shall apply without prejudice to specific national rules concerning the protection of victims and witnesses.

Article 16

Report

1. No later than 6 August 2008, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and propose any amendments that are necessary. The Member States shall send the Commission any information relevant to the preparation of this report.
2. After presenting the report referred to in paragraph 1, the Commission shall report to the European Parliament and the Council at least every three years on the application of this Directive in the Member States.

Article 17

Transposal

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 6 August 2006. They shall immediately inform the Commission accordingly.

When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 18

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 19

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

DONE at Luxembourg, 29 April 2004.

For the Council

The President

M. McDOWELL

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FINAL ACT OF THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE

The Helsinki final act (1 August 1975)

Text: Conference on Security and Co-operation in Europe, Final Act

The Conference on Security and Co-operation in Europe, which opened at Helsinki on 3 July 1973 and continued at Geneva from 18 September 1973 to 21 July 1975, was concluded at Helsinki on 1 August 1975 by the High Representatives of Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia.

During the opening and closing stages of the Conference the participants were addressed by the Secretary-General of the United Nations as their guest of honour. The Director-General of UNESCO and the Executive Secretary of the United Nations Economic Commission for Europe addressed the Conference during its second stage.

During the meetings of the second stage of the Conference, contributions were received, and statements heard, from the following non-participating Mediterranean States on various agenda items: the Democratic and Popular Republic of Algeria, the Arab Republic of Egypt, Israel, the Kingdom of Morocco, the Syrian Arab Republic, Tunisia.

Motivated by the political will, in the interest of peoples, to improve and intensify their relations and to contribute in Europe to peace, security, justice and co-operation as well as to rapprochement among themselves and with the other States of the world,

Determined, in consequence, to give full effect to the results of the Conference and to assure, among their States and throughout Europe, the benefits deriving from those results and thus to broaden, deepen and make continuing and lasting the process of detente,

The High Representatives of the participating States have solemnly adopted the following:

Questions relating to Security in Europe

The States participating in the Conference on Security and Co-operation in Europe,

Reaffirming their objective of promoting better relations among themselves and ensuring conditions in which their people can live in true and lasting peace free from any threat to or attempt against their security;

Convinced of the need to exert efforts to make détente both a continuing and an increasingly viable and comprehensive process, universal in scope, and that the implementation of the results of the Conference on Security and Co-operation in Europe will be a major contribution to this process;

Considering that solidarity among peoples, as well as the common purpose of the participating States in achieving the aims as set forth by the Conference on Security and Co-operation in Europe, should lead to the development of better and closer relations among them in all fields and thus to overcoming the confrontation stemming from the character of their past relations, and to better mutual understanding;

Mindful of their common history and recognizing that the existence of elements common to their traditions and values can assist them in developing their relations, and desiring to search, fully taking into account the individuality and diversity of their positions and views, for possibilities of joining their efforts with a view to overcoming distrust and increasing confidence, solving the problems that separate them and cooperating in the interest of mankind;

Recognizing the indivisibility of security in Europe as well as their common interest in the development of co-operation throughout Europe and among themselves and expressing their intention to pursue efforts accordingly;

Recognizing the close link between peace and security in Europe and in the world as a whole and conscious of the need for each of them to make its contribution to the strengthening of world peace and security and to the promotion of fundamental rights, economic and social progress and well-being for all peoples;

Have adopted the following:

1

(A) DECLARATION ON PRINCIPLES GUIDING RELATIONS BETWEEN PARTICIPATING STATES

The participating States,

Reaffirming their commitment to peace, security and justice and the continuing development of friendly relations and co-operation;

Recognizing that this commitment, which reflects the interest and aspirations of peoples, constitutes for each participating State a present and future responsibility, heightened by experience of the past;

Reaffirming, in conformity with their membership in the United Nations and in accordance with the purposes and principles of the United Nations, their full and active support for the United Nations and for the enhancement of its role and effectiveness in strengthening international peace, security and justice, and in promoting the solution of international problems, as well as the development of friendly relations and co-operation among States;

Expressing their common adherence to the principles which are set forth below and are in conformity with the Charter of the United Nations, as well as their common will to act, in the application of these principles, in conformity with the purposes and principles of the Charter of the United Nations;

Declare their determination to respect and put into practice, each of them in its relations with all other participating States, irrespective of their political, economic or social systems as well as of their size, geographical location or level of economic development, the following principles, which all are of primary significance, guiding their mutual relations:

I. Sovereign equality, respect for the rights inherent in sovereignty

The participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence. They will also respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations.

Within the framework of international law, all the participating States have equal rights and duties. They will respect each other's right to define and conduct as it wishes its relations with other States in accordance with international law and in the spirit of the present Declaration. They consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement. They also have the right to belong or not to belong to international organizations, to be or not to be a party to bilateral or multilateral treaties including the right to be or not to be a party to treaties of alliance; they also have the right to neutrality.

II. Refraining from the threat or use of force

The participating States will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration. No consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle.

Accordingly, the participating States will refrain from any acts constituting a threat of force or direct or indirect use of force against another participating State. Likewise they will refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. Likewise they will also refrain in their mutual relations from any act of reprisal by force.

No such threat or use of force will be employed as a means of settling disputes, or questions likely to give rise to disputes, between them.

III. Inviolability of frontiers

The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.

Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State.

IV. Territorial integrity of States

The participating States will respect the territorial integrity of each of the participating States.

Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force.

The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal.

V. Peaceful settlement of disputes

The participating States will settle disputes among them by peaceful means in such a manner as not to endanger international peace and security, and justice.

They will endeavour in good faith and a spirit of co-operation to reach a rapid and equitable solution on the basis of international law.

For this purpose they will use such means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice including any settlement procedure agreed to in advance of disputes to which they are parties.

In the event of failure to reach a solution by any of the above peaceful means, the parties to a dispute will continue to seek a mutually agreed way to settle the dispute peacefully.

Participating States, parties to a dispute among them, as well as other participating States, will refrain from any action which might aggravate the situation to such a degree as to endanger the maintenance of international peace and security and thereby make a peaceful settlement of the dispute more difficult.

VI. Non-intervention in internal affairs

The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations.

They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State.

They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

Accordingly, they will, *inter alia*, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating State.

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief

The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

The participating States recognize the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.

They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them.

They confirm the right of the individual to know and act upon his rights and duties in this field.

In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including *inter alia* the International Covenants on Human Rights, by which they may be bound.

VIII. Equal rights and self-determination of peoples

The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.

The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle.

IX. Co-operation among States

The participating States will develop their co-operation with one another and with all States in all fields in accordance with the purposes and principles of the Charter of the United Nations. In developing their co-

operation the participating States will place special emphasis on the fields as set forth within the framework of the Conference on Security and Co-operation in Europe, with each of them making its contribution in conditions of full equality.

They will endeavour, in developing their co-operation as equals, to promote mutual understanding and confidence, friendly and good-neighbourly relations among themselves, international peace, security and justice. They will equally endeavour, in developing their co-operation, to improve the well-being of peoples and contribute to the fulfilment of their aspirations through, *inter alia*, the benefits resulting from increased mutual knowledge and from progress and achievement in the economic, scientific, technological, social, cultural and humanitarian fields. They will take steps to promote conditions favourable to making these benefits available to all; they will take into account the interest of all in the narrowing of differences in the levels of economic development, and in particular the interest of developing countries throughout the world.

They confirm that governments, institutions, organizations and persons have a relevant and positive role to play in contributing toward the achievement of these aims of their co-operation.

They will strive, in increasing their co-operation as set forth above, to develop closer relations among themselves on an improved and more enduring basis for the benefit of peoples.

X. Fulfilment in good faith of obligations under international law

The participating States will fulfil in good faith their obligations under international law, both those obligations arising from the generally recognized principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties.

In exercising their sovereign rights, including the right to determine their laws and regulations, they will conform with their legal obligations under international law; they will furthermore pay due regard to and implement the provisions in the Final Act of the Conference on Security and Co-operation in Europe.

The participating States confirm that in the event of a conflict between the obligations of the members of the United Nations under the Charter of the United Nations and their obligations under any treaty or other international agreement, their obligations under the Charter will prevail, in accordance with Article 103 of the Charter of the United Nations.

All the principles set forth above are of primary significance and, accordingly, they will be equally and unreservedly applied, each of them being interpreted taking into account the others.

The participating States express their determination fully to respect and apply these principles, as set forth in the present Declaration, in all aspects, to their mutual relations and co-operation in order to ensure to each participating State the benefits resulting from the respect and application of these principles by all.

The participating States, paying due regard to the principles above and, in particular, to the first sentence of the tenth principle, “Fulfilment in good faith of obligations under international law”, note that the present Declaration does not affect their rights and obligations, nor the corresponding treaties and other agreements and arrangements.

The participating States express the conviction that respect for these principles will encourage the development of normal and friendly relations and the progress of co-operation among them in all fields. They also express the conviction that respect for these principles will encourage the development of political contacts among them which in time would contribute to better mutual understanding of their positions and views.

The participating States declare their intention to conduct their relations with all other States in the spirit of the principles contained in the present Declaration.

(B) MATTERS RELATED TO GIVING EFFECT TO CERTAIN OF THE ABOVE PRINCIPLES

(I)

The participating States,

Reaffirming that they will respect and give effect to refraining from the threat or use of force and convinced of the necessity to make it an effective norm of international life,

Declare that they are resolved to respect and carry out, in their relations with one another, *inter alia*, the following provisions which are in conformity with the Declaration on Principles Guiding Relations between Participating States:

(*a*) To give effect and expression, by all the ways and forms which they consider appropriate, to the duty to refrain from the threat or use of force in their relations with one another.

(*b*) To refrain from any use of armed forces inconsistent with the purposes and principles of the Charter of the United Nations and the provisions of the Declaration on Principles Guiding Relations between Participating States, against another participating State, in particular from invasion of or attack on its territory.

(*c*) To refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights.

(*d*) To refrain from any act of economic coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind.

(*e*) To take effective measures which by their scope and by their nature constitute steps towards the ultimate achievement of general and complete disarmament under strict and effective international control.

To promote, by all means which each of them considers appropriate, a climate of confidence and respect among peoples consonant with their duty to refrain from propaganda for wars of aggression or for any threat or use of force inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States, against another participating State.

To make every effort to settle exclusively by peaceful means any dispute between them, the continuance of which is likely to endanger the maintenance of international peace and security in Europe, and to seek, first of all, a solution through the peaceful means set forth in Article 33 of the United Nations Charter. To refrain from any action which could hinder the peaceful settlement of disputes between the participating States.

(II)

The participating States,

Reaffirming their determination to settle their disputes as set forth in the Principle of Peaceful Settlement of Disputes;

Convinced that the peaceful settlement of disputes is a complement to refraining from the threat or use of force, both being essential though not exclusive factors for the maintenance and consolidation of peace and security;

Desiring to reinforce and to improve the methods at their disposal for the peaceful settlement of disputes;

(*a*) Are resolved to pursue the examination and elaboration of a generally acceptable method for the peaceful settlement of disputes aimed at complementing existing methods, and to continue to this end to work upon the "Draft Convention on a European System for the Peaceful Settlement of Disputes" submitted by Switzerland during the second stage of the Conference on Security and Co-operation in Europe, as well as other proposals relating to it and directed towards the elaboration of such a method.

(*b*) Decide that, on the invitation of Switzerland, a meeting of experts of all the participating States will be convoked in order to fulfil the mandate described in paragraph 1 above within the framework and under the procedures of the follow-up to the Conference laid down in the chapter "Follow-up to the Conference".

(*c*) This meeting of experts will take place after the meeting of the representatives appointed by the Ministers of Foreign Affairs of the participating States, scheduled according to the chapter "Follow-up to the Conference" for 1977; the results of the work of this meeting of experts will be submitted to Governments.

2

DOCUMENT ON CONFIDENCE-BUILDING MEASURES AND CERTAIN ASPECTS OF SECURITY AND DISARMAMENT

The participating States,

Desirous of eliminating the causes of tension that may exist among them and thus of contributing to the strengthening of peace and security in the world;

Determined to strengthen confidence among them and thus to contribute to increasing stability and security in Europe;

Determined further to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the Declaration on Principles Guiding Relations between Participating States as adopted in this Final Act;

Recognizing the need to contribute to reducing the dangers of armed conflict and of misunderstanding or miscalculation of military activities which could give rise to apprehension, particularly in a situation where the participating States lack clear and timely information about the nature of such activities;

Taking into account considerations relevant to efforts aimed at lessening tension and promoting disarmament;

Recognizing that the exchange of observers by invitation at military manoeuvres will help to promote contacts and mutual understanding;

Having studied the question of prior notification of major military movements in the context of confidence-building;

Recognizing that there are other ways in which individual States can contribute further to their common objectives;

Convinced of the political importance of prior notification of major military manoeuvres for the promotion of mutual understanding and the strengthening of confidence, stability and security;

Accepting the responsibility of each of them to promote these objectives and to implement this measure, in accordance with the accepted criteria and modalities, as essentials for the realization of these objectives;

Recognizing that this measure deriving from political decision rests upon a voluntary basis;

Have adopted the following:

I

Prior notification of major military manoeuvres

They will notify their major military manoeuvres to all other participating States through usual diplomatic channels in accordance with the following provisions:

Notification will be given of major military manoeuvres exceeding a total of 25,000 troops, independently or combined with any possible air or naval components (in this context the word "troops" includes

amphibious and airborne troops). In the case of independent manoeuvres of amphibious or airborne troops, or of combined manoeuvres involving them, these troops will be included in this total. Furthermore, in the case of combined manoeuvres which do not reach the above total but which involve land forces together with significant numbers of either amphibious or airborne troops, or both, notification can also be given.

Notification will be given of major military manoeuvres which take place on the territory, in Europe, of any participating State as well as, if applicable, in the adjoining sea area and air space.

In the case of a participating State whose territory extends beyond Europe, prior notification need be given only of manoeuvres which take place in an area within 250 kilometres from its frontier facing or shared with any other European participating State, the participating State need not, however, give notification in cases in which that area is also contiguous to the participating State's frontier facing or shared with a non-European non-participating State.

Notification will be given 21 days or more in advance of the start of the manoeuvre or in the case of a manoeuvre arranged at shorter notice at the earliest possible opportunity prior to its starting date.

Notification will contain information of the designation, if any, the general purpose of and the States involved in the manoeuvre, the type or types and numerical strength of the forces engaged, the area and estimated time-frame of its conduct. The participating States will also, if possible, provide additional relevant information, particularly that related to the components of the forces engaged and the period of involvement of these forces.

Prior notification of other military manoeuvres

The participating States recognize that they can contribute further to strengthening confidence and increasing security and stability, and to this end may also notify smaller-scale military manoeuvres to other participating States, with special regard for those near the area of such manoeuvres.

To the same end, the participating States also recognize that they may notify other military manoeuvres conducted by them.

Exchange of observers

The participating States will invite other participating States, voluntarily and on a bilateral basis, in a spirit of reciprocity and goodwill towards all participating States, to send observers to attend military manoeuvres.

The inviting State will determine in each case the number of observers, the procedures and conditions of their participation, and give other information which it may consider useful. It will provide appropriate facilities and hospitality.

The invitation will be given as far ahead as is conveniently possible through usual diplomatic channels.

Prior notification of major military movements

In accordance with the Final Recommendations of the Helsinki Consultations the participating States studied the question of prior notification of major military movements as a measure to strengthen confidence.

Accordingly, the participating States recognize that they may, at their own discretion and with a view to contributing to confidence-building, notify their major military movements.

In the same spirit, further consideration will be given by the States participating in the Conference on Security and Co-operation in Europe to the question of prior notification of major military movements, bearing in mind, in particular, the experience gained by the implementation of the measures which are set forth in this document.

Other confidence-building measures

The participating States recognize that there are other means by which their common objectives can be promoted.

In particular, they will, with due regard to reciprocity and with a view to better mutual understanding, promote exchanges by invitation among their military delegations.

In order to make a fuller contribution to their common objective of confidence/building, the participating States, when conducting their military activities in the area covered by the provisions for the prior notification of major military manoeuvres, will duly take into account and respect this objective.

They also recognize that the experience gained by the implementation of the provisions set forth above, together with further efforts, could lead to developing and enlarging measures aimed at strengthening confidence.

II

QUESTIONS RELATING TO DISARMAMENT

The participating States recognize the interest of all of them in efforts aimed at lessening military confrontation and promoting disarmament which are designed to complement political detente in Europe and to strengthen their security. They are convinced of the necessity to take effective measures in these fields which by their scope and by their nature constitute steps towards the ultimate achievement of general and complete disarmament under strict and effective international control, and which should result in strengthening peace and security throughout the world.

III

GENERAL CONSIDERATIONS

Having considered the views expressed on various subjects related to the strengthening of security in Europe through joint efforts aimed at promoting detente and disarmament, the participating States, when engaged in such efforts, will, in this context, proceed, in particular, from the following essential considerations:

(*a*) The complementary nature of the political and military aspects of security;

(*b*) The interrelation between the security of each participating State and security in Europe as a whole and the relationship which exists, in the broader context of world security, between security in Europe and security in the Mediterranean area;

(*c*) Respect for the security interests of all States participating in the Conference on Security and Co-operation in Europe inherent in their sovereign equality;

(*d*) The importance that participants in negotiating fora see to it that information about relevant developments, progress and results is provided on an appropriate basis to other States participating in the Conference on Security and Co-operation in Europe and, in return, the justified interest of any of those States in having their views considered.

Co-operation in the Field of Economics, of Science and Technology and of the Environment

The participating States,

Convinced that their efforts to develop co-operation in the fields of trade, industry, science and technology, the environment and other areas of economic activity contribute to the reinforcement of peace and security in Europe and in the world as a whole,

Recognizing that co-operation in these fields would promote economic and social progress and the improvement of the conditions of life,

Aware of the diversity of their economic and social systems,

Reaffirming their will to intensify such co-operation between one another, irrespective of their systems,

Recognizing that such co-operation, with due regard for the different levels of economic development, can be developed, on the basis of equality and mutual satisfaction of the partners, and of reciprocity permitting, as a whole, an equitable distribution of advantages and obligations of comparable scale, with respect for bilateral and multilateral agreements,

Taking into account the interests of the developing countries throughout the world, including those among the participating countries as long as they are developing from the economic point of view; reaffirming their

will to co-operate for the achievement of the aims and objectives established by the appropriate bodies of the United Nations in the pertinent documents concerning development, it being understood that each participating State maintains the positions it has taken on them; giving special attention to the least developed countries,

Convinced that the growing world-wide economic interdependence calls for increasing common and effective efforts towards the solution of major world economic problems such as food, energy, commodities, monetary and financial problems, and therefore emphasizes the need for promoting stable and equitable international economic relations, thus contributing to the continuous and diversified economic development of all countries,

Having taken into account the work already undertaken by relevant international organizations and wishing to take advantage of the possibilities offered by these organizations, in particular by the United Nations Economic Commission for Europe, for giving effect to the provisions of the final documents of the Conference,

Considering that the guidelines and concrete recommendations contained in the following texts are aimed at promoting further development of their mutual economic relations, and convinced that their co-operation in this field should take place in full respect for the principles guiding relations among participating States as set forth in the relevant document,

Have adopted the following:

1

COMMERCIAL EXCHANGES

General provisions

The participating States,

Conscious of the growing role of international trade as one of the most important factors in economic growth and social progress,

Recognizing that trade represents an essential sector of their co-operation, and bearing in mind that the provisions contained in the above preamble apply in particular to this sector,

Considering that the volume and structure of trade among the participating States do not in all cases correspond to the possibilities created by the current level of their economic, scientific and technological development,

Are resolved to promote, on the basis of the modalities of their economic co-operation, the expansion of their mutual trade in goods and services, and to ensure conditions favourable to such development;

Recognize the beneficial effects which can result for the development of trade from the application of most favoured nation treatment;

Will encourage the expansion of trade on as broad a multilateral basis as possible, thereby endeavouring to utilize the various economic and commercial possibilities;

Recognize the importance of bilateral and multilateral intergovernmental and other agreements for the long-term development of trade;

Note the importance of monetary and financial questions for the development of international trade, and will endeavour to deal with them with a view to contributing to the continuous expansion of trade;

Will endeavour to reduce or progressively eliminate all kinds of obstacles to the development of trade;

Will foster a steady growth of trade while avoiding as far as possible abrupt fluctuations in their trade;

Consider that their trade in various products should be conducted in such a way as not to cause or threaten to cause serious injury – and should the situation arise, market disruption – in domestic markets for these products and in particular to the detriment of domestic producers of like or directly competitive products; as regards the concept of market disruption, it is understood that it should not be invoked in a way inconsistent with the relevant provisions of their international agreements; if they resort to safeguard measures, they will

do so in conformity with their commitments in this field arising from international agreements to which they are parties and will take account of the interests of the parties directly concerned;

Will give due attention to measures for the promotion of trade and the diversification of its structure;

Note that the growth and diversification of trade would contribute to widening the possibilities of choice of products;

Consider it appropriate to create favourable conditions for the participation of firms, organizations and enterprises in the development of trade.

Business contacts and facilities

The participating States,

Conscious of the importance of the contribution which an improvement of business contacts, and the accompanying growth of confidence in business relationships, could make to the development of commercial and economic relations,

Will take measures further to improve conditions for the expansion of contacts between representatives of official bodies, of the different organizations, enterprises, firms and banks concerned with foreign trade, in particular, where useful, between sellers and users of products and services, for the purpose of studying commercial possibilities, concluding contracts, ensuring their implementation and providing after-sales services;

Will encourage organizations, enterprises and firms concerned with foreign trade to take measures to accelerate the conduct of business negotiations;

Will further take measures aimed at improving working conditions of representatives of foreign organizations, enterprises, firms and banks concerned with external trade, particularly as follows:

(*a*) By providing the necessary information, including information on legislation and procedures relating to the establishment and operation of permanent representation by the above mentioned bodies;

(*b*) By examining as favourably as possible requests for the establishment of permanent representation and of offices for this purpose, including, where appropriate, the opening of joint offices by two or more firms;

(*c*) By encouraging the provision, on conditions as favourable as possible and equal for all representatives of the above/mentioned bodies, of hotel accommodation, means of communication, and of other facilities normally required by them, as well as of suitable business and residential premises for purposes of permanent representation;

(*d*) Recognize the importance of such measures to encourage greater participation by small and medium sized firms in trade between participating States.

Economic and commercial information

The participating States,

Conscious of the growing role of economic and commercial information in the development of international trade,

Considering that economic information should be of such a nature as to allow adequate market analysis and to permit the preparation of medium and long term forecasts, thus contributing to the establishment of a continuing flow of trade and a better utilization of commercial possibilities,

Expressing their readiness to improve the quality and increase the quantity and supply of economic and relevant administrative information,

Considering that the value of statistical information on the international level depends to a considerable extent on the possibility of its comparability,

Will promote the publication and dissemination of economic and commercial information at regular intervals and as quickly as possible, in particular:

(*a*) Statistics concerning production, national income, budget, consumption and productivity;

(*b*) Foreign trade statistics drawn up on the basis of comparable classification including breakdown by product with indication of volume and value, as well as country of origin or destination;

(*c*) Laws and regulations concerning foreign trade;

(*d*) Information allowing forecasts of development of the economy to assist in trade promotion, for example, information on the general orientation of national economic plans and programmes;

(*e*) Other information to help businessmen in commercial contacts, for example, periodic directories, lists, and where possible, organizational charts of firms and organizations concerned with foreign trade;

Will in addition to the above encourage the development of the exchange of economic and commercial information through, where appropriate, joint commissions for economic, scientific and technical co-operation, national and joint chambers of commerce, and other suitable bodies;

Will support a study, in the framework of the United Nations Economic Commission for Europe, of the possibilities of creating a multilateral system of notification of laws and regulations concerning foreign trade and changes therein;

Will encourage international work on the harmonization of statistical nomenclatures, notably in the United Nations Economic Commission for Europe.

Marketing

The participating States,

Recognizing the importance of adapting production to the requirements of foreign markets in order to ensure the expansion of international trade,

Conscious of the need of exporters to be as fully familiar as possible with and take account of the requirements of potential users,

Will encourage organizations, enterprises and firms concerned with foreign trade to develop further the knowledge and techniques required for effective marketing;

Will encourage the improvement of conditions for the implementation of measures to promote trade and to satisfy the needs of users in respect of imported products, in particular through market research and advertising measures as well as, where useful, the establishment of supply facilities, the furnishing of spare parts, the functioning of after sales services, and the training of the necessary local technical personnel;

Will encourage international co-operation in the field of trade promotion, including marketing, and the work undertaken on these subjects within the international bodies, in particular the United Nations Economic Commission for Europe.

2

INDUSTRIAL CO-OPERATION AND PROJECTS OF COMMON INTEREST

Industrial co-operation

The participating States,

Considering that industrial co-operation, being motivated by economic considerations, can

(*a*) Create lasting ties thus strengthening long-term overall economic co-operation,

(*b*) Contribute to economic growth as well as to the expansion and diversification of international trade and to a wider utilization of modern technology,

(*c*) Lead to the mutually advantageous utilization of economic complementarities through better use of all factors of production, and

(*d*) Accelerate the industrial development of all those who take part in such co-operation,

Propose to encourage the development of industrial co-operation between the competent organizations, enterprises and firms of their countries;

Consider that industrial co-operation may be facilitated by means of intergovernmental and other bilateral and multilateral agreements between the interested parties;

Note that in promoting industrial co-operation they should bear in mind the economic structures and the development levels of their countries;

Note that industrial co-operation is implemented by means of contracts concluded between competent organizations, enterprises and firms on the basis of economic considerations;

Express their willingness to promote measures designed to create favourable conditions for industrial co-operation;

Recognize that industrial co-operation covers a number of forms of economic relations going beyond the framework of conventional trade, and that in concluding contracts on industrial co-operation the partners will determine jointly the appropriate forms and conditions of co-operation, taking into account their mutual interests and capabilities;

Recognize further that, if it is in their mutual interest, concrete forms such as the following may be useful for the development of industrial co-operation: joint production and sale, specialization in production and sale, construction, adaptation and modernization of industrial plants, co-operation for the setting up of complete industrial installations with a view to thus obtaining part of the resultant products, mixed companies, exchanges of "know-how", of technical information, of patents and of licences, and joint industrial research within the framework of specific co-operation projects;

Recognize that new forms of industrial co-operation can be applied with a view to meeting specific needs;

Note the importance of economic, commercial, technical and administrative information such as to ensure the development of industrial co-operation;

Consider it desirable:

(*a*) To improve the quality and the quantity of information relevant to industrial co-operation, in particular the laws and regulations, including those relating to foreign exchange, general orientation of national economic plans and programmes as well as programme priorities and economic conditions of the market; and

(*b*) To disseminate as quickly as possible published documentation thereon;

Will encourage all forms of exchange of information and communication of experience relevant to industrial co-operation, including through contacts between potential partners and, where appropriate, through joint commissions for economic, industrial, scientific and technical co-operation, national and joint chambers of commerce, and other suitable bodies;

Consider it desirable, with a view to expanding industrial co-operation, to encourage the exploration of co-operation possibilities and the implementation of co-operation projects and will take measures to this end, *inter alia*, by facilitating and increasing all forms of business contacts between competent organizations, enterprises and firms and between their respective qualified personnel;

Note that the provisions adopted by the Conference relating to business contacts in the economic and commercial fields also apply to foreign organizations, enterprises and firms engaged in industrial co-operation, taking into account the specific conditions of this co-operation, and will endeavour to ensure, in particular, the existence of appropriate working conditions for personnel engaged in the implementation of co-operation projects;

Consider it desirable that proposals for industrial co-operation projects should be sufficiently specific and should contain the necessary economic and technical data, in particular preliminary estimates of the cost of the project information on the form of co-operation envisaged, and market possibilities, to enable potential partners to proceed with initial studies and to arrive at decisions in the shortest possible time;

Will encourage the parties concerned with industrial co-operation to take measures to accelerate the conduct of negotiations for the conclusion of co-operation contracts,

Recommend further the continued examination – for example within the framework of the United Nations Economic Commission for Europe – of means of improving the provision of information to those concerned on general conditions of industrial co-operation and guidance on the preparation of contracts in this field;

Consider it desirable to further improve conditions for the implementation of industrial co-operation projects, in particular with respect to:

(*a*) The protection of the interests of the partners in industrial co-operation projects, including the legal protection of the various kinds of property involved;

(*b*) The consideration, in ways that are compatible with their economic systems, of the needs and possibilities of industrial co-operation within the framework of economic policy and particularly in national economic plans and programmes;

Consider it desirable that the partners, when concluding industrial co-operation contracts, should devote due attention to provisions concerning the extension of the necessary mutual assistance and the provision of the necessary information during the implementation of these contracts, in particular with a view to attaining the required technical level and quality of the products resulting from such co-operation;

Recognize the usefulness of an increased participation of small and medium sized firms in industrial co-operation projects.

Projects of common interest

The participating States,

Considering that their economic potential and their natural resources permit, through common efforts, long-term co-operation in the implementation, including at the regional or sub-regional level, of major that these may contribute to the speeding-up of the economic development of the countries participating therein,

Considering it desirable that the competent organizations, enterprises and firms of all countries should be given the possibility of indicating their interest in participating in such projects, and, in case of agreement, of taking part in their implementation,

Noting that the provisions adopted by the Conference relating to industrial co-operation are also applicable to projects of common interest,

Regard it as necessary to encourage, where appropriate, the investigation by competent and interested organizations, enterprises and firms of the possibilities for the carrying out of projects of common interest in the fields of energy resources and of the exploitation of raw materials, as well as of transport and communications;

Regard it as desirable that organizations, enterprises and firms exploring the possibilities of taking part in projects of common interest exchange with their potential partners, through the appropriate channels, the requisite economic, legal, financial and technical information pertaining to these projects;

Consider that the fields of energy resources, in particular, petroleum, natural gas and coal, and the extraction and processing of mineral raw materials, in particular, iron ore and bauxite, are suitable ones for strengthening long-term economic co-operation and for the development of trade which could result;

Consider that possibilities for projects of common interest with a view to long-term economic co-operation also exist in the following fields:

(*a*) Exchanges of electrical energy within Europe with a view to utilizing the capacity of the electrical power stations as rationally as possible;

(*b*) Co-operation in research for new sources of energy and, in particular, in the field of nuclear energy;

(*c*) Development of road networks and co-operation aimed at establishing a coherent navigable network in Europe;

(*d*) Co-operation in research and the perfecting of equipment for multimodal transport operations and for the handling of containers;

Recommend that the States interested in projects of common interest should consider under what conditions it would be possible to establish them, and if they so desire, create the necessary conditions for their actual implementation.

3

PROVISIONS CONCERNING TRADE AND INDUSTRIAL CO-OPERATION

Harmonization of standards

The participating States,

Recognizing the development of international harmonization of standards and technical regulations and of international co-operation in the field of certification as an important means of eliminating technical obstacles to international trade and industrial co-operation, thereby facilitating their development and increasing productivity,

Reaffirm their interest to achieve the widest possible international harmonization of standards and technical regulations;

Express their readiness to promote international agreements and other appropriate arrangements on acceptance of certificates of conformity with standards and technical regulations;

Consider it desirable to increase international co-operation on standardization, in particular by supporting the activities of intergovernmental and other appropriate organizations in this field.

Arbitration

The participating States,

Considering that the prompt and equitable settlement of disputes which may arise from commercial transactions relating to goods and services and contracts for industrial co-operation would contribute to expanding and facilitating trade and co-operation,

Considering that arbitration is an appropriate means of settling such disputes,

Recommend, where appropriate, to organizations, enterprises and firms in their countries, to include arbitration clauses in commercial contracts and industrial co-operation contracts, or in special agreements;

Recommend that the provisions on arbitration should provide for arbitration under a mutually acceptable set of arbitration rules, and permit arbitration in a third country, taking into account existing intergovernmental and other agreements in this field.

Specific bilateral arrangements

The participating States,

Conscious of the need to facilitate trade and to promote the application of new forms of industrial co-operation,

Will consider favourably the conclusion, in appropriate cases, of specific bilateral agreements concerning various problems of mutual interest in the fields of commercial exchanges and industrial co-operation, in particular with a view to avoiding double taxation and to facilitating the transfer of profits and the return of the value of the assets invested.

4

SCIENCE AND TECHNOLOGY

The participating States,

Convinced that scientific and technological co-operation constitutes an important contribution to the strengthening of security and co-operation among them, in that it assists the effective solution of problems of common interest and the improvement of the conditions of human life,

Considering that in developing such co-operation, it is important to promote the sharing of information and experience, facilitating the study and transfer of scientific and technological achievements, as well as the access to such achievements on a mutually advantageous basis and in fields of co-operation agreed between interested parties,

Considering that it is for the potential partners, i.e. the competent organizations, institutions, enterprises, scientists and technologists of the participating States to determine the opportunities for mutually beneficial co-operation and to develop its details,

Affirming that such co-operation can be developed and implemented bilaterally and multilaterally at the governmental and non-governmental levels, for example, through intergovernmental and other agreements, international programmes, cooperative projects and commercial channels, while utilizing also various forms of contacts, including direct and individual contacts,

Aware of the need to take measures further to improve scientific and technological co-operation between them,

Possibilities for improving co-operation

Recognize that possibilities exist for further improving scientific and technological co-operation, and to this end, express their intention to remove obstacles to such co-operation, in particular through:

(*a*) The improvement of opportunities for the exchange and dissemination of scientific and technological information among the parties interested in scientific and technological research and co-operation including information related to the organization and implementation of such co-operation;

(*b*) The expeditious implementation and improvement in organization, including programmes, of international visits of scientists and specialists in connexion with exchanges, conferences and co-operation;

(*c*) The wider use of commercial channels and activities for applied scientific and technological research and for the transfer of achievements obtained in this field while providing information on and protection of intellectual and industrial property rights;

Fields of co-operation

Consider that possibilities to expand co-operation exist within the areas given below as examples, noting that it is for potential partners in the participating countries to identify and develop projects and arrangements of mutual interest and benefit:

Agriculture

Research into new methods and technologies for increasing the productivity of crop cultivation and animal husbandry; the application of chemistry to agriculture; the design, construction and utilization of agricultural machinery; technologies of irrigation and other agricultural land improvement works;

Energy

New technologies of production, transport and distribution of energy aimed at improving the use of existing fuels and sources of hydroenergy, as well as research in the field of new energy sources, including nuclear, solar and geothermal energy;

New technologies, rational use of resources

Research on new technologies and equipment designed in particular to reduce energy consumption and to minimize or eliminate waste;

Transport technology

Research on the means of transport and the technology applied to the development and operation of international, national and urban transport networks including container transport as well as transport safety;

Physics

Study of problems in high energy physics and plasma physics; research in the field of theoretical and experimental nuclear physics;

Chemistry

Research on problems in electrochemistry and the chemistry of polymers, of natural products, and of metals and alloys, as well as the development of improved chemical technology, especially materials processing; practical application of the latest achievements of chemistry to industry, construction and other sectors of the economy;

Meteorology and hydrology

Meteorological and hydrological research, including methods of collection, evaluation and transmission of data and their utilization for weather forecasting and hydrology forecasting;

Oceanography

Oceanographic research, including the study of air/sea interactions;

Seismological research

Study and forecasting of earthquakes and associated geological changes; development and research of technology of seism-resisting constructions;

Research on glaciology, permafrost and problems of life under conditions of cold

Research on glaciology and permafrost; transportation and construction technologies; human adaptation to climatic extremes and changes in the living conditions of indigenous populations;

Computer, communication and information technologies

Development of computers as well as of telecommunications and information systems; technology associated with computers and telecommunications, including their use for management systems, for production processes, for automation, for the study of economic problems, in scientific research and for the collection, processing and dissemination of information;

Space research

Space exploration and the study of the earth's natural resources and the natural environment by remote sensing in particular with the assistance of satellites and rocket-probes;

Medicine and public health

Research on cardiovascular, tumour and virus diseases, molecular biology, neurophysiology; development and testing of new drugs; study of contemporary problems of paediatrics, gerontology and the organization and techniques of medical services;

Environmental research

Research on specific scientific and technological problems related to human environment.

Forms and methods of co-operation

Express their view that scientific and technological co-operation should, in particular, employ the following forms and methods:

(*a*) Exchange and circulation of books, periodicals and other scientific and technological publications and papers among interested organizations, scientific and technological institutions, enterprises and scientists and technologists, as well as participation in international programmes for the abstracting and indexing of publications;

(*b*) Exchanges and visits as well as other direct contacts and communications among scientists and technologists, on the basis of mutual agreement and other arrangements, for such purposes as consultations, lecturing and conducting research, including the use of laboratories, scientific libraries, and other documentation centres in connexion therewith;

(*c*) Holding of international and national conferences, symposia, seminars, courses and other meetings of a scientific and technological character, which would include the participation of foreign scientists and technologists;

(*d*) Joint preparation and implementation of programmes and projects of mutual interest on the basis of consultation and agreement among all parties concerned, including, where possible and appropriate, exchanges of experience and research results, and correlation of research programmes, between scientific and technological research institutions and organizations;

(*e*) Use of commercial channels and methods for identifying and transferring technological and scientific developments, including the conclusion of mutually beneficial co-operation arrangements between firms and enterprises in fields agreed upon between them and for carrying out, where appropriate, joint research and development programmes and projects;

Consider it desirable that periodic exchanges of views and information take place on scientific policy, in particular on general problems of orientation and administration of research and the question of a better use of large-scale scientific and experimental equipment on a co-operative basis;

Recommend that, in developing co-operation in the field of science and technology, full use be made of existing practices of bilateral and multilateral co-operation, including that of a regional or sub-regional character, together with the forms and methods of co-operation described in this document;

Recommend further that more effective utilization be made of the possibilities and capabilities of existing international organizations, intergovernmental and non-governmental, concerned with science and technology, for improving exchanges of information and experience, as well as for developing other forms of co-operation in fields of common interest, for example:

(*a*) In the United Nations Economic Commission for Europe, study of possibilities for expanding multilateral co-operation, taking into account models for projects and research used in various international organizations; and for sponsoring conferences, symposia, and study and working groups such as those which would bring together younger scientists and technologists with eminent specialists in their field;

(*b*) Through their participation in particular international scientific and technological co-operation programmes, including those of UNESCO and other international organizations, pursuit of continuing progress towards the objectives of such programmes, notably those of UNISIST with particular respect to information policy guidance, technical advice, information contributions and data processing.

5

ENVIRONMENT

The participating States,

Affirming that the protection and improvement of the environment, as well as the protection of nature and the rational utilization of its resources in the interests of present and future generations, is one of the tasks of major importance to the well-being of peoples and the economic development of all countries and

that many environmental problems, particularly in Europe, can be solved effectively only through close international co-operation,

Acknowledging that each of the participating States, in accordance with the principles of international law, ought to ensure, in a spirit of co-operation, that activities carried out on its territory do not cause degradation of the environment in another State or in areas lying beyond the limits of national jurisdiction,

Considering that the success of any environmental policy presupposes that all population groups and social forces, aware of their responsibilities, help to protect and improve the environment, which necessitates continued and thorough educative action, particularly with regard to youth;

Affirming that experience has shown that economic development and technological progress must be compatible with the protection of the environment and the preservation of historical and cultural values; that damage to the environment is best avoided by preventive measures; and that the ecological balance must be preserved in the exploitation and management of natural resources.

Aims of co-operation

Agree to the following aims of co-operation, in particular:

(*a*) To study, with a view to their solution, those environmental problems which, by their nature, are of a multilateral, bilateral, regional or sub-regional dimension; as well as to encourage the development of an interdisciplinary approach to environmental problems;

(*b*) To increase the effectiveness of national and international measures for the protection of the environment, by the comparison and, if appropriate, the harmonization of methods of gathering and analyzing facts, by improving the knowledge of pollution phenomena and rational utilization of natural resources, by the exchange of information, by the harmonization of definitions and the adoption, as far as possible, of a common terminology in the field of the environment;

(*c*) To take the necessary measures to bring environmental policies closer together and, where appropriate and possible, to harmonize them;

(*d*) To encourage, where possible and appropriate, national and international efforts by their interested organizations, enterprises and firms in the development, production and improvement of equipment designed for monitoring, protecting and enhancing the environment.

Fields of co-operation

To attain these aims, the participating States will make use of every suitable opportunity to co-operate in the field of environment and, in particular, within the areas described below as examples:

Control of air pollution

Desulphurization of fossil fuels and exhaust gases, pollution control of heavy metals, particles, aerosols, nitrogen oxides, in particular those emitted by transport, power stations, and other industrial plants; systems and methods of observation and control of air pollution and its effects, including long-range transport of air pollutants;

Water pollution control and fresh water utilization

Prevention and control of water pollution, in particular of transboundary rivers and international lakes; techniques for the improvement of the quality of water and further development of ways and means for industrial and municipal sewage effluent purification; methods of assessment of fresh water resources and the improvement of their utilization, in particular by developing methods of production which are less polluting and lead to less consumption of fresh water;

Protection of the marine environment

Protection of the marine environment of participating States, and especially the Mediterranean Sea, from pollutants emanating from land-based sources and those from ships and other vessels, notably the harmful substances listed in Annexes I and II to the London Convention on the Prevention of Marine Pollution by the

Dumping of Wastes and Other Matters; problems of maintaining marine ecological balances and food chains, in particular such problems as may arise from the exploration and exploitation of biological and mineral resources of the seas and the sea-bed;

Land utilization and soils

Problems associated with more effective use of lands, including land amelioration, reclamation and recultivation; control of soil pollution, water and air erosion, as well as other forms of soil degradation; maintaining and increasing the productivity of soils with due regard for the possible negative effects of the application of chemical fertilizers and pesticides;

Nature conservation and nature reserves

Protection of nature and nature reserves; conservation and maintenance of existing genetic resources, especially rare animal and plant species; conservation of natural ecological systems; establishment of nature reserves and other protected landscapes and areas, including their use for research, tourism, recreation and other purposes;

Improvement of environmental conditions in areas of human settlement

Environmental conditions associated with transport, housing, working areas, urban development and planning, water supply and sewage disposal systems; assessment of harmful effects of noise, and noise control methods; collection, treatment and utilization of wastes, including the recovery and recycling of materials; research on substitutes for non-biodegradable substances;

Fundamental research, monitoring, forecasting and assessment of environmental changes

Study of changes in climate, landscapes and ecological balances under the impact of both natural factors and human activities; forecasting of possible genetic changes in flora and fauna as a result of environmental pollution; harmonization of statistical data, development of scientific concepts and systems of monitoring networks, standardized methods of observation, measurement and assessment of changes in the biosphere; assessment of the effects of environmental pollution levels and degradation of the environment upon human health; study and development of criteria and standards for various environmental pollutants and regulation regarding production and use of various products;

Legal and administrative measures

Legal and administrative measures for the protection of the environment including procedures for establishing environmental impact assessments.

Forms and methods of co-operation

The participating States declare that problems relating to the protection and improvement of the environment will be solved on both a bilateral and a multilateral, including regional and sub-regional, basis, making full use of existing pattern and forms of co-operation. They will develop co-operation in the field of the environment in particular by taking into consideration the Stockholm Declaration on the Human Environment, relevant resolutions of the United Nations General Assembly and the United Nations Economic Commission for Europe Prague symposium on environmental problems.

The participating States are resolved that co-operation in the field of the environment will be implemented in particular through:

(*a*) Exchanges of scientific and technical information, documentation and research results, including information on the means of determining the possible effects on the environment of technical and economic activities;

(*b*) Organization of conferences, symposia and meetings of experts;

(*c*) Exchanges of scientists, specialists and trainees;

(*d*) Joint preparation and implementation of programmes and projects for the study and solution of various problems of environmental protection;

(*e*) Harmonization, where appropriate and necessary, of environmental protection standards and norms, in particular with the object of avoiding possible difficulties in trade which may arise from efforts to resolve ecological problems of production processes and which relate to the achievement of certain environmental qualities in manufactured products;

(*f*) Consultations on various aspects of environmental protection, as agreed upon among countries concerned, especially in connexion with problems which could have international consequences.

The participating States will further develop such co-operation by:

(*a*) Promoting the progressive development, codification and implementation of international law as one means of preserving and enhancing the human environment, including principles and practices, as accepted by them, relating to pollution and other environmental damage caused by activities within the jurisdiction or control of their States affecting other countries and regions;

(*b*) Supporting and promoting the implementation of relevant international Conventions to which they are parties, in particular those designed to prevent and combat marine and fresh water pollution, recommending States to ratify Conventions which have already been signed, as well as considering possibilities of accepting other appropriate Conventions to which they are not parties at present;

(*c*) Advocating the inclusion, where appropriate and possible, of the various areas of co-operation into the programmes of work of the United Nations Economic Commission for Europe, supporting such co-operation within the framework of the Commission and of the United Nations Environment Programme, and taking into account the work of other competent international organizations of which they are members;

(*d*) Making wider use, in all types of co-operation, of information already available from national and international sources, including internationally agreed criteria, and utilizing the possibilities and capabilities of various competent international organizations.

The participating States agree on the following recommendations on specific measures:

(*a*) To develop through international co-operation an extensive programme for the monitoring and evaluation of the long-range transport of air pollutants, starting with sulphur dioxide and with possible extension to other pollutants, and to this end to take into account basic elements of a co-operation programme which were identified by the experts who met in Oslo in December 1974 at the invitation of the Norwegian Institute of Air Research;

(*b*) To advocate that within the framework of the United Nations Economic Commission for Europe a study be carried out of procedures and relevant experience relating to the activities of Governments in developing the capabilities of their countries to predict adequately environmental consequences of economic activities and technological development.

6

CO-OPERATION IN OTHER AREAS

Development of transport

The participating States,

Considering that the improvement of the conditions of transport constitutes one of the factors essential to the development of co-operation among them,

Considering that it is necessary to encourage the development of transport and the solution of existing problems by employing appropriate national and international means,

Taking into account the work being carried out on these subjects by existing international organizations, especially by the Inland Transport Committee of the United Nations Economic Commission for Europe,

Note that the speed of technical progress in the various fields of transport makes desirable a development of co-operation and an increase in exchanges of information among them;

Declare themselves in favour of a simplification and a harmonization of administrative formalities in the field of international transport, in particular at frontiers;

Consider it desirable to promote, while allowing for their particular national circumstances in this sector, the harmonization of administrative and technical provisions concerning safety in road, rail, river, air and sea transport;

Express their intention to encourage the development of international inland transport of passengers and goods as well as the possibilities of adequate participation in such transport on the basis of reciprocal advantage;

Declare themselves in favour, with due respect for their rights and international commitments, of the elimination of disparities arising from the legal provisions applied to traffic on inland waterways which are subject to international conventions and, in particular, of the disparity in the application of those provisions; and to this end invite the Member States of the Central Commission for the Navigation of the Rhine, of the Danube Commission and of other bodies to develop the work and studies now being carried out, in particular within the United Nations Economic Commission for Europe;

Express their willingness, with a view to improving international rail transport and with due respect for their rights and international commitments, to work towards the elimination of difficulties arising from disparities in existing international legal provisions governing the reciprocal railway transport of passengers and goods between their territories;

Express the desire for intensification of the work being carried out by existing international organizations in the field of transport, especially that of the Inland Transport Committee of the United Nations Economic Commission for Europe, and express their intention to contribute thereto by their efforts;

Consider that examination by the participating States of the possibility of their accession to the different conventions or to membership of international organizations specializing in transport matters, as well as their efforts to implement conventions when ratified, could contribute to the strengthening of their co-operation in this field.

Promotion of tourism

The participating States,

Aware of the contribution made by international tourism to the development of mutual understanding among peoples, to increased knowledge of other countries' achievements in various fields, as well as to economic, social and cultural progress,

Recognizing the interrelationship between the development of tourism and measures taken in other areas of economic activity,

Express their intention to encourage increased tourism on both an individual and group basis in particular by:

(*a*) Encouraging the improvement of the tourist infrastructure and co-operation in this field;

(*b*) Encouraging the carrying out of joint tourist projects including technical co-operation, particularly where this is suggested by territorial proximity and the convergence of tourist interests;

(*c*) Encouraging the exchange of information, including relevant laws and regulations, studies, data and documentation relating to tourism, and by improving statistics with a view to facilitating their comparability;

(*d*) Dealing in a positive spirit with questions connected with the allocation of financial means for tourist travel abroad, having regard to their economic possibilities, as well as with those connected with the formalities required for such travel, taking into account other provisions on tourism adopted by the Conference;

(*e*) Facilitating the activities of foreign travel agencies and passenger transport companies in the promotion of international tourism;

(*g*) Encouraging tourism outside the high season;

(*h*) Examining the possibilities of exchanging specialists and students in the field of tourism, with a view to improving their qualifications;

(*i*) Promoting conferences and symposia on the planning and development of tourism;

Consider it desirable to carry out in the appropriate international framework, and with the co-operation of the relevant national bodies, detailed studies on tourism, in particular:

(*a*) A comparative study on the status and activities of travel agencies as well as on ways and means of achieving better co-operation among them;

(*b*) A study of the problems raised by the seasonal concentration of vacations, with the ultimate objective of encouraging tourism outside peak periods;

(*c*) Studies of the problems arising in areas where tourism has injured the environment;

Consider also that interested parties might wish to study the following questions:

(*a*) Uniformity of hotel classification; and

(*b*) Tourist routes comprising two or more countries;

Will endeavour, where possible, to ensure that the development of tourism does not injure the environment and the artistic, historic and cultural heritage in their respective countries;

Will pursue their co-operation in the field of tourism bilaterally and multilaterally with a view to attaining the above objectives.

Economic and social aspects of migrant labour

The participating States,

Considering that the movements of migrant workers in Europe have reached substantial proportions, and that they constitute an important economic, social and human factor for host countries as well as for countries of origin,

Recognizing that workers' migrations have also given rise to a number of economic, social, human and other problems in both the receiving countries and the countries of origin,

Taking due account of the activities of the competent international organizations, more particularly the International Labour Organization, in this area,

Are of the opinion that the problems arising bilaterally from the migration of workers in Europe as well as between the participating States should be dealt with by the parties directly concerned, in order to resolve these problems in their mutual interest, in the light of the concern of each State involved to take due account of the requirements resulting from its socio-economic situation, having regard to the obligation of each State to comply with the bilateral and multilateral agreements to which it is party, and with the following aims in view:

(*a*) To encourage the efforts of the countries of origin directed towards increasing the possibilities of employment for their nationals in their own territories, in particular by developing economic co-operation appropriate for this purpose and suitable for the host countries and the countries of origin concerned;

(*b*) To ensure, through collaboration between the host country and the country of origin, the conditions under which the orderly movement of workers might take place, while at the same time protecting their personal and social welfare and, if appropriate, to organize the recruitment of migrant workers and the provision of elementary language and vocational training;

(*c*) To ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work and to social security, and to endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions;

(*d*) To endeavour to ensure, as far as possible, that migrant workers may enjoy the same opportunities as nationals of the host countries of finding other suitable employment in the event of unemployment;

(*e*) To regard with favour the provision of vocational training to migrant workers and, as far as possible, free instruction in the language of the host country, in the framework of their employment;

(*f*) To confirm the right of migrant workers to receive, as far as possible, regular information in their own language, covering both their country of origin and the host country;

(*g*) To ensure that the children of migrant workers established in the host country have access to the education usually given there, under the same conditions as the children of that country and, furthermore, to permit them to receive supplementary education in their own language, national culture, history and geography;

(*h*) To bear in mind that migrant workers, particularly those who have acquired qualifications, can by returning to their countries after a certain period of time help to remedy any deficiency of skilled labour in their country of origin;

(*i*) To facilitate, as far as possible, the reuniting of migrant workers with their families;

(*j*) To regard with favour the efforts of the countries of origin to attract the savings of migrant workers, with a view to increasing, within the framework of their economic development, appropriate opportunities for employment, thereby facilitating the reintegration of these workers on their return home.

Training of personnel

The participating States,

Conscious of the importance of the training and advanced training of professional staff and technicians for the economic development of every country,

Declare themselves willing to encourage co-operation in this field notably by promoting exchange of information on the subject of institutions, programmes and methods of training and advanced training open to professional staff and technicians in the various sectors of economic activity and especially in those of management, public planning, agriculture and commercial and banking techniques;

Consider that it is desirable to develop, under mutually acceptable conditions, exchanges of professional staff and technicians, particularly through training activities, of which it would be left to the competent and interested bodies in the participating States to discuss the modalities – duration, financing, education and qualification levels of potential participants;

Declare themselves in favour of examining, through appropriate channels, the possibilities of cooperating on the organization and carrying out of vocational training on the job, more particularly in professions involving modern techniques.

QUESTIONS RELATING TO SECURITY AND CO-OPERATION IN THE MEDITERRANEAN

The participating States,

Conscious of the geographical, historical, cultural, economic and political aspects of their relationship with the non-participating Mediterranean States,

Convinced that security in Europe is to be considered in the broader context of world security and is closely linked with security in the Mediterranean area as a whole, and that accordingly the process of improving security should not be confined to Europe but should extend to other parts of the world, and in particular to the Mediterranean area,

Believing that the strengthening of security and the intensification of co-operation in Europe would stimulate positive processes in the Mediterranean region, and expressing their intention to contribute towards peace, security and justice in the region, in which ends the participating States and the non-participating Mediterranean States have a common interest,

Recognizing the importance of their mutual economic relations with the non-participating Mediterranean States, and conscious of their common interest in the further development of co-operation,

Noting with appreciation the interest expressed by the non-participating Mediterranean States in the Conference since its inception, and having duly taken their contributions into account,

Declare their intention:

(*a*) To promote the development of good-neighbourly relations with the non-participating Mediterranean States in conformity with the purposes and principles of the Charter of the United Nations, on which their relations are based, and with the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States and accordingly, in this context, to conduct their relations with the non-participating Mediterranean States in the spirit of the principles set forth in the Declaration on Principles Guiding Relations between Participating States;

(b) To seek, by further improving their relations with the non-participating Mediterranean States, to increase mutual confidence, so as to promote security and stability in the Mediterranean area as a whole;

(c) To encourage with the non-participating Mediterranean States the development of mutually beneficial co-operation in the various fields of economic activity, especially by expanding commercial exchanges, on the basis of a common awareness of the necessity for stability and progress in trade relations, of their mutual economic interests, and of differences in the levels of economic development, thereby promoting their economic advancement and well-being;

(d) To contribute to a diversified development of the economies of the non-participating Mediterranean countries, whilst taking due account of their national development objectives, and to cooperate with them, especially in the sectors of industry, science and technology, in their efforts to achieve a better utilization of their resources, thus promoting a more harmonious development of economic relations;

(e) To intensify their efforts and their co-operation on a bilateral and multilateral basis with the non-participating Mediterranean States directed towards the improvement of the environment of the Mediterranean, especially the safeguarding of the biological resources and ecological balance of the sea, by appropriate measures including the prevention and control of pollution; to this end, and in view of the present situation, to cooperate through competent international organizations and in particular within the United Nations Environment Programme (UNEP);

(*f*) To promote further contacts and co-operation with the non-participating Mediterranean States in other relevant fields.

In order to advance the objectives set forth above, the participating States also declare their intention of maintaining and amplifying the contacts and dialogue as initiated by the CSCE with the non-participating Mediterranean States to include all the States of the Mediterranean, with the purpose of contributing to peace, reducing armed forces in the region, strengthening security, lessening tensions in the region, and widening the scope of co-operation, ends in which all share a common interest, as well as with the purpose of defining further common objectives.

The participating States would seek, in the framework of their multilateral efforts, to encourage progress and appropriate initiatives and to proceed to an exchange of views on the attainment of the above purposes.

CO-OPERATION IN HUMANITARIAN AND OTHER FIELDS

The participating States,

Desiring to contribute to the strengthening of peace and understanding among peoples and to the spiritual enrichment of the human personality without distinction as to race, sex, language or religion,

Conscious that increased cultural and educational exchanges, broader dissemination of information, contacts between people, and the solution of humanitarian problems will contribute to the attainment of these aims,

Determined therefore to co-operate among themselves, irrespective of their political, economic and social systems, in order to create better conditions in the above fields, to develop and strengthen existing forms of co-operation and to work out new ways and means appropriate to these aims,

Convinced that this co-operation should take place in full respect for the principles guiding relations among participating States as set forth in the relevant document,

Have adopted the following:

1

HUMAN CONTACTS

The participating States,

Considering the development of contacts to be an important element in the strengthening of friendly relations and trust among peoples,

Affirming, in relation to their present effort to improve conditions in this area, the importance they attach to humanitarian considerations,

Desiring in this spirit to develop, with the continuance of detente, further efforts to achieve continuing progress in this field,

And conscious that the questions relevant hereto must be settled by the States concerned under mutually acceptable conditions,

Make it their aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of the humanitarian problems that arise in that connexion,

Declare their readiness to these ends to take measures which they consider appropriate and to conclude agreements or arrangements among themselves, as may be needed, and

Express their intention now to proceed to the implementation of the following:

(*a*) Contacts and Regular Meetings on the Basis of Family Ties

In order to promote further development of contacts on the basis of family ties the participating States will favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.

Applications for temporary visits to meet members of their families will be dealt with without distinction as to the country of origin or destination: existing requirements for travel documents and visas will be applied in this spirit. The preparation and issue of such documents and visas will be effected within reasonable time limits, cases of urgent necessity – such as serious illness or death – will be given priority treatment. They will take such steps as may be necessary to ensure that the fees for official travel documents and visas are acceptable.

They confirm that the presentation of an application concerning contacts on the basis of family ties will not modify the rights and obligations of the applicant or of members of his family.

(*b*) Reunification of Families

The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character – such as requests submitted by persons who are ill or old.

They will deal with applications in this field as expeditiously as possible.

They will lower where necessary the fees charged in connexion with these applications to ensure that they are at a moderate level.

Applications for the purpose of family reunification which are not granted may be renewed at the appropriate level and will be reconsidered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned; under such circumstances fees will be charged only when applications are granted.

Persons whose applications for family reunification are granted may bring with them or ship their household and personal effects; to this end the participating States will use all possibilities provided by existing regulations.

Until members of the same family are reunited meetings and contacts between them may take place in accordance with the modalities for contacts on the basis of family ties.

The participating States will support the efforts of Red Cross and Red Crescent Societies concerned with the problems of family reunification.

They confirm that the presentation of an application concerning family reunification will not modify the rights and obligations of the applicant or of members of his family.

The receiving participating State will take appropriate care with regard to employment for persons from other participating States who take up permanent residence in that State in connexion with family reunification with its citizens and see that they are afforded opportunities equal to those enjoyed by its own citizens for education, medical assistance and social security.

(*c*) Marriage between Citizens of Different States

The participating States will examine favourably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating State.

The processing and issuing of the documents required for the above purposes and for the marriage will be in accordance with the provisions accepted for family reunification.

In dealing with requests from couples from different participating States, once married, to enable them and the minor children of their marriage to transfer their permanent residence to a State in which either one is normally a resident, the participating States will also apply the provisions accepted for family reunification.

(*d*) Travel for Personal or Professional Reasons

The participating States intend to facilitate wider travel by their citizens for personal or professional reasons and to this end they intend in particular:

(a) Gradually to simplify and to administer flexibly the procedures for exit and entry;

(b) To ease regulations concerning movement of citizens from the other participating States in their territory, with due regard to security requirements.

They will endeavour gradually to lower, where necessary, the fees for visas and official travel documents.

They intend to consider, as necessary, means – including, in so far as appropriate, the conclusion of multilateral or bilateral consular conventions or other relevant agreements or understandings – for the improvement of arrangements to provide consular services, including legal and consular assistance.

They confirm that religious faiths, institutions and organizations, practising within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.

(*e*) Improvement of Conditions for Tourism on an Individual or Collective Basis

The participating States consider that tourism contributes to a fuller knowledge of the life, culture and history of other countries, to the growth of understanding among peoples, to the improvement of contacts and to the broader use of leisure. They intend to promote the development of tourism, on an individual or collective basis, and, in particular, they intend:

(a) To promote visits to their respective countries by encouraging the provision of appropriate facilities and the simplification and expediting of necessary formalities relating to such visits;

(b) To increase, on the basis of appropriate agreements or arrangements where necessary, co-operation in the development of tourism, in particular by considering bilaterally possible ways to increase information relating to travel to other countries and to the reception and service of tourists, and other related questions of mutual interest.

(*f*) Meetings among Young People

The participating States intend to further the development of contacts and exchanges among young people by encouraging:

(*a*) Increased exchanges and contacts on a short or long term basis among young people working, training or undergoing education through bilateral or multilateral agreements or regular programmes in all cases where it is possible;

(*b*) Study by their youth organizations of the question of possible agreements relating to frameworks of multilateral youth co-operation;

(*c*) Agreements or regular programmes relating to the organization of exchanges of students, of international youth seminars, of courses of professional training and foreign language study;

(*d*) The further development of youth tourism and the provision to this end of appropriate facilities;

(e) The development, where possible, of exchanges, contacts and co-operation on a bilateral or multilateral basis between their organizations which represent wide circles of young people working, training or undergoing education;

(*f*) Awareness among youth of the importance of developing mutual understanding and of strengthening friendly relations and confidence among peoples.

(*g*) Sport

In order to expand existing links and co-operation in the field of sport the participating States will encourage contacts and exchanges of this kind, including sports meetings and competitions of all sorts, on the basis of the established international rules, regulations and practice.

(*h*) Expansion of Contacts

By way of further developing contacts among governmental institutions and non-governmental organizations and associations, including women's organizations, the participating States will facilitate the convening of meetings as well as travel by delegations, groups and individuals.

2

INFORMATION

The participating States,

Conscious of the need for an ever wider knowledge and understanding of the various aspects of life in other participating States,

Acknowledging the contribution of this process to the growth of confidence between peoples,

Desiring, with the development of mutual understanding between the participating States and with the further improvement of their relations, to continue further efforts towards progress in this field,

Recognizing the importance of the dissemination of information from the other participating States and of a better acquaintance with such information,

Emphasizing therefore the essential and influential role of the press, radio, television, cinema and news agencies and of the journalists working in these fields,

Make it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State, and

Express their intention in particular:

(*a*) Improvement of the Circulation of, Access to, and Exchange of Information

(i) *Oral Information*

To facilitate the dissemination of oral information through the encouragement of lectures and lecture tours by personalities and specialists from the other participating States, as well as exchanges of opinions at round table meetings, seminars, symposia, summer schools, congresses and other bilateral and multilateral meetings.

(ii) *Printed Information*

To facilitate the improvement of the dissemination, on their territory, of newspapers and printed publications, periodical and non-periodical, from the other participating States. For this purpose:

(*a*) They will encourage their competent firms and organizations to conclude agreements and contracts designed gradually to increase the quantities and the number of titles of newspapers and publications imported from the other participating States. These agreements and contracts should in particular mention the speediest conditions of delivery and the use of the normal channels existing in each country for the distribution of its own publications and newspapers, as well as forms and means of payment agreed between the parties making it possible to achieve the objectives aimed at by these agreements and contracts;

(*b*) Where necessary, they will take appropriate measures to achieve the above objectives and to implement the provisions contained in the agreements and contracts.

To contribute to the improvement of access by the public to periodical and non-periodical printed publications imported on the bases indicated above. In particular:

(a) They will encourage an increase in the number of places where these publications are on sale,

(*b*) They will facilitate the availability of these periodical publications during congresses, conferences, official visits and other international events and to tourists during the season,

(*c*) They will develop the possibilities for taking out subscriptions according to the modalities particular to each country;

(*d*) They will improve the opportunities for reading and borrowing these publications In large public libraries and their reading rooms as well as in university libraries.

They intend to improve the possibilities for acquaintance with bulletins of official information issued by diplomatic missions and distributed by those missions on the basis of arrangements acceptable to the interested parties.

(iii) *Filmed and Broadcast Information*

To promote the improvement of the dissemination of filmed and broadcast information. To this end:

(*a*) They will encourage the wider showing and broadcasting of a greater variety of recorded and filmed information from the other participating States, illustrating the various aspects of life in their countries and received on the basis of such agreements or arrangements as may be necessary between the organizations and firms directly concerned;

(*b*) They will facilitate the import by competent organizations and firms of recorded audio-visual material from the other participating States.

The participating States note the expansion in the dissemination of information broadcast by radio, and express the hope for the continuation of this process, so as to meet the interest of mutual understanding among peoples and the aims set forth by this Conference.

(*b*) Co-operation in the Field of Information

To encourage co-operation in the field of information on the basis of short or long term agreements or arrangements. In particular:

(*a*) They will favour increased co-operation among mass media organizations, including press agencies, as well as among publishing houses and organizations:

(*b*) They will favour co-operation among public or private, national or international radio and television organizations, in particular through the exchange of both live and recorded radio and television programmes, and through the joint production and the broadcasting and distribution of such programmes;

(*c*) They will encourage meetings and contacts both between journalists' organizations and between journalists from the participating States;

(*d*) They will view favourably the possibilities of arrangements between periodical publications as well as between newspapers from the participating States, for the purpose of exchanging and publishing articles;

(*e*) They will encourage the exchange of technical information as well as the organization of joint research and meetings devoted to the exchange of experience and views between experts in the field of the press, radio and television.

(*c*) Improvement of Working Conditions for Journalists

The participating States, desiring to improve the conditions under which journalists from one participating State exercise their profession in another participating State, intend in particular to:

(*a*) Examine in a favourable spirit and within a suitable and reasonable time scale requests from journalists for visas;

(*b*) Grant to permanently accredited journalists of the participating States, on the basis of arrangements, multiple entry and exit visas for specified periods;

(*c*) Facilitate the issue to accredited journalists of the participating States of permits for stay in their country of temporary residence and, if and when these are necessary, of other official papers which it is appropriate for them to have;

(*d*) Ease, on a basis of reciprocity, procedures for arranging travel by journalists of the participating States in the country where they are exercising their profession, and to provide progressively greater opportunities for such travel, subject to the observance of regulations relating to the existence of areas closed for security reasons,

(e) Ensure that requests by such journalists for such travel receive, in so far as possible, an expeditious response, taking into account the time scale of the request;

(*f*) Increase the opportunities for journalists of the participating States to communicate personally with their sources, including organizations and official institutions;

(*g*) Grant to journalists of the participating States the right to import, subject only to its being taken out again, the technical equipment (photographic, cinematographic, tape recorder, radio and television) necessary for the exercise of their profession;[1]

(*h*) Enable journalists of the other participating States, whether permanently or temporarily accredited, to transmit completely, normally and rapidly by means recognized by the participating States to the information organs which they represent, the results of their professional activity, including tape recordings and undeveloped film, for the purpose of publication or of broadcasting on the radio or television.

The participating States reaffirm that the legitimate pursuit of their professional activity will neither render journalists liable to expulsion nor otherwise penalize them. If an accredited journalist is expelled, he will be informed of the reasons for this act and may submit an application for re-examination of his case.

3

CO-OPERATION AND EXCHANGES IN THE FIELD OF CULTURE

The participating States,

Considering that cultural exchanges and co-operation contribute to a better comprehension among people and among peoples, and thus promote a lasting understanding among States,

Confirming the conclusions already formulated in this field at the multilateral level, particularly at the Intergovernmental Conference on Cultural Policies in Europe, organized by UNESCO in Helsinki in June

[1] While recognizing that appropriate local personnel are employed by foreign journalists in many instances, the participating States note that the above provisions would be applied, subject to the observance of the appropriate rules, to persons from the other participating States, who are regularly and professionally engaged as technicians, photographers or cameramen of the press, radio, television or cinema.

1972, where interest was manifested in the active participation of the broadest possible social groups in an increasingly diversified cultural life,

Desiring, with the development of mutual confidence and the further improvement of relations between the participating States, to continue further efforts toward progress in this field,

Disposed in this spirit to increase substantially their cultural exchanges, with regard both to persons and to cultural works, and to develop among them an active co-operation, both at the bilateral and the multilateral level, in all the fields of culture,

Convinced that such a development of their mutual relations will contribute to the enrichment of the respective cultures, while respecting the originality of each, as well as to the reinforcement among them of a consciousness of common values, while continuing to develop cultural co-operation with other countries of the world,

Declare that they jointly set themselves the following objectives:

(*a*) To develop the mutual exchange of information with a view to a better knowledge of respective cultural achievements,

(*b*) To improve the facilities for the exchange and for the dissemination of cultural property,

(*c*) To promote access by all to respective cultural achievements,

(*d*) To develop contacts and co-operation among persons active in the field of culture,

(*e*) To seek new fields and forms of cultural co-operation,

Thus *give expression* to their common will to take progressive, coherent and long-term action in order to achieve the objectives of the present declaration; and

Express their intention now to proceed to the implementation of the following:

Extension of Relations

To expand and improve at the various levels co-operation and links in the field of culture, in particular by:

(*a*) Concluding, where appropriate, agreements on a bilateral or multilateral basis, providing for the extension of relations among competent State institutions and non-governmental organizations in the field of culture, as well as among people engaged in cultural activities, taking into account the need both for flexibility and the fullest possible use of existing agreements, and bearing in mind that agreements and also other arrangements constitute important means of developing cultural co-operation and exchanges;

(*b*) Contributing to the development of direct communication and co-operation among relevant State institutions and non-governmental organizations, including, where necessary, such communication and co-operation carried out on the basis of special agreements and arrangements;

(*c*) Encouraging direct contacts and communications among persons engaged in cultural activities, including, where necessary, such contacts and communications carried out on the basis of special agreements and arrangements.

Mutual Knowledge

Within their competence to adopt, on a bilateral and multilateral level, appropriate measures which would give their peoples a more comprehensive and complete mutual knowledge of their achievements in the various fields of culture, and among them:

(*a*) To examine jointly, if necessary with the assistance of appropriate international organizations, the possible creation in Europe and the structure of a bank of cultural data, which would collect information from the participating countries and make it available to its correspondents on their request, and to convene for this purpose a meeting of experts from interested States;

(*b*) To consider, if necessary in conjunction with appropriate international organizations, ways of compiling in Europe an inventory of documentary films of a cultural or scientific nature from the participating States;

(*c*) To encourage more frequent book exhibitions and to examine the possibility of organizing periodically in Europe a large-scale exhibition of books from the participating States;

(*d*) To promote the systematic exchange, between the institutions concerned and publishing houses, of catalogues of available books as well as of pre-publication material which will include, as far as possible, all forthcoming publications; and also to promote the exchange of material between firms publishing encyclopaedias, with a view to improving the presentation of each country;

(*e*) To examine jointly questions of expanding and improving exchanges of information in the various fields of culture, such as theatre, music, library work as well as the conservation and restoration of cultural property.

Exchanges and Dissemination

To contribute to the improvement of facilities for exchanges and the dissemination of cultural property, by appropriate means, in particular by:

(*a*) Studying the possibilities for harmonizing and reducing the charges relating to international commercial exchanges of books and other cultural materials, and also for new means of insuring works of art in foreign exhibitions and for reducing the risks of damage or loss to which these works are exposed by their movement;

(*b*) Facilitating the formalities of customs clearance, in good time for programmes of artistic events, of the works of art, materials and accessories appearing on lists agreed upon by the organizers of these events;

(*c*) Encouraging meetings among representatives of competent organizations and relevant firms to examine measures within their field of activity – such as the simplification of orders, time limits for sending supplies and modalities of payment – which might facilitate international commercial exchanges of books;

(*d*) Promoting the loan and exchange of films among their film institutes and film libraries;

(*e*) Encouraging the exchange of information among interested parties concerning events of a cultural character foreseen in the participating States, in fields where this is most appropriate, such as music, theatre and the plastic and graphic arts, with a view to contributing to the compilation and publication of a calendar of such events, with the assistance, where necessary, of the appropriate international organizations;

(*f*) Encouraging a study of the impact which the foreseeable development, and a possible harmonization among interested parties, of the technical means used for the dissemination of culture might have on the development of cultural co-operation and exchanges, while keeping in view the preservation of the diversity and originality, of their respective cultures;

(*g*) Encouraging, in the way they deem appropriate, within their cultural policies, the further development of interest in the cultural heritage of the other participating States, conscious of the merits and the value of each culture;

(*h*) Endeavouring to ensure the full and effective application of the international agreements and conventions on copyrights and on circulation of cultural property to which they are party or to which they may decide in the future to become party.

Access

To promote fuller mutual access by all to the achievements – works, experiences and performing arts – in the various fields of culture of their countries, and to that end to make the best possible efforts, in accordance with their competence, more particularly:

(*a*) To promote wider dissemination of books and artistic works, in particular by such means as:

(i) Facilitating, while taking full account of the international copyright conventions to which they are party, international contacts and communications between authors and publishing houses as well as other cultural institutions, with a view to a more complete mutual access to cultural achievements;

(ii) Recommending that, in determining the size of editions, publishing houses take into account also the demand from the other participating States, and that rights of sale in other participating States be granted, where possible, to several sales organizations of the importing countries, by agreement between interested partners;

(iii) Encouraging competent organizations and relevant firms to conclude agreements and contracts and contributing, by this means, to a gradual increase in the number and diversity of works by authors from the other participating States available in the original and in translation in their libraries and bookshops;

(iv) Promoting, where deemed appropriate, an increase in the number of sales outlets where books by authors from the other participating States, imported in the original on the basis of agreements and contracts, and in translation, are for sale;

(v) Promoting, on a wider scale, the translation of works in the sphere of literature and other fields of cultural activity, produced in the languages of the other participating States, especially from the less widely-spoken languages, and the publication and dissemination of the translated works by such measures as:

a. Encouraging more regular contacts between interested publishing houses;

b. Developing their efforts in the basic and advanced training of translators;

c. Encouraging, by appropriate means, the publishing houses of their countries to publish translations;

d. Facilitating the exchange between publishers and interested institutions of lists of books which might be translated;

e. Promoting between their countries the professional activity and co-operation of translators;

f. Carrying out joint studies on ways of further promoting translations and their dissemination;

(vi) Improving and expanding exchanges of books, bibliographies and catalogue cards between libraries;

(*b*) To envisage other appropriate measures which would permit, where necessary by mutual agreement among interested parties, the facilitation of access to their respective cultural achievements, in particular in the field of books;

(*c*) To contribute by appropriate means to the wider use of the mass media in order to improve mutual acquaintance with the cultural life of each;

(*d*) To seek to develop the necessary conditions for migrant workers and their families to preserve their links with their national culture, and also to adapt themselves to their new cultural environment;

(*e*) To encourage the competent bodies and enterprises to make a wider choice and effect wider distribution of full-length and documentary films from the other participating States, and to promote more frequent non-commercial showings, such as premieres, film weeks and festivals, giving due consideration to films from countries whose cinematographic works are less well known;

(*f*) To promote, by appropriate means, the extension of opportunities for specialists from the other participating States to work with materials of a cultural character from film and audio-visual archives, within the framework of the existing rules for work on such archival materials;

(*g*) To encourage a joint study by interested bodies, where appropriate with the assistance of the competent international organizations, of the expediency and the conditions for the establishment of a repertory of their recorded television programmes of a cultural nature, as well as of the means of viewing them rapidly in order to facilitate their selection and possible acquisition.

Contacts and Co-operation

To contribute, by appropriate means, to the development of contacts and co-operation in the various fields of culture, especially among creative artists and people engaged in cultural activities, in particular by making efforts to:

(*a*) Promote for persons active in the field of culture, travel and meetings including, where necessary, those carried out on the basis of agreements, contracts or other special arrangements and which are relevant to their cultural co-operation;

(*b*) Encourage in this way contacts among creative and performing artists and artistic groups with a view to their working together, making known their works in other participating States or exchanging views on topics relevant to their common activity;

(c) Encourage, where necessary through appropriate arrangements, exchanges of trainee and specialists and the granting of scholarships for basic and advanced training in various fields of culture such as the arts and architecture, museums and libraries, literary studies and translation, and contribute to the creation of favourable conditions of reception in their respective institutions;

(*d*) Encourage the exchange of experience in the training of organizers of cultural activities as well as of teachers and specialists in fields such as theatre, opera, ballet, music and fine arts;

(*e*) Continue to encourage the organization of international meetings among creative artists, especially young creative artists, on current questions of artistic and literary creation which are of interest for joint study;

(*f*) Study other possibilities for developing exchanges and co-operation among persons active in the field of culture, with a view to a better mutual knowledge of the cultural life of the participating States.

Fields and Forms of Co-operation

To encourage the search for new fields and forms of cultural co-operation, to these ends contributing to the conclusion among interested parties, where necessary, of appropriate agreements and arrangements, and in this context to promote:

(*a*) Joint studies regarding cultural policies, in particular in their social aspects, and as they relate to planning, town-planning, educational and environmental policies, and the cultural aspects of tourism;

(*b*) The exchange of knowledge in the realm of cultural diversity, with a view to contributing thus to a better understanding by interested parties of such diversity where it occurs;

(*c*) The exchange of information, and as may be appropriate, meetings of experts, the elaboration and the execution of research programmes and projects, as well as their joint evaluation, and the dissemination of the results, on the subjects indicated above;

(*d*) Such forms of cultural co-operation and the development of such joint projects as:

(i) International events in the fields of the plastic and graphic arts, cinema, theatre, ballet, music, folklore, etc.; book fairs and exhibitions, joint performances of operatic and dramatic works, as well as performances given by soloists;

(ii) Instrumental ensembles, orchestras, choirs and other artistic groups, including those composed of amateurs, paying due attention to the organization of international cultural youth events and the exchange of young artists;

(iii) The inclusion of works by writers and composers from the other participating States in the repertoires of soloists and artistic ensembles;

(iv) The preparation, translation and publication of articles, studies and monographs, as well as of low-cost books and of artistic and literary collections, suited to making better known respective cultural achievements, envisaging for this purpose meetings among experts and representatives of publishing houses;

(v) The co-production and the exchange of films and of radio and television programmes, by promoting, in particular, meetings among producers, technicians and representatives of the public authorities with a view to working out favourable conditions for the execution of specific joint projects and by encouraging, in the field of co-production, the establishment of international filming teams;

(vi) The organization of competitions for architects and town-planners, bearing in mind the possible implementation of the best projects and the formation, where possible, of international teams;

(vii) The implementation of joint projects for conserving, restoring and showing to advantage works of art, historical and archaeological monuments and sites of cultural interest, with the help, in appropriate cases, of international organizations of a governmental or non-governmental character as well as of private institutions – competent and active in these fields – envisaging for this purpose:

a. Periodic meetings of experts of the interested parties to elaborate the necessary proposals, while bearing in mind the need to consider these questions in a wider social and economic context;

b. The publication in appropriate periodicals of articles designed to make known and to compare, among the participating States, the most significant achievements and innovations;

c. A joint study with a view to the improvement and possible harmonization of the different systems used to inventory and catalogue the historical monuments and places of cultural interest in their countries;

d. The study of the possibilities for organizing international courses for the training of specialists in different disciplines relating to restoration.

National minorities or regional cultures. The participating States, recognizing the contribution that national minorities or regional cultures can make to co-operation among them in various fields of culture, intend, when such minorities or cultures exist within their territory, to facilitate this contribution, taking into account the legitimate interests of their members.

4

CO-OPERATION AND EXCHANGES IN THE FIELD OF EDUCATION

The participating States,

Conscious that the development of relations of an international character in the fields of education and science contributes to a better mutual understanding and is to the advantage of all peoples as well as to the benefit of future generations,

Prepared to facilitate, between organizations, institutions and persons engaged in education and science, the further development of exchanges of knowledge and experience as well as of contacts, on the basis of special arrangements where these are necessary,

Desiring to strengthen the links among educational and scientific establishments and also to encourage their co-operation in sectors of common interest, particularly where the levels of knowledge and resources require efforts to be concerted internationally, and

Convinced that progress in these fields should be accompanied and supported by a wider knowledge of foreign languages,

Express to these ends their intention in particular:

(*a*) Extension of Relations

To expand and improve at the various levels co-operation and links in the fields of education and science, in particular by:

(*a*) Concluding, where appropriate, bilateral or multilateral agreements providing for co-operation and exchanges among State institutions, non-governmental bodies and persons engaged in activities in education and science, bearing in mind the need both for flexibility and the fuller use of existing agreements and arrangements;

(*b*) Promoting the conclusion of direct arrangements between universities and other institutions of higher education and research, in the framework of agreements between governments where appropriate;

(*c*) Encouraging among persons engaged in education and science direct contacts and communications, including those based on special agreements or arrangements where these are appropriate.

(*b*) Access and Exchanges

To improve access, under mutually acceptable conditions, for students, teachers and scholars of the participating States to each other's educational, cultural and scientific institutions, and to intensify exchanges among these institutions in all areas of common interest, in particular by:

(*a*) Increasing the exchange of information on facilities for study and courses open to foreign participants, as well as on the conditions under which they will be admitted and received;

(*b*) Facilitating travel between the participating States by scholars, teachers and students for purposes of study, teaching and research as well as for improving knowledge of each other's educational, cultural and scientific achievements;

(*c*) Encouraging the award of scholarships for study, teaching and research in their countries to scholars, teachers and students of other participating States;

(*d*) Establishing, developing or encouraging programmes providing for the broader exchange of scholars, teachers and students, including the organization of symposia, seminars and collaborative projects, and the exchanges of educational and scholarly information such as university publications and materials from libraries;

(*e*) Promoting the efficient implementation of such arrangements and programmes by providing scholars, teachers and students in good time with more detailed information about their placing in universities and institutes and the programmes envisaged for them; by granting them the opportunity to use relevant scholarly, scientific and open archival materials; and by facilitating their travel within the receiving State for the purpose of study or research as well as in the form of vacation tours on the basis of the usual procedures;

(*f*) Promoting a more exact assessment of the problems of comparison and equivalence of academic degrees and diplomas by fostering the exchange of information on the organization, duration and content of studies, the comparison of methods of assessing levels of knowledge, and academic qualifications, and, where feasible, arriving at the mutual recognition of academic degrees and diplomas either through governmental agreements, where necessary, or direct arrangements between universities and other institutions of higher learning and research;

(*g*) Recommending, moreover, to the appropriate international organizations that they should intensify their efforts to reach a generally acceptable solution to the problems of comparison and equivalence between academic degrees and diplomas.

(*c*) Science

Within their competence to broaden and improve co-operation and exchanges in the field of science, in particular.

To increase, on a bilateral or multilateral basis, the exchange and dissemination of scientific information and documentation by such means as:

(*a*) Making this information more widely available to scientists and research workers of the other participating States through, for instance, participation in international information-sharing programmes or through other appropriate arrangements;

(*b*) Broadening and facilitating the exchange of samples and other scientific materials used particularly for fundamental research in the fields of natural sciences and medicine;

(*c*) Inviting scientific institutions and universities to keep each other more fully and regularly informed about their current and contemplated research work in fields of common interest. To facilitate the extension of communications and direct contacts between universities, scientific institutions and associations as well as among scientists and research workers, including those based where necessary on special agreements or arrangements, by such means as:

(*d*) Further developing exchanges of scientists and research workers and encouraging the organization of preparatory meetings or working groups on research topics of common interest;

(*e*) Encouraging the creation of joint teams of scientists to pursue research projects under arrangements made by the scientific institutions of several countries;

(*f*) Assisting the organization and successful functioning of international conferences and seminars and participation in them by their scientists and research workers;

(*g*) Furthermore envisaging, in the near future, a "Scientific Forum" in the form of a meeting of leading personalities in science from the participating States to discuss interrelated problems of common interest concerning current and future developments in science, and to promote the expansion of contacts, communications and the exchange of information between scientific institutions and among scientists;

(*h*) Foreseeing, at an early date, a meeting of experts representing the participating States and their national scientific institutions, in order to prepare such a "Scientific Forum" in consultation with appropriate international organizations, such as UNESCO and the ECE;

(*i*) Considering in due course what further steps might be taken with respect to the "Scientific Forum".

To develop in the field of scientific research, on a bilateral or multilateral basis, the co-ordination of programmes carried out in the participating States and the organization of joint programmes, especially in the areas mentioned below, which may involve the combined efforts of scientists and in certain cases the use of costly or unique equipment. The list of subjects in these areas is illustrative; and specific projects would have to be determined subsequently by the potential partners in the participating States, taking account of the contribution which could be made by appropriate international organizations and scientific institutions:

(*a*) *Exact and natural sciences*, in particular fundamental research in such fields as mathematics, physics, theoretical physics, geophysics, chemistry, biology, ecology and astronomy;

(*b*) *Medicine*, in particular basic research into cancer and cardiovascular diseases, studies on the diseases endemic in the developing countries, as well as medico-social research with special emphasis on occupational diseases, the rehabilitation of the handicapped and the care of mothers, children and the elderly;

(*c*) *The humanities and social sciences*, such as history, geography, philosophy, psychology, pedagogical research, linguistics, sociology, the legal, political and economic sciences; comparative studies on social, socio-economic and cultural phenomena which are of common interest to the participating States, especially the problems of human environment and urban development; and scientific studies on the methods of conserving and restoring monuments and works of art.

(*d*) Foreign Languages and Civilizations

To encourage the study of foreign languages and civilizations as an important means of expanding communication among peoples for their better acquaintance with the culture of each country, as well as for the strengthening of international co-operation; to this end to stimulate, within their competence, the further development and improvement of foreign language teaching and the diversification of choice of languages taught at various levels, paying due attention to less widely-spread or studied languages, and in particular:

(*a*) To intensify co-operation aimed at improving the teaching of foreign languages through exchanges of information and experience concerning the development and application of effective modern teaching methods and technical aids, adapted to the needs of different categories of students, including methods of accelerated teaching; and to consider the possibility of conducting, on a bilateral or multilateral basis, studies of new methods of foreign language teaching;

(*b*) To encourage co-operation between institutions concerned, on a bilateral or multilateral basis, aimed at exploiting more fully the resources of modern educational technology in language teaching, for example through comparative studies by their specialists and, where agreed, through exchanges or transfers of audio-visual materials, of materials used for preparing textbooks, as well as of information about new types of technical equipment used for teaching languages;

(*c*) To promote the exchange of information on the experience acquired in the training of language teachers and to intensify exchanges on a bilateral basis of language teachers and students as well as to

facilitate their participation in summer courses in languages and civilizations, wherever these are organized;

(*d*) To encourage co-operation among experts in the field of lexicography with the aim of defining the necessary terminological equivalents, particularly in the scientific and technical disciplines, in order to facilitate relations among scientific institutions and specialists;

(*e*) To promote the wider spread of foreign language study among the different types of secondary education establishments and greater possibilities of choice between an increased number of European languages; and in this context to consider, wherever appropriate, the possibilities for developing the recruitment and training of teachers as well as the organization of the student groups required;

(*f*) To favour, in higher education, a wider choice in the languages offered to language students and greater opportunities for other students to study various foreign languages; also to facilitate, where desirable, the organization of courses in languages and civilizations, on the basis of special arrangements as necessary to be given by foreign lecturers, particularly from European countries having less widely-spread or studied languages;

(*g*) To promote, within the framework of adult education, the further development of specialized programmes, adapted to various needs and interests, for teaching foreign languages to their own inhabitants and the languages of host countries to interested adults from other countries; in this context to encourage interested institutions to co-operate, for example, in the elaboration of programmes for teaching by radio and television and by accelerated methods, and also, where desirable, in the definition of study objectives for such programmes, with a view to arriving at comparable levels of language proficiency;

(*h*) To encourage the association, where appropriate, of the teaching of foreign languages with the study of the corresponding civilizations and also to make further efforts to stimulate interest in the study of foreign languages, including relevant out-of-class activities.

(*e*) Teaching Methods

To promote the exchange of experience, on a bilateral or multilateral basis, in teaching methods at all levels of education, including those used in permanent and adult education, as well as the exchange of teaching materials, in particular by:

(*a*) Further developing various forms of contacts and co-operation in the different fields of pedagogical science, for example through comparative or joint studies carried out by interested institutions or through exchanges of information on the results of teaching experiments;

(*b*) Intensifying exchanges of information on teaching methods used in various educational systems and on results of research into the processes by which pupils and students acquire knowledge, taking account of relevant experience in different types of specialized education;

(*c*) Facilitating exchanges of experience concerning the organization and functioning of education intended for adults and recurrent education, the relationships between these and other forms and levels of education, as well as concerning the means of adapting education, including vocational and technical training, to the needs of economic and social development in their countries;

(*d*) Encouraging exchanges of experience in the education of youth and adults in international understanding, with particular reference to those major problems of mankind whose solution calls for a common approach and wider international co-operation;

(*e*) Encouraging exchanges of teaching materials – including school textbooks, having in mind the possibility of promoting mutual knowledge and facilitating the presentation of each country in such books – as well as exchanges of information on technical innovations in the field of education.

National minorities or regional cultures. The participating States, recognizing the contribution that national minorities or regional cultures can make to co-operation among them in various fields of education, intend, when such minorities or cultures exist within their territory, to facilitate this contribution, taking into account the legitimate interests of their members.

Follow-up to the Conference

The participating States,

Having considered and evaluated the progress made at the Conference on Security and Co-operation in Europe,

Considering further that, within the broader context of the world, the Conference is an important part of the process of improving security and developing co-operation in Europe and that its results will contribute significantly to this process,

Intending to implement the provisions of the Final Act of the Conference in order to give full effect to its results and thus to further the process of improving security and developing co-operation in Europe,

Convinced that, in order to achieve the aims sought by the Conference, they should make further unilateral, bilateral and multilateral efforts and continue, in the appropriate forms set forth below, the multilateral process initiated by the Conference,

1. *Declare their resolve*, in the period following the Conference, to pay due regard to and implement the provisions of the Final Act of the Conference:

   (*a*) Unilaterally, in all cases which lend themselves to such action;

   (*b*) Bilaterally, by negotiations with other participating States;

   (*c*) Multilaterally, by meetings of experts of the participating States, and also within the framework of existing international organizations, such as the United Nations Economic Commission for Europe and UNESCO, with regard to educational, scientific and cultural co-operation;

2. *Declare furthermore their resolve* to continue the multilateral process initiated by the Conference:

   (*a*) By proceeding to a thorough exchange of views both on the implementation of the provisions of the Final Act and of the tasks defined by the Conference, as well as, in the context of the questions dealt with by the latter, on the deepening of their mutual relations, the improvement of security and the development of co-operation in Europe, and the development of the process of détente in the future;

   (*b*) By organizing to these ends meetings among their representatives, beginning with a meeting at the level of representatives appointed by the Ministers of Foreign Affairs. This meeting will define the appropriate modalities for the holding of other meetings which could include further similar meetings and the possibility of a new Conference;

3. The first of the meetings indicated above will be held at Belgrade in 1977. A preparatory meeting to organize this meeting will be held at Belgrade on 15 June 1977. The preparatory meeting will decide on the date, duration, agenda and other modalities of the meeting of representatives appointed by the Ministers of Foreign Affairs;

4. The rules of procedure, the working methods and the scale of distribution for the expenses of the Conference will, *mutatis mutandis*, be applied to the meetings envisaged in paragraphs 1 (c), 2 and 3 above. All the above-mentioned meetings will be held in the participating States in rotation. The services of a technical secretariat will be provided by the host country.

The original of this Final Act, drawn up in English, French, German, Italian, Russian and Spanish, will be transmitted to the Government of the Republic of Finland, which will retain it in its archives. Each of the participating States will receive from the Government of the Republic of Finland a true copy of this Final Act.

The text of this Final Act will be published in each participating State, which will disseminate it and make it known as widely as possible.

The Government of the Republic of Finland is requested to transmit to the Secretary-General of the United Nations the text of this Final Act, which is not eligible for registration under Article 102 of the Charter of the United Nations, with a view to its circulation to all the members of the Organization as an official document of the United Nations.

The Government of the Republic of Finland is also requested to transmit the text of this Final Act to the Director-General of UNESCO and to the Executive Secretary of the United Nations Economic Commission for Europe.

Wherefore, the undersigned High Representatives of the participating States, mindful of the high political significance which they attach to the results of the Conference, and declaring their determination to act in accordance with the provisions contained in the above texts, have subscribed their signatures below:

DONE at Helsinki, on 1st August 1975, in the name of

[Here follow the names of the High Representatives of the participating States]

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COPENHAGEN 1990 DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE

Adopted at the Second Conference on the Human Dimension of the CSCE, 5 June – 29 July 1990

The representatives of the participating States of the Conference on Security and Co-operation in Europe (CSCE), Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia, met in Copenhagen from 5 to 29 June 1990, in accordance with the provisions relating to the Conference on the Human Dimension of the CSCE contained in the Concluding Document of the Vienna Follow-up Meeting of the CSCE.

The representative of Albania attended the Copenhagen Meeting as observer.

The first Meeting of the Conference was held in Paris from 30 May to 23 June 1989.

The Copenhagen Meeting was opened and closed by the Minister for Foreign Affairs of Denmark.

The formal opening of the Copenhagen Meeting was attended by Her Majesty the Queen of Denmark and His Royal Highness the Prince Consort.

Opening statements were made by Ministers and Deputy Ministers of the participating States.

At a special meeting of the Ministers for Foreign Affairs of the participating States of the CSCE on 5 June 1990, convened on the invitation of the Minister for Foreign Affairs of Denmark, it was agreed to convene a Preparatory Committee in Vienna on 10 July 1990 to prepare a Summit Meeting in Paris of their Heads of State or Government.

The participating States welcome with great satisfaction the fundamental political changes that have occurred in Europe since the first Meeting of the Conference on the Human Dimension of the CSCE in Paris in 1989. They note that the CSCE process has contributed significantly to bringing about these changes and that these developments in turn have greatly advanced the implementation of the provisions of the Final Act and of the other CSCE documents.

They recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.

At the Copenhagen Meeting the participating States held a review of the implementation of their commitments in the field of the human dimension. They considered that the degree of compliance with the commitments contained in the relevant provisions of the CSCE documents had shown a fundamental improvement since the Paris Meeting. They also expressed the view, however, that further steps are required for the full realization of their commitments relating to the human dimension.

The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe. They therefore reaffirm their commitment to implement fully all provisions of the Final Act and of the other CSCE documents relating to the human dimension and undertake to build on the progress they have made.

They recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

I

1. The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

2. They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

3. They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

4. They confirm that they will respect each others right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

5. They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

   5.1. Free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

   5.2. A form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;

   5.3. The duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;

   5.4. A clear separation between the State and political parties; in particular, political parties will not be merged with the State;

   5.5. The activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;

   5.6. Military forces and the police will be under the control of, and accountable to, the civil authorities;

   5.7. Human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;

   5.8. Legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

   5.9. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

   5.10. Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

   5.11. Administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;

   5.12. The independence of judges and the impartial operation of the public judicial service will be ensured;

   5.13. The independence of legal practitioners will be recognized and protected, in particular as regards conditions for recruitment and practice;

   5.14. The rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;

5.15. Any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;

5.16. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

5.17. Any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

5.18. No one will be charged with, tried for or convicted of any criminal offence unless the offence is provided for by a law which defines the elements of the offence with clarity and precision;

5.19. Everyone will be presumed innocent until proved guilty according to law;

5.20. Considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments, if they have not yet done so;

5.21. In order to supplement domestic remedies and better to ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

6. The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.

7. To ensure that the will of the people serves as the basis of the authority of government, the participating States will

7.1. Hold free elections at reasonable intervals, as established by law;

7.2. Permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

7.3. Guarantee universal and equal suffrage to adult citizens;

7.4. Ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

7.5. Respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

7.6. Respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

7.7 Ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

7.8. Provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

7.9. Ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

8. The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

II

9. The participating States reaffirm that

9.1. Everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;

9.2. Everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;

9.3. The right of association will be guaranteed. The right to form and subject to the general right of a trade union to determine its own membership freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards;

9.4. Everyone will have the right to freedom of thought, conscience and religion. This right includes freedom to change ones religion or belief and freedom to manifest ones religion or belief, either alone or in community with others, in public or in private, through worship, teaching, practice and observance. The exercise of these rights may be subject only to such restrictions as are prescribed by law and are consistent with international standards;

9.5. They will respect the right of everyone to leave any country, including his own, and to return to his country, consistent with a State's international obligations and CSCE commitments. Restrictions on this right will have the character of very rare exceptions, will be considered necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner;

9.6. Everyone has the right peacefully to enjoy his property either on his own or in common with others. No one may be deprived of his property except in the public interest and subject to the conditions provided for by law and consistent with international commitments and obligations.

10. In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

10.1. Respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

10.2. Respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards;

10.3. Ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

10.4. Allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

11. The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include

11.1. The right of the individual to seek and receive adequate legal assistance;

11.2. The right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms;

11.3. The right of individuals or groups acting on their behalf to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses.

12. The participating States, wishing to ensure greater transparency in the implementation of the commitments undertaken in the Vienna Concluding Document under the heading of the human dimension of the CSCE, decide to accept as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held *in camera* in the circumstances prescribed by law and consistent with obligations under international law and international commitments.

13. The participating States decide to accord particular attention to the recognition of the rights of the child, his civil rights and his individual freedoms, his economic, social and cultural rights, and his right to special protection against all forms of violence and exploitation. They will consider acceding to the Convention on the Rights of the Child, if they have not yet done so, which was opened for signature by States on 26 January 1990. They will recognize in their domestic legislation the rights of the child as affirmed in the international agreements to which they are Parties.

14. The participating States agree to encourage the creation, within their countries, of conditions for the training of students and trainees from other participating States, including persons taking vocational and technical courses. They also agree to promote travel by young people from their countries for the purpose of obtaining education in other participating States and to that end to encourage the conclusion, where appropriate, of bilateral and multilateral agreements between their relevant governmental institutions, organizations and educational establishments.

15. The participating States will act in such a way as to facilitate the transfer of sentenced persons and encourage those participating States which are not Parties to the Convention on the Transfer of Sentenced Persons, signed at Strasbourg on 21 November 1983, to consider acceding to the Convention.

16. The participating States

16.1. Reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such practices, to protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and to take effective measures to prevent and punish such practices;

16.2. Intend, as a matter of urgency, to consider acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so, and recognizing the competences of the Committee against Torture under articles 21 and 22 of the Convention and withdrawing reservations regarding the competence of the Committee under article 20;

16.3. Stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture;

16.4. Will ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

16.5. Will keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any cases of torture;

16.6. Will take up with priority for consideration and for appropriate action, in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE, any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information;

16.7. Will act upon the understanding that preserving and guaranteeing the life and security of any individual subjected to any form of torture and other inhuman or degrading treatment or punishment will be the sole criterion in determining the urgency and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman or degrading treatment or punishment within the framework of any other international body or mechanism may not be invoked as a reason for refraining from consideration and appropriate action in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE.

17. The participating States

17.1. Recall the commitment undertaken in the Vienna Concluding Document to keep the question of capital punishment under consideration and to co-operate within relevant international organizations;

17.2. Recall, in this context, the adoption by the General Assembly of the United Nations, on 15 December 1989, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

17.3. Note the restrictions and safeguards regarding the use of the death penalty which have been adopted by the international community, in particular article 6 of the International Covenant on Civil and Political Rights;

17.4. Note the provisions of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;

17.5. Note recent measures taken by a number of participating States towards the abolition of capital punishment;

17.6. Note the activities of several non-governmental organizations on the question of the death penalty;

17.7. Will exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration;

17.8. Will make available to the public information regarding the use of the death penalty.

18. The participating States

18.1. Note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;

18.2. Note recent measures taken by a number of participating States to permit exemption from compulsory military service on the basis of conscientious objections;

18.3. Note the activities of several non-governmental organizations on the question of conscientious objections to compulsory military service;

18.4. Agree to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;

18.5. Will make available to the public information on this issue;

18.6. Will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exemption from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions.

19. The participating States affirm that freer movement and contacts among their citizens are important in the context of the protection and promotion of human rights and fundamental freedoms. They will ensure that their policies concerning entry into their territories are fully consistent with the aims set out in the relevant provisions of the Final Act, the Madrid Concluding Document and the Vienna Concluding Document. While reaffirming their determination not to recede from the commitments contained in CSCE documents, they undertake to implement fully and improve present commitments in the field of human contacts, including on a bilateral and multilateral basis. In this context they will

19.1. Strive to implement the procedures for entry into their territories, including the issuing of visas and passport and customs control, in good faith and without unjustified delay. Where necessary, they will shorten the waiting time for visa decisions, as well as simplify practices and reduce administrative requirements for visa applications;

19.2. Ensure, in dealing with visa applications, that these are processed as expeditiously as possible in order, *inter alia*, to take due account of important family, personal or professional considerations, especially in cases of an urgent, humanitarian nature;

19.3. Endeavour, where necessary, to reduce fees charged in connection with visa applications to the lowest possible level.

20. The participating States concerned will consult and, where appropriate, cooperate in dealing with problems that might emerge as a result of the increased movement of persons.

21. The participating States recommend the consideration, at the next CSCE Follow-up Meeting in Helsinki, of the advisability of holding a meeting of experts on consular matters.

22. The participating States reaffirm that the protection and promotion of the rights of migrant workers have their human dimension. In this context, they

22.1. Agree that the protection and promotion of the rights of migrant workers are the concern of all participating States and that as such they should be addressed within the CSCE process;

22.2. Reaffirm their commitment to implement fully in their domestic legislation the rights of migrant workers provided for in international agreements to which they are parties;

22.3. Consider that, in future international instruments concerning the rights of migrant workers, they should take into account the fact that this issue is of importance for all of them;

22.4. Express their readiness to examine, at future CSCE meetings, the relevant aspects of the further promotion of the rights of migrant workers and their families.

23. The participating States reaffirm their conviction expressed in the Vienna Concluding Document that the promotion of economic, social and cultural rights as well as of civil and political rights is of paramount importance for human dignity and for the attainment of the legitimate aspirations of every individual. They also reaffirm their commitment taken in the Document of the Bonn Conference on Economic Co-operation in Europe to the promotion of social justice and the improvement of living and working

conditions. In the context of continuing their efforts with a view to achieving progressively the full realization of economic, social and cultural rights by all appropriate means, they will pay special attention to problems in the areas of employment, housing, social security, health, education and culture.

24. The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

    Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

25. The participating States confirm that any derogations from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation. They also reaffirm that

    25.1. Measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments;

    25.2. The imposition of a state of public emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law;

    25.3. Measures derogating from obligations will be limited to the extent strictly required by the exigencies of the situation;

    25.4. Such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

III

26. The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:

    – Constitutional law, reform and development,
    – Electoral legislation, administration and observation,
    – Establishment and management of courts and legal systems,
    – The development of an impartial and effective public service where recruitment and advancement are based on a merit system,
    – Law enforcement,
    – Local government and decentralization,
    – Access to information and protection of privacy,
    – Developing political parties and their role in pluralistic societies,
    – Free and independent trade unions,
    – Co-operative movements,
    – Developing other forms of free associations and public interest groups,
    – Journalism, independent media, and intellectual and cultural life,

– The teaching of democratic values, institutions and practices in educational institutions and the fostering of an atmosphere of free enquiry.

Such endeavours may cover the range of co-operation encompassed in the human dimension of the CSCE, including training, exchange of information, books and instructional materials, co-operative programmes and projects, academic and professional exchanges and conferences, scholarships, research grants, provision of expertise and advice, business and scientific contacts and programmes.

27. The participating States will also facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law, which may also serve as focal points for co-ordination and collaboration between such institutions in the participating States. They propose that co-operation be encouraged between parliamentarians from participating States, including through existing inter-parliamentary associations and, *inter alia*, through joint commissions, television debates involving parliamentarians, meetings and round-table discussions. They will also encourage existing institutions, such as organizations within the United Nations system and the Council of Europe, to continue and expand the work they have begun in this area.

28. The participating States recognize the important expertise of the Council of Europe in the field of human rights and fundamental freedoms and agree to consider further ways and means to enable the Council of Europe to make a contribution to the human dimension of the CSCE. They agree that the nature of this contribution could be examined further in a future CSCE forum.

29. The participating States will consider the idea of convening a meeting or seminar of experts to review and discuss co-operative measures designed to promote and sustain viable democratic institutions in participating States, including comparative studies of legislation in participating States in the area of human rights and fundamental freedoms, *inter alia* drawing upon the experience acquired in this area by the Council of Europe and the activities of the Commission "Democracy through Law".

IV

30. The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

    They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

    They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

31. Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

    The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

32. To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

    Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right

    32.1. To use freely their mother tongue in private as well as in public;

32.2. To establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

32.3. To profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

32.4. To establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

32.5. To disseminate, have access to and exchange information in their mother tongue;

32.6. To establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

33. The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

    Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

34. The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

    In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

35. The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

    The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

36. The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice.

    Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

37. None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States.

38. The participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other

relevant international instruments and consider adhering to the relevant conventions, if they have not yet done so, including those providing for a right of complaint by individuals.

39. The participating States will co-operate closely in the competent international organizations to which they belong, including the United Nations and, as appropriate, the Council of Europe, bearing in mind their on-going work with respect to questions relating to national minorities.

    They will consider convening a meeting of experts for a thorough discussion of the issue of national minorities.

40. The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

    They declare their firm intention to intensify the efforts to combat these phenomena in all their forms and therefore will

    40.1. Take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

    40.2. Commit themselves to take appropriate and proportionate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

    40.3. Take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

    40.4. Endeavour to ensure that the objectives of education include special attention to the problem of racial prejudice and hatred and to the development of respect for different civilizations and cultures;

    40.5. Recognize the right of the individual to effective remedies and endeavour to recognize, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts;

    40.6. Consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, including those relating to the submission of periodic reports;

    40.7. Consider, also, accepting those international mechanisms which allow States and individuals to bring communications relating to discrimination before international bodies.

V

41. The participating States reaffirm their commitment to the human dimension of the CSCE and emphasize its importance as an integral part of a balanced approach to security and co-operation in Europe. They agree that the Conference on the Human Dimension of the CSCE and the human dimension mechanism described in the section on the human dimension of the CSCE of the Vienna Concluding Document have demonstrated their value as methods of furthering their dialogue and co-operation and assisting in the resolution of relevant specific questions. They express their conviction that these should be continued and developed as part of an expanding CSCE process.

42. The participating States recognize the need to enhance further the effectiveness of the procedures described in paragraphs 1 to 4 of the section on the human dimension of the CSCE of the Vienna Concluding Document and with this aim decide

    42.1. To provide in as short a time as possible, but no later than four weeks, a written response to requests for information and to representations made to them in writing by other participating States under paragraph 1;

42.2. That the bilateral meetings, as contained in paragraph 2, will take place as soon as possible, as a rule within three weeks of the date of the request;

42.3. To refrain, in the course of a bilateral meeting held under paragraph 2, from raising situations and cases not connected with the subject of the meeting, unless both sides have agreed to do so.

43. The participating States examined practical proposals for new measures aimed at improving the implementation of the commitments relating to the human dimension of the CSCE. In this regard, they considered proposals related to the sending of observers to examine situations and specific cases, the appointment of rapporteurs to investigate and suggest appropriate solutions, the setting up of a Committee on the Human Dimension of the CSCE, greater involvement of persons, organizations and institutions in the human dimension mechanism and further bilateral and multilateral efforts to promote the resolution of relevant issues.

They decide to continue to discuss thoroughly in subsequent relevant CSCE fora these and other proposals designed to strengthen the human dimension mechanism, and to consider adopting, in the context of the further development of the CSCE process, appropriate new measures. They agree that these measures should contribute to achieving further effective progress, enhance conflict prevention and confidence in the field of the human dimension of the CSCE.

44. The representatives of the participating States express their profound gratitude to the people and Government of Denmark for the excellent organization of the Copenhagen Meeting and the warm hospitality extended to the delegations which participated in the Meeting.

45. In accordance with the provisions relating to the Conference on the Human Dimension of the CSCE contained in the Concluding Document of the Vienna Follow-up Meeting of the CSCE, the third Meeting of the Conference will take place in Moscow from 10 September to 4 October 1991.

Copenhagen, 29 June 1990

Annex

Chairman's statement on the access of non-governmental organizations and the media to meetings of the conference on the human dimension

The Chairman notes that the practices of openness and access to the Meetings of the Conference on the Human Dimension, as they were applied at the Vienna Meeting and as contained in Annex XI of the Concluding Document of that Meeting, are of importance to all participating States. In order to follow and build upon those practices at forthcoming CSCE meetings of the Conference on the Human Dimension, the participating States agree that the following practices of openness and access should be respected:

- Free movement by members of interested non-governmental organizations (NGOs) in the Conference premises, except for the areas restricted to delegations and to the services of the Executive Secretariat. Accordingly, badges will be issued to them, at their request, by the Executive Secretariat;
- Unimpeded contacts between members of interested NGOs and delegates, as well as with accredited representatives of the media;
- Access to official documents of the Conference in all the working languages and also to any document that delegates might wish to communicate to members of interested NGOs;
- The opportunity for members of interested NGOs to transmit to delegates communications relating to the human dimension of the CSCE. Mailboxes for each delegation will be accessible to them for this purpose;
- Free access for delegates to all documents emanating from interested NGOs and addressed to the Executive Secretariat for the information of the Conference. Accordingly, the Executive Secretariat will make available to delegates a regularly updated collection of such documents.

They further undertake to guarantee to representatives of the media

- Free movement in the Conference premises, except for the areas restricted to delegations and to the services of the Executive Secretariat. Accordingly, badges will be issued to them by the Executive Secretariat upon presentation of the requisite credentials;
- Unimpeded contacts with delegates and with members of interested NGOs;
- Access to official documents of the Conference in all the working languages.

The Chairman notes further that this statement will be an Annex to the Document of the Copenhagen Meeting and will be published with it.

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HELSINKI SUMMIT 1992

Text: The Challenges of Change (Decisions, chapter VI, paras. 39 to 45)

VI. THE HUMAN DIMENSION

The participating States,

[…]

39. Express their concern over the problem of refugees and displaced persons;

40. Emphasize the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration;

41. Recognise the need for international co-operation in dealing with mass flows of refugees and displaced persons;

42. Recognize that displacement is often a result of violations of CSCE commitments, including those relating to the Human Dimension;

43. Reaffirm the importance of existing international standards and instruments related to the protection of and assistance to refugees and will consider acceding to the Convention relating to the Status of Refugees and the Protocol, if they have not already done so;

44. Recognize the importance of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross, as well as of non-governmental organizations involved in relief work, for the protection of and assistance to refugees and displaced persons;

45. Welcome and support unilateral, bilateral and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions.

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STOCKHOLM 1992 THIRD MEETING OF THE MINISTERIAL COUNCIL

Text: Decisions, "The CSCE as a Community of Values", paras. 5 and 7

(...) Violations of international humanitarian law and CSCE principles and commitments, such as "ethnic cleansing", or mass deportation, endangered the maintenance of peace, security and democracy and will not be tolerated. [The Ministers] were convinced that increased attention should be paid by the CSCE, and in particular by the Committee of Senior Officials and the High Commissioner on National Minorities, to these threats to human rights and fundamental freedoms (...)

The increasing problem of refugees and displaced persons is an issue of major concern to all participating States, particularly in conflicts where the fulfilment of basic human needs is most at risk. The Ministers deplored the plight of civil populations most affected in such conflicts and called on all participating States to contribute to a concerted effort to share the common burden. All Governments are accountable to each other for their behaviour towards their citizens and towards their neighbours. Individuals are to be held personally accountable for war crimes and acts in violation of international humanitarian law.

257

LISBON SUMMIT 1996

Text: Summit Declaration, paras. 9 and 10

9. (...) Among the acute problems within the human dimension, the continuing violations of human rights, such as involuntary migration (...) continue to endanger stability in the OSCE region. We are committed to continuing to address these problems.

10. Against the background of recent refugee tragedies in the OSCE region and taking into account the issue of forced migration, we again condemn and pledge to refrain from any policy of "ethnic cleansing" or mass expulsion. Our States will facilitate the return, in safety and in dignity, of refugees and internally displaced persons, according to international standards. Their reintegration into their places of origin must be pursued without discrimination. We commend the work of the ODIHR Migration Advisor and express support for his continuing activities to follow up on the Programme of Action agreed at the May 1996 Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the relevant States.

258

ISTANBUL SUMMIT 1999

Text: Charter for European Security, para. 22

22. We reject any policy of ethnic cleansing or mass expulsion. We reaffirm our commitment to respect the right to seek asylum and to ensure the international protection of refugees as set out in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as to facilitate the voluntary return of refugees and internally displaced persons in dignity and safety. We will pursue without discrimination the reintegration of refugees and internally displaced persons in their places of origin.

259

MAASTRICHT 2003

Text: Eleventh Meeting of the Ministerial Council; OSCE Strategy to address Threats to Security and Stability in the 21st century, para. 38

38. (…) Harmonious relations between ethnic, religious, linguistic and other groups and the rights of persons belonging to national minorities will be actively promoted (…) Violence, intolerance, extremism and discrimination against these groups, including migrant workers, asylum seekers and other immigrants, must be counteracted and persons responsible for such actions held accountable.

260

MAASTRICHT 2003

Text: OSCE Action Plan to combat Trafficking in human beings,

Chapter IV, para. 5.2 and chapter V, paras. 9.1 and 10.3

5.2 Ensuring that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including their freedom of movement.

9.1 Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including victims of THB, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through effective application of the principle of *non-refoulement*.

10.3 Considering the provisions outlined in the United Nations High Commissioner for Refugees Guidelines for the Protection of Unaccompanied Minors when elaborating policies targeted at this risk group, and in particular for those who are not in possession of identification documents.

Text: OSCE Action Plan on improving the situation of Roma and Sinti,
Chapter VII, preamble, paras. 108, 109, 110, 114

Roma and Sinti in crisis and post-crisis situations: the Participating States have an obligation to ensure that, even in crisis and post-crisis situations, all the fundamental rights, including the rights of refugees deriving from relevant international instruments, in particular the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, are secured without discrimination. They take into account the UN Guiding Principles on Internal Displacement as a useful framework for the work of the OSCE and their endeavours in dealing with internal displacement.

108. Ensure that Roma and Sinti populations in a forced displacement situation (refugees and IDPs) are duly registered and provided with the relevant documents.

109. The participating States should ensure that programmes are in place to promote informed choice regarding the decision of Roma and Sinti refugees and IDPs concerning durable solutions to their situations, including the exercise of their right to safe, decent and sustainable return. Such programmes should provide concrete information regarding each subject of concern to refugees and IDPs and should be made available in the relevant languages.

110. Ensure that Roma and Sinti refugees are treated in accordance with the relevant international norms and standards of protection, and in a non-discriminatory manner.

114. In accordance with its mandate, the ODIHR-CPRSI is called upon to respond effectively to crisis situations by, *inter alia*, cooperating with relevant governments, inter-governmental bodies and international Organizations, in particular the UNHCR, to ensure protection of Roma communities at risk.

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ADDENDUM TO THE OSCE ACTION PLAN TO COMBAT TRAFFICKING IN HUMAN BEINGS: ADDRESSING THE SPECIAL NEEDS OF CHILD VICTIMS OF TRAFFICKING FOR PROTECTION AND ASSISTANCE DECISION NO. 685

Adopted at the 562nd Plenary Meeting of the Permanent Council of the Organization for Security and Co-operation in Europe on 7 July 2005

Text: PC Journal No. 562, Agenda item 8

The Permanent Council,

Reaffirming the strong OSCE commitments of participating States in the field of prevention and combating trafficking in human beings, as well as the OSCE Action Plan to Combat Trafficking in Human Beings,

Recalling Sofia Ministerial Council Decision No. 13/04 on the Special Needs for Child Victims of Trafficking for Protection and Assistance and its tasking to develop an addendum to the OSCE Action Plan to Combat Trafficking in Human Beings (PC.DEC/557 and MC.DEC/2/03),

Mindful of the need to identify and support the development of best practices in assisting child victims and to act at all times in the best interests of the child,

Conscious of the particular vulnerability of children in conflict and post-conflict situations and of their need for security and protection for the fulfilment and enjoyment of their rights,

Drawing upon existing regional experiences such as the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking in South Eastern Europe, endorsed in the Statement on Commitments on Victim/Witness Protection and Trafficking in Children by the Fourth Regional Ministerial Forum of the Stability Pact Task Force on Combating Trafficking in Human Beings, Sofia 2003,

Supports the following based on principles of respect for human rights, gender perspective and the best interests of the child to be used by States in addressing the special needs for protection and assistance of trafficked children; and

Decides to attach the Addendum annexed to this Decision to the OSCE Action Plan to Combat Trafficking in Human Beings[1] as an integral part and to recommend the endorsement of this decision by the Ministerial Council.

[1] See Permanent Council Decision No. 557/Rev.1.

Annex

Addendum to the OSCE action plan to combat trafficking in human beings: Addressing the special needs of child victims of trafficking for protection and assistance

Recommended actions at the national level:

1. Ensuring that child trafficking, including internal trafficking, is criminalized in accordance with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, in order to better address the need for protection and assistance of child victims of trafficking;
2. Establishing and/or strengthening effective policies and programmes to prevent trafficking in children, and reducing children's vulnerability by promoting a protective environment in general through strengthening relevant institutions and regulations, reducing poverty and preventing violence against children;
3. Developing, where necessary, national co-ordinating and referral mechanisms to specifically address protection and assistance measures which focus on the special needs of child victims of trafficking and ensure that child victims are referred expeditiously to appropriate services. Forming partnerships with civil society to develop a comprehensive approach to protect and assist child victims of trafficking;
4. Facilitating research and gathering data, including for the purpose of strengthening protection and assistance programmes, on the extent of all forms of child trafficking in their countries, and making the data publicly available. Strengthening co-operation and improving exchange of information among States with a view to preventing child trafficking and protecting and assisting child victims, including in conflict and post-conflict situations;
5. Facilitating special training for law enforcement and direct service personnel on proper and effective methods to identify child victims of trafficking. Any child presumed to be a victim of trafficking shall be referred without delay for appropriate assistance;
6. Following identification, providing child victims of trafficking, when necessary, with a guardian and/or legal representative at all stages of the assistance, (re)integration and/or return and to ensure protection of their human rights;
7. Developing child-friendly procedures related to criminal and civil proceedings, from initial questioning to the conclusion of the proceedings which are consistent with the rule of law;
8. Providing in appropriate cases presumed child trafficking victims who are not nationals or residents of the country in which they are identified with appropriate status entitling them to stay, at least temporarily, in the country and be eligible to receive immediate assistance which should include safe shelter, medical and psychological care, legal assistance, social services and education;
9. Processing every child trafficking case individually and making every effort to find a durable solution which will result in one of three options:
   (*a*) Return to and reintegration in the country of origin;
   (*b*) Local integration into the country in which they are identified; and
   (*c*) Relocation to a third country;
10. Making available special assistance and protection when it is in the best interest of the child to return him/her to the country of origin, providing returning children with appropriate care for the return process and supporting the monitoring, by the authorities in the country of origin of their well-being upon return;
11. Strengthening structures to promote social inclusion and (re)integration of child victims of trafficking in countries of origin and destination, taking into account the special needs of children;
12. Encouraging print and broadcast media to develop and promote a professional ethic related to the special treatment of child victims of trafficking in order to avoid the further exploitation and victimization of children, in particular by protecting the identity of children;
13. Addressing the use of the Internet in facilitating the trafficking of children for sexual exploitation and developing measures to combat it, including the exchange of images and other information in accordance with national law, in particular via the international database of child abuse images housed by Interpol with a view to identifying and protecting child victims as well as identifying their abusers.

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SOFIA 2004 DECISION NO. 2/04 ELABORATION OF AN OSCE BORDER SECURITY AND MANAGEMENT CONCEPT (MC.DEC/2/04)

Text: Twelfth Meeting of the Ministerial Council, Sofia, 6 and 7 December 2004, pages 16-17
(MC.DOC/1/04, 7 December 2004)

The Ministerial Council,

Guided by the OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century and, in particular, its paragraph 35,

Committed to promoting open and secure borders in a free, democratic and more integrated OSCE area without dividing lines,

Recalling the principles and commitments of the Helsinki Final Act, all of which apply equally and unreservedly, each of them being interpreted taking into account the others,

Recalling the principles and commitments contained in the Helsinki Document 1992 and in the Charter for European Security 1999,

Recalling the action plans, decisions and other relevant agreed OSCE documents, including documents in the politico-military, economic and environmental, and human dimensions addressing, among others, border issues,

Reaffirming that border security and management is a matter of national sovereignty and should be in accordance with international law, in particular international human rights, refugee and humanitarian law, and relevant OSCE commitments, as a prerequisite for good-neighbourly relations,

Welcoming the work carried out in 2004 by the Permanent Council informal Working Group on Borders,

Decides as follows:

(*a*) That the Permanent Council will continue its work on the elaboration of an OSCE Border Security and Management Concept with the firm intention to complete it by the Ministerial Council in 2005;

(*b*) That, in developing the Concept, the OSCE participating States will be guided, *inter alia*, by the following objectives:

(*c*) To promote the free and secure movement of persons, goods, services and investments across borders in conformity with relevant legal frameworks, international law and OSCE commitments;

(*d*) To reduce the threat of terrorism, including by preventing cross-border movement of persons, weapons and funds connected with terrorist and other criminal activities;

(*e*) To prevent and repress organized crime, illegal migration, corruption, smuggling, and trafficking of weapons, drugs and human beings;

(*f*) To promote co-operation between border services, and between specialized national authorities and agencies of participating States;

(*g*) To encourage high standards of their border services and specialized national authority and agency structures;

(*h*) To ensure a dignified treatment of all individuals wanting to cross borders, in conformity with relevant national legal frameworks, international law, in particular human rights, refugee, and humanitarian law, and relevant OSCE commitments;

(*i*) That the work on the Concept will be carried out in a special working group of the Permanent Council. The Forum for Security Co-operation will make its own contribution to this work within its competencies and mandate, and in accordance with Bucharest Ministerial Council Decision No. 3 on Fostering the Role of the OSCE as a Forum for Political Dialogue. Progress on the work will be reviewed, as required, at joint meetings of the Permanent Council and the Forum for Security Co-operation;

(*j*) That the work on developing the Concept to be carried out by the special working group will be guided by the common considerations contained in annex to this Decision.

Annex to Decision No. 14/04

2004 OSCE action plan for the promotion of gender equality

Text: Twelfth Meeting of the Ministerial Council, Sofia, 6 and 7 December 2004, pages 39-40

(MC.DOC/1/04, 7 December 2004)

"The peace and welfare of the world require maximum participation of women on equal terms with men in all fields"[1]

1. Respect for human rights and fundamental freedoms, democracy, and the rule of law is at the core of the OSCE's comprehensive concept of security. The Charter for European Security adopted at the OSCE Istanbul Summit declares that: "The full and equal exercise by women of their human rights is essential to achieve a more peaceful, prosperous and democratic OSCE area. We are committed to making equality between men and women an integral part of our policies, both at the level of our States and within the Organization."

2. As a regional arrangement under Chapter VIII of the Charter of the United Nations, the OSCE is a key instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation in its region. In the OSCE area, it has become increasingly evident that security, democracy, and prosperity are closely linked. Economic liberty, social justice, and environmental responsibility are indispensable for prosperity. For the Organization to carry out its tasks and achieve its goals it is crucial that, in co-operation with participating States, it invests in its human capital.

3. Effective gender-mainstreaming with the goal of achieving gender equality is important if full use is to be made of the human capital in the OSCE area. Gender equality contributes to comprehensive security, which is a goal of OSCE activities in all three dimensions. Gender-mainstreaming is a way of contributing to attaining this goal. The gender perspective should therefore be taken into account in the Organization's activities, projects and programmes, in order for the Organization to achieve gender equality within its own operations as well as in the participating States. It is the joint responsibility of the participating States, the Chairman-in-Office, the Secretary General, and the Heads of institutions and missions to promote equality between women and men as an integral element of policies and practices of the OSCE. In this effort it shall be borne in mind that if gender equality is to become a reality in any area and at any level of society, both men and women will benefit from such a change.

[1] United Nations General Assembly resolution 34/180 of 18 December 1979 (CEDAW).

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CONVENTION ON LEGAL AID AND LEGAL RELATIONS IN CIVIL, FAMILY AND CRIMINAL CASES

Adopted in Minsk on 22 January 1993

Entry into force: 19 May 1994, in accordance with Article 83

Members States of the Commonwealth of Independent States, participants of the present Convention, named hereafter Contracting Parties,

Being guided by the desire to provide to citizens of the Contracting Parties and persons residing on their territories legal defence of personal and property rights similar to those of the native inhabitants of all Contracting Parties,

Attaching great importance to the development of cooperation in the sphere of granting legal assistance in civil, family and criminal cases by judicial organs,

Have agreed on the following:

PART I

GENERAL PROVISIONS

SECTION I

LEGAL DEFENSE

Article 1

Granting legal defence

1. Citizens of each Contracting Party and persons residing on its territory, have the right to use the same legal defence of their personal and property rights on territories of all Contracting Parties as native citizens.
2. Citizens of each Contracting Party and persons residing on its territory, have the right to turn freely and without obstacles to courts, prosecutor's offices and other agencies, whose competence covers civil, family and criminal cases (judicial organs, in what follows), they may make speeches there, hand petitions, bring suits and fulfil other procedural activities on the same conditions as native citizens.
3. The clauses of this Convention are also valid for juridical persons created corresponding to the laws of the Contracting Parties.

Article 2

Exemption from fees and expenses

1. Citizens of each Contracting Party and persons residing on its territory are exempted from paying fees, court and notary expenses and have the right for free juridical aid along with the native citizens.
2. Privileges stipulated by item 1 of this Article are extended to all procedural actions during a case, including taking the resolution.

Article 3

Presenting documents on family and property states

1. The privileges, stipulated in Article 2, are granted on the basis of documents on family and property states of the person handing the petition. These documents are issued by a competent organ of the Contracting Party, on whose territory the claimant resides permanently or temporarily.

2. If the claimant is not a permanent or temporary resident of the Contracting Party, then it is sufficient to present the documents issued by the diplomatic representation or consular office of the claimant's native country.
3. The establishment taking the decision of granting privileges may request some additional data or explanations from the agency that issued the documents.

SECTION II

LEGAL AID

Article 4

Granting legal aid

1. Judicial organs of the Contracting Parties grant legal aid in civil, family and criminal cases according to this Convention.
2. Judicial organs of the Contracting Parties grant legal aid to other organizations in the cases indicated in item 1 of the present article.

Article 5

Communication procedure

While fulfilling the norms of the present Convention the competent judicial organs of the Contracting Parties communicate with each other through their central organs, unless this Convention presupposes another way of communication.

Article 6

Range of legal aid

The Contracting Parties grant legal aid to each other by way of carrying out procedural and other actions envisaged by laws of the Contracting Party, in particular: compiling and sending documents, conducting searches, requisition, sending and delivery of exhibits, conducting expertise and interrogations of the parties, accused, witnesses, experts, as well as starting criminal persecution, search of the wanted persons and their delivery, recognition and fulfilment of court decisions in civil cases, verdicts on civil claims, writs of execution, and by way of handing documents.

Article 7

The content and form of commission on granting legal aid

1. The commission on granting legal aid must contain:
   (*a*) Name of the organization representing the object of the commission;
   (*b*) Name of the organization ordering the commission;
   (*c*) Name of the case, in which the legal aid is requested;
   (*d*) Names and surnames of the parties, witnesses, suspected, accused, convicted and victims, their addresses, citizenship, occupation, in criminal cases also the place and date of birth, names and surnames of their parents (of available); for juridical persons their name and location;
   (*e*) If the persons mentioned in sub-item (d) have representatives, then names, surnames and addresses of the latter;
   (*f*) Essence of the commission and other data needed for its fulfilment;
   (*g*) In criminal cases also the description and qualification of the committed action and the data on the damage size, if any damage was inflicted by the action.

2. The commission on the delivery of the document must also contain the exact address of the recipient and the name of the document.

3. The commission must be signed and certified by the official seal of the organization ordering the commission.

Article 8

Fulfilment procedure

1. Fulfilling the commission on rendering legal aid, the organization representing the object of the commission applies laws of its country. On the request of the ordering organization the fulfilling organization may also apply the procedural norms of the ordering Contracting Party, if the norms do not contradict laws of the fulfilling Contracting Party.

2. If the requested organization is incompetent to fulfil the order, it must pass the request to a competent organization and to inform the requesting organization about this.

3. On the request of the ordering organization the fulfilling organization must inform on the due time the requesting organization and interested sides about the time and the place of the fulfilment of the order, thus enabling them to be present at the fulfilment process, according to laws of the fulfilling Contracting Party.

4. In cases, where the exact address of the person mentioned in the commission is unknown, the requested organization takes the appropriate measures for finding the address, according to laws of the Contracting Party, on whose territory the requested organization is located.

5. After the fulfilment of the commission the requested organization returns the documents to the requesting organization; in case, where the legal aid could not be rendered, the requested organization must inform in due time about the obstacles that impede the fulfilment of the commission and return the documents to the requesting organization.

Article 9

Summons of witnesses, victims, civil plaintiffs, civil defendants, their representatives and experts

1. Witnesses, victims, civil plaintiffs, civil defendants, their representatives and experts, who are summoned by the requested organization to a judicial organ of the Contracting Party ordering the commission, may not be, independent of their citizenship, brought to civil or criminal responsibility, detained or punished for an act committed before crossing the state border. These persons may not be either brought to responsibility, detained or punished in connection with their evidence or conclusions in the capacity of experts concerning the criminal case, which is the object of the court examination.

2. Persons listed in item 1 of this Article loose the guarantee given by this item, if they do not leave the territory of the Contracting Party ordering the commission (having the opportunity to do this) before expiration of 15 days since the day, when the judicial organization interrogating him/her informs that it completed the proceedings.

3. The requesting Contracting Party must pay the witnesses, experts, victims and his legal representatives the expenses of transportation to and sojourn in the requesting country, as well as the compensation for the pay that could be earned during the time of absence from one's job; the expert also has the right to be paid for the expertise. The summon must contain the information which payments must obtain the summoned persons; the judicial organ of the requesting party must, having received their petition, pay the advance for covering the corresponding expenses.

4. A summon of a witness or an expert residing on the territory of one of the Contracting Parties to a judicial organ of the requesting party must not contain any threats of coercion in the case of non-appearance.

Article 10

Order on handing documents

1. The requested judicial organ hands documents according to the procedure valid in its state, if the documents are written in its native language or in Russian, or are appended with the authorized translation to these languages. Otherwise, it hands the documents to the receiver only if the latter agrees to accept them.
2. If it is impossible to hand the documents to the address mentioned in the order, the requested judicial organ carries out, by its own initiative, the needed measures in order to find the address. If it is impossible to find the address, the requested judicial organ must inform about this to the requesting judicial organ and return the documents.

Article 11

Confirmation of handing the documents

Handing the document must be confirmed with a message signed by the person, who received the document, and certified by the official seal of the requested organ. The message must also contain the date of reception and the signature of the clerk of the organ, who handed the document. The reception of the document may be confirmed by another message, which must contain the method, place and time of handing.

Article 12

Rights of diplomatic representations or consular offices

1. The Contracting Parties have the right to hand documents to their citizens through their diplomatic representations or consular offices.
2. The Contracting Parties have the right to interrogate their citizens through their diplomatic representations or consular offices on behalf of the competent organs.
3. In the cases described in items 1 and 2 of the present article it is forbidden to apply coercive methods or threat thereof.

Article 13

Validity of documents

1. Documents, which are issued or authorized by an organ or special entrusted person within their competence, that conform to the established form and are confirmed with the official seal, must be accepted on the territories of other Contracting Parties with any special authorization.
2. Documents, which are regarded as official on the territory of one Contracting Party, have the status of official documents on the territories of other Contracting Parties.

Article 14

Mailing documents on civil status and other documents

The Contracting Parties are obliged to satisfy the requests of mailing without translation and free of charge certificates on registering acts of civil status, documents about education, duration of labour and other documents concerning personal or property rights of citizens of the requested Contracting Party or other persons residing on its territory.

Article 15

Information on legal questions

Central judicial organs of the Contracting Parties send to each other, by request, the information about laws operated or operating on their territories and on the practical appliance of these laws by judicial organs.

Article 16

Finding addresses and other data

1. The Contracting Parties are obliged, if requested, to render assistance, according to their laws, in finding addresses of persons residing on their territories, if it is needed for implementing the rights of their citizens. In this case the requesting party passes available data for assisting the search.
2. The judicial organs of the Contracting Parties are obliged to render to each other the assistance in finding out the places of employment and incomes of the residents of the requested party, to whom judicial organs of the requesting Contracting Party make demands concerning civil, family and criminal cases.

Article 17

Language

In their interrelations in the fulfilment of the present Convention the judicial organs of the Contracting Parties use the state languages of the Contracting Parties or the Russian language.

Article 18

Expenses connected with granting legal aid

The requested Contracting Party shall not demand the compensation of the expenses connected with granting legal aid. The Contracting Parties pay themselves all the expenses connected with granting legal aid on their territories.

Article 19

Refusal in granting legal aid

The request about granting legal aid may be rejected, if granting such aid may inflict damage to the sovereignty or security, or contradicts the legislation of the requested Contracting Party.

PART II

LEGAL RELATIONS IN CIVIL AND FAMILY CASES

SECTION I

COMPETENCE

Article 20

Common

1. If sections II-V of the current part do not stipulate otherwise, the suits against residents of a Contracting Party are brought, independently of their citizenship, to a court of this Contracting Party, and the suits against juridical persons are brought to a court of the Contracting Party, on whose territory the administration organ, representation or branch of this juridical person is placed.

   If the case concerns several defendants, residing on the territories of different Contracting Parties, the case is considered in any involved country on the choice of the plaintiff.
2. Courts of a Contracting Party are competent also in cases where on the territory of this party:

   (*a*) Trade, industrial or other economic activities of the enterprise (branch) of the defendant is carried out;

   (*b*) The obligations of the contract, which is the object of controversy, was fulfilled or must be fulfilled partly or entirely;

(*c*) The plaintiff in the case of protecting honour, dignity and business reputation resides permanently or temporarily.

3. In cases about property rights and other material rights for real estate only courts situated where the property is are competent.

   Claims against transport agents following from contracts on transportation of loads, passengers and luggage are handed where the administration of the transport organization, to which the pretensions are made according to the proper procedure, is placed.

Article 21

Agreements on places of jurisdiction

1. Controversies may be resolved in other courts of the Contracting Parties, if a written agreement was taken by the sides involved.

   Yet, the exclusive competence, following from item 3 of Article 20 and other norms stipulated by sections II-V of the present part, as well as from the internal legislation of the concerned Contracting Party, may be changed by an agreement of the sides.

2. If there is an agreement on passing the case to another court, the original court stops considering the case on the defendant's request.

Article 22

Interrelation of court processes

1. If a case about the same conflict of the same sides is considered by courts of two Contracting Parties, both courts being competent according to the present Convention, then the court that started the court process later must stop the legal proceedings.

2. Counter-claim and the demand of compensation, following from the same legal relationship that has the basic suit, must be considered by the same court that considered the basic suit.

SECTION II

PERSONAL STATUS

Article 23

Legal capacity and capability

1. Capability of a physical person is determined in the legislation of the Contracting Party, whose citizen is the person.

2. Capability of a person without citizenship is determined by the legislation of the country, in which the person resides.

3. Legal capacity of a juridical person is determined by the legislation of the state, according to whose laws it was established.

Article 24

Recognition as partly capable or incapable. Restoration of capability

1. In the affairs of recognition a person as party capable or incapable, except the cases described in items 2 and 3 of the present Article, a court of that Contracting Party is competent, whose citizen is the person.

2. In the case, where a court of a Contracting Party learn the reasons of recognizing as partly capable or incapable a person residing in this country and being a citizen of another Contracting Party, then the court must inform about this a court of the Contracting Party, whose citizen is the person.

3. If the court of a Contracting Party, which was informed about the reasons of recognizing a person as partly capable or incapable, did not start proceedings or did not inform about its opinion within three months, then the case about the recognition as partly capable or incapable will be considered by a court of that Contracting Party, where the person resides. The decision about the recognition of a person as partly capable or incapable is mailed to a competent court of the Contracting Party, whose citizen is the person.
4. The clauses of items 1-3 of the present article are also applied to the restoration of capability.

Article 25

Recognizing a person missing and declaring dead. Establishing the fact of death

1. In cases of recognizing a person missing and declaring dead and in cases of establishing the fact of death the competent judicial organs are the organs of the Contracting Party, whose citizen was the person, when he/she was alive according to the latest information; as to other persons, the competence is passed to the judicial organs of the country, where the person resided at latest.
2. Judicial organs of each of the Contracting Parties may recognize dead or missing, or establish the fact of death of a citizen of another Contracting Party or some other person residing on its territory on the request of interested sides residing on its territory, whose rights and interests are based on laws of this country.
3. While considering the cases of recognizing a person missing and declaring dead and in cases of establishing the fact of death judicial organs of the Contracting Parties apply laws of their state.

SECTION III

FAMILY CASES

Article 26

Marriage

The conditions of marriage are determined for each of the future spouses by the legislation of the Contracting Party, of which he/she is a citizen; for persons without citizenship the procedure is determined by the legislation of the country, where they permanently reside. What concerns the obstacles to the marriage, the laws must be obeyed of that Contracting Party, where the marriage is registered.

Article 27

Legal relations between spouses

1. Personal and property legal relations between spouses are determined by the legislation of the Contracting Party, on whose territory the spouses jointly reside.
2. If one of the spouses resides in one Contracting Party, and another – in another Contracting Party, and both spouses have the same citizenship, then their personal and property legal relations are determined by the legislation of that Contracting Party, whose citizens they are.
3. If one of the spouses is a citizen of one Contracting Party, and another – of another Contracting Party, and one of them resides in one Contracting Party, and another – in another Contracting Party, then their personal and property legal relations are determined by the legislation of the Contracting Party, on whose territory they had their last joint residence.
4. If persons mentioned in item 3 of the present article had no joint residence on the territories of the Contracting Parties, then the legislation is applied of that Contracting Party, whose judicial organs consider the controversy.
5. The legal relations of the spouses concerning their real estate are determined by the legislation of the Contracting Party, on whose territory the real estate is.
6. The judicial organs of the Contracting Party defined in items 1-3 and 5 of the present article are competent in the affairs concerning personal and property legal relations of spouses.

Article 28

Divorce

1. In the affairs concerning divorce the legislation is applied of that Contracting Party, whose citizens at the moment of handing their application are the spouses.
2. If one of the spouses is a citizen of one Contracting Party, and another – of another Contracting Party, then the legislation is applied of that Contracting Party, whose judicial organ considers the case of divorce.

Article 29

Competence of judicial organs of the Contracting Parties

1. In the affairs concerning divorce, to which item 1 of Article 28 is applicable, the judicial organs are competent of the Contracting Party, whose citizens at the moment of handing their application are the spouses. If at the moment of handing in their application the both spouses reside on the territory of another Contracting Party, then the judicial organs of the latter are also competent.
2. In the affairs concerning divorce, to which item 2 of Article 28 is applicable, the judicial organs are competent of the Contracting Party, on whose territory the both spouses reside. If one of the spouses resides in one Contracting Party, and another – in another Contracting Party, then the judicial organs of the both Contracting Parties are competent.

Article 30

Acknowledging a marriage null and void

1. In the affairs concerning acknowledging a marriage null and void the legislation is applied of that Contracting Party, where, according to Article 26, the marriage was registered.
2. Competence of judicial organs in the affairs concerning acknowledging a marriage null and void is determined according to Article 27.

Article 31

Establishing and contesting paternity or maternity

Establishing and contesting paternity or maternity are determined by the legislation of that Contracting Party, whose citizen is the child by birth.

Article 32

Legal relations between parents and children

1. The legal relations between parents and children are determined by the legislation of that Contracting Party, on whose territory the children permanently reside.
2. In the affairs of taking alimony from adult children the legislation is applied of that Contracting Party, on whose territory the claimant resides.
3. In the affairs concerning the legal relations between parents and children the court is competent of that Contracting Party, whose legislation is applicable according to items 1 and 2 of the present article.

Article 33

Guardianship or trusteeship

1. Establishment or cancellation of guardianship or trusteeship is done according to the legislation of that Contracting Party, whose citizen is the person, for whom the guardianship or trusteeship are established or cancelled.

2. The legal relations between guardian or trustee and the person under wardship are regulated by the legislation of that Contracting Party, whose judicial organ appointed the guardian or trustee.

3. The duty to accept guardianship or trusteeship is determined by the legislation of that Contracting Party, whose citizen is the person appointed as guardian or trustee.

4. Guardian or trustee of a person, who is a citizen of one of the Contracting Parties, may be appointed a citizen of another Contracting Party, if he/she resides on the territory of the Party, where the guardianship or trusteeship will be carried out.

Article 34

Competence of judicial organs of the Contracting Parties in the questions of guardianship or trusteeship

In the affairs of establishment or cancellation of guardianship or trusteeship the judicial organs are competent of that Contracting Party, whose citizen is the person, for whom the guardianship or trusteeship are established or cancelled, if the present Convention does not stipulate otherwise.

Article 35

Procedure of taking measures concerning guardianship or trusteeship

1. In case, where measures concerning guardianship or trusteeship must be applied in interests of a citizen of a Contracting Party, who permanently or temporarily resides, or has property on the territory of another Contracting Party, a judicial organ of this Contracting Party must inform without delay the organ competent according to Article 34.

2. In urgent cases the judicial organ of another Contracting Party may take the needed temporary measures according to its legislation. If doing so it must inform about this without delay the organ competent according to Article 34. These measures remain valid until the organ mentioned in Article 34 takes its decision.

Article 36

Procedure of passing guardianship or trusteeship

1. The organ competent according to Article 34 may pass the guardianship or trusteeship to an organ of another Contracting Party in the case, where the person, being under guardianship or trusteeship, permanently or temporarily resides, or has property on the territory of this Contracting Party. Passing guardianship or trusteeship becomes valid from the moment, when the requested organ takes on itself the guardianship or trusteeship and informs about this the requesting organ.

2. The organ, which, according to item 1 of the present article, took on itself the guardianship or trusteeship, carries them out according to the legislation of its state.

Article 37

Adoption

1. The adoption or its cancellation is determined by the legislation of the Contracting Party, whose citizen is the adopting parent at the moment of handing the application about the adoption or its cancellation.

2. If the child is a citizen of another Contracting Party, then for the adoption or its cancellation it is necessary to get the consent of a legal representative or a competent state organ, as well as the consent of the child, if it is demanded by the legislation of the Contracting Party, whose citizen is the child.

3. If the child is being adopted by spouses, one of whom is a citizen of one Contracting Party and another – of another Contracting Party, then the adoption or its cancellation must be carried out in accordance with the procedures stipulated by the legislation of the both Contracting Parties.

4. In the affairs connected with the adoption or its cancellation the organ is competent of that Contracting Party, whose citizen is the adopting parent at the moment of handing the application about the adoption or its

cancellation; in the case envisaged in item 3 of the present article the organ is competent of that Contracting Party, on the territory of which the spouses had or have their last joint temporary or permanent residence.

SECTION IV

LEGAL PROPERTY RELATIONS

Article 38

Property rights

1. The property rights for real estate are determined by the legislation of the Contracting Party, on whose territory the real estate is. The question whether some property is real estate is solved according to the legislation of the country, on whose territory the property is.
2. The property rights for transport vehicles, which had to be included into the state registers, are determined according to the legislation of the Contracting Party, on whose territory the organ is situated that registered the vehicle.
3. Appearance or cessation of property rights or other material rights for property are determined by the legislation of the Contracting Party, on whose territory the property was at the moment, when an action or another circumstance occurred that caused the appearance and cessation of such rights.
4. Appearance or cessation of property rights or other material rights for property, which is the object of a deal, are determined by the legislation of the country, where the deal is concluded, if the involved sides did not decide otherwise.

Article 39

Form of a deal

1. The form of a deal is determined according to the legislation of the country, where the deal is concluded.
2. The form of the deal concerning real estate and rights for it is determined according to the legislation of the Contracting Party, on whose territory the real estate is.

Article 40

Proxy

The form and the expiration date of a proxy are defined according to the legislation of the Contracting Party, on whose territory the proxy is given.

Article 41

Rights and obligations of the sides of a deal

Rights and obligations of the sides of a deal are determined by the legislation of the country, where the deal is concluded, if the involved sides did not decide otherwise.

Article 42

Compensation of a damage

1. Obligations on the compensation of a damage, except those, which follow from the contracts and other legal actions, are determined by the legislation of the Contracting Party, on whose territory the action or other circumstances occurred that caused the demand on the compensation.
2. If the tortfeasor and the aggrieved side are citizens of the same country, then the legislation of this country is applicable.

3. In the cases mentioned in items 1 and 2 of the present article a court is competent of that Contracting Party, on whose territory the action or other circumstances occurred that caused the demand on the compensation. The aggrieved side may hand a claim also in a court of the Contracting Party, where the defendant resides.

Article 43

Time limitation of action

The questions of the time limitation of action are solved according to the legislation used for regulating such legal relations.

SECTION V

INHERITANCE

Article 44

The equality principle

Citizens of all Contracting Parties may inherit on the territories of other Contracting Parties property or rights according to laws or testament under equal conditions and in same volume as native citizens of this country.

Article 45

Inheritance rights

1. The rights for inheritance of property, except the case determined by item 2 of the present article, are determined by the legislation of that Contracting Party, on whose territory the testator had his/her latest permanent residence.
2. The rights for inheritance of real estate are determined by the legislation of that Contracting Party, on whose territory the real estate is.

Article 46

Passing the inheritance to the state

If, by the legislation of the Contracting Party applicable while inheritance, the heir is the state, then the inherited movables pass to the state, whose citizen was the testator at the moment of his death; inherited real estate passes to the state, on whose territory the real estate is.

Article 47

Testament

The person's ability to compile or cancel the testament, as well as the form of the testament and its cancellation are determined by the legislation of that Contracting Party, on whose territory the testator permanently resided at the moment of compiling the act. Yet, the testament and its cancellation may not acknowledged as invalid because of imperfect form, if the form satisfies the demands of the legislation of the state, where the testament was compiled.

Article 48

Competence in the cases concerning inheritance

1. Proceedings of the cases concerning inheritance of movables must be conducted by judicial organs of that Contracting Party, on whose territory the testator resided at the moment of his death.

2. Proceedings in the cases concerning inheritance of real estate must be conducted by judicial organs of that Contracting Party, on whose territory the real estate is.

3. Clauses of items 1 and 2 of the present article are also applicable when considering the controversies concerning inheritance.

Article 49

Competence of diplomatic representations or consular offices in inheritance affairs

In inheritance affairs, including inheritance controversies, diplomatic representations or consular offices are competent to represent (except the right for refusal from the inheritance) citizens of their state without a special proxy in judicial organs of other Contracting Parties, if the citizens are absent or did not appoint their attorney.

Article 50

Measures on guarding the inheritance

1. The judicial organs of the Contracting Parties take measures, according to their legislation, needed for guarding the inheritance left on their territories by citizens of other Contracting Parties or for administrating the inheritance.

2. The diplomatic representation or consular office of the Contracting Party, whose citizen is the heir, must be immediately informed about the measures taken according to item 1 of the present article. The mentioned organizations may take part in the implementation of these measures.

3. According to the request of the judicial organs competent to conduct proceedings in the inheritance affair, as well as of the diplomatic representations or consular offices, the measures taken according to item 1 of the present article may be changed, cancelled or postponed.

PART III

RECOGNITION AND EXECUTION OF DECISIONS

Article 51

Recognition and execution of decisions

Each of the Contracting Parties, under the conditions determined by the present Convention, must recognize and execute the following decisions, taken on the territories of other Contracting Parties:

(*a*) Decisions of judicial organs on civil and family affairs, including agreements of peace confirmed by a court and notarial acts concerning financial obligations (decisions, in what follows);

(*b*) Court decisions on criminal cases of recompensing damage.

Article 52

Recognition of decisions not requiring execution

1. The decisions not requiring execution, that were taken by judicial organs of each Contracting Party and came into effect, are recognized on the territories of all Contracting Parties without special proceedings provided that:

(*a*) Judicial organs of the requested Contracting Party had not taken before a decision in this case that came into effect;

(*b*) The case, according to the present Convention or, if it is not covered by the Convention, according to the legislation of the country, on whose territory the decision must be recognized, is not related to the exclusive competence of judicial organs of the Contracting Party.

2. The clauses of item 1 of the present article are also related to decisions on guardianship and trusteeship, as well as to decisions on divorce, taken by organs competent according to the legislation of the Contracting Party, on whose territory the decision was taken.

Article 53

Petition on the permission for coercive execution of a decision

1. The petition on the permission for coercive execution of a decision is handed to a competent court of the Contracting Party, where the decision must be executed. The petition may be also handed to the court that took the decision in the first instance. This court passes the petition to a court competent to take the decision on the petition.
2. The petition is appended by:
   (*a*) The decision or its authorized copy, as well as the official document confirming that the decision came into effect and must be executed or that it must be executed before coming into effect, if it does not follow from the decision itself;
   (*b*) The document confirming that the side, against which the decision was taken and which did not participate in the process and was not properly represented, was summoned to the court in time and in the proper order;
   (*c*) The document confirming the partial execution of the decision at the moment of its sending;
   (*d*) The document confirming the agreement of the sides about their turning to court.
3. The petition on the permission for coercive execution of a decision and the appended documents must be supplied with the authorized translation to the language of the requested Contracting Party of to Russian.

Article 54

Procedure of recognition and coercive execution of decisions

1. The petition on the recognition and permission for coercive execution of decisions envisaged in Article 51 must be considered by courts of the Contracting Party, on whose territory the coercive execution is to be taken.
2. The court considering the petition on the recognition and permission for coercive execution confines its decision to checking the conditions stipulated by the present Convention. In the case, where the conditions are observed, the court takes a decision on the coercive execution.
3. The procedure of the coercive execution is determined by the legislation of the Contracting Party, on whose territory the coercive execution is to be taken.

Article 55

Refusal to recognize or execute decisions

The recognition of the decisions mentioned in Article 52 and the issue of the permission for coercive execution may be refused in cases, where:

(*a*) According to the legislation of the Contracting Party, on whose territory the decision was taken, it did not come into effect or does not requires execution, except the decisions that must be executed before coming into effect;

(*b*) The defendant did not participate in the process because he/she or his/her attorney did not receive the summon to the court in the proper time and order;

(*c*) Another decision was taken beforehand on the territory of the Contracting Party, where the decision must be recognized and executed, that had already come into effect by the same case between the same sides, on the same subject and on the same reasons, or in case, where there is a recognized decision of a court of the third party, or if a judicial organs of the Contracting Party had started before the proceedings on this case;

(*d*) According to the clauses of the present Convention or, if it is not covered by the Convention, according to the legislation of the Contracting Party, on whose territory the decision must be recognized and executed, the case is related to the exclusive competence of its judicial organs;

(*e*) The document, which confirms the agreement of the sides about their turning to court, is absent;

(*f*) The term of the coercive execution stipulated by the legislation of the Contracting Party, whose court executes the order, has expired.

PART IV

LEGAL AID IN CRIMINAL CASES

SECTION I

EXTRADITION

Article 56

Obligations for extradition

1. The Contracting Parties take on obligation, according to the conditions determined by the present Convention, to extradite to each other by the request the persons, who are on their territories, for bringing to criminal responsibility or for executing a verdict.
2. The extradition for bringing to criminal responsibility is performed for the actions that, by laws of the both Contracting Parties, are considered to be punishable by an imprisonment not shorter than one year.
3. The extradition for executing a verdict is performed for the actions that, by laws of the both Contracting Parties, are considered to be punishable, and for which the person, who must be extradited, was condemned for the term not shorter than six months.

Article 57

Refusal in extradition

1. The extradition is not performed if:
   (*a*) The person to be extradited is a citizen of the requested Contracting Party;
   (*b*) At the moment of receiving the request the criminal persecution, according to the legislation of the requested Contracting Party, cannot be started, or the verdict cannot be executed because of expiration of the term or by other legal reasons;
   (*c*) The person to be extradited was already tried in the requested Contracting Party for the same crime, and the verdict was issued or the case was closed by a decision that already came into effect;
   (*d*) The criminal persecution, according to the legislation of the requested or requesting Contracting Party, is conducted in the capacity of a private accusation (after the claim of the victim).
2. The extradition may be refused if the crime, in connection with which the extradition is required, was committed on the territory of the requested country.
3. In case of the refusal in extradition the requesting Contracting Party must be informed on the reasons of the refusal.

Article 58

Demand of extradition

1. The demand of extradition must contain:
   (*a*) Name of the requested organ;
   (*b*) Description of the actual circumstances of the action and the text of the law of the requesting Contracting Party, after which the action is considered to be a crime;
   (*c*) Surname, first name and patronymic of the person to be extradited, his/her citizenship, place of permanent or temporary residence, description of the person and other personal data, if possible;

(*d*) Description of the size of damage caused by the action.

2. The demand of extradition must be appended with the authorized copy of the detention warrant.

3. The demand of extradition for executing the verdict must be appended with the authorized copy of the verdict with the mark about its coming into effect, as well as the text of the criminal law, according to which the person was found guilty. If the condemned has already done a part of his term, the information about it is given too.

4. The demand of extradition and the appended documents must be compiled according to Article 17.

Article 59

Additional information

1. If the demand of extradition does not contain all the needed information, then the requested Contracting Party may demand the additional information, giving the term of one month. This term may be doubled on the petition of the requesting Party.

2. If the requesting Contracting Party do not present the additional information within the prescribed term, then the requested Contracting Party must release the detained person.

Article 60

Detention for extradition

Having received the demand of extradition the requested Contracting Party must immediately take measures for detention of the person to be extradited, except in cases, where the extradition may not be performed.

Article 61

Detention before receiving the demand of extradition

1. The person to be extradited may be detained before receiving the demand of extradition, by special request. The request must contain reference to the detention warrant or the verdict that came to effect, and the promise to send additionally the demand of extradition. The request for the detention may be sent by mail, telegraph, telex or facsimile.

2. The person may be detained without the request described in item 1 of the present article, if there are doubts envisaged by law that the person committed a crime, implying extradition, on the territory of other Contracting Party.

3. The second Contracting Party must be immediately informed about taking into custody or the detention before receiving the demand of extradition.

Article 62

Releasing the detained person

1. The person detained according to item 1 of Article 61 must be released, if the demand of extradition is not received within one month since the detention.

2. The person detained according to item 2 of Article 61 must be released, if the demand of extradition is not received within the term determined for detention in the legislation.

Article 63

Postponement of extradition

If the person to be extradited was brought to criminal responsibility or condemned for some other crime on the territory of the requested Contracting Party, his/her extradition may be postponed until finishing the criminal persecution, executing the verdict or until the release.

Article 64

Temporary extradition

1. If the postponement of extradition envisaged by Article 63 may imply the expiration of the term of the criminal responsibility or to damnify the investigation, then the person to be extradited may be extradited temporarily.
2. The temporarily extradited person must be returned after the completion of the actions concerning the criminal case, for which he/she was extradited, but not later than three months after the extradition. If there are well-grounded reasons, this term may be prolonged.

Article 65

Collision of demands of extradition

If the demands of extradition come from several states, the requested Contracting Party selects itself, which of the demands to satisfy.

Article 66

Limits of criminal persecution of the extradited person

1. The extradited person may not be brought to criminal responsibility or punished for the crime committed before the extradition, which was not the reason of the extradition without the consent of the requested Contracting Party.
2. The extradited person may not be transferred to the third party without the consent of the requested Contracting Party.
3. The consent of the requested Contracting Party is not required if the extradited person will not leave the territory of the requesting Contracting Party or will return there voluntarily within one month after finishing the trial or, in case of conviction, within one month after the release. This term does not include the time during which the extradited person could not leave the territory of the requesting Contracting Party independently of his/her will.

Article 67

Transfer of the extradited person

The requested Contracting Party informs the requesting Contracting Party about the place and time of the extradition. If the requesting Contracting Party does not accept the person to be extradited during 15 days after the appointed date of the transfer, the person must be released.

Article 68

Repeated extradition

If the extradited person dodges the criminal persecution or punishment and returns on the territory of the requested Contracting Party, then the person must be extradited on the repeated demand without presenting documents mentioned in Articles 58 and 59.

Article 69

Notification on the results of proceedings on the criminal case

The Contracting Parties notify each other about the results of the proceedings on the criminal case of the extradited person. If requested, the copy of the final decision is sent.

Article 70

Transit transportation

1. A Contracting Party, by the request of another Contracting Party, permits the transit transportation through its territory of persons, extradited to the latter by a third country.
2. The request for the transit is considered in the same manner as the demand of extradition.
3. The requested Contracting Party permits the transit transportation in the manner, which it considers more reasonable.

Article 71

Expenses of the extradition and transit transportation

The expenses of extradition must be paid by that Contracting Party, on whose territory the expenses are made, and the expenses of transit transportation must be paid by the Contracting Party requesting the transportation.

SECTION II

CRIMINAL PERSECUTION

Article 72

Obligation to carry out criminal persecution

1. Each Contracting Party is obliged, by the commission of another Contracting Party, to carry out the criminal persecution against its own citizens, suspected in committing a crime on the territory of the requesting Contracting Party.
2. If the crime, after which the case is started, implies civil and legal demands of the persons, to whom the damage was inflicted by the crime, then these demands must be considered within this case, if the petition about the damage compensation is available.

Article 73

Commission to carry out the criminal persecution

1. The commission to carry out the criminal persecution must contain:
   (*a*) Name of the requesting organ;
   (*b*) Description of the action that caused the commission to carry out the criminal persecution;
   (*c*) Information, as correct as possible, on the place and time of the action;
   (*d*) Text of the law of the requesting Contracting Party, which qualifies the action as a crime, as well as the texts of other legal acts, which are essential for the proceeding on the case;
   (*e*) Surname and first name of the suspect, his/her citizenship and other personal data;
   (*f*) Complaints of the victims in connection with criminal cases started by victim's complaint and petitions about the damage compensation;
   (*g*) Estimation of the size of the damage inflicted by the action.

The commission must be appended with the documents concerning the criminal persecution and proofs that the requesting Contracting Party has.

2. If the requesting Contracting Party sends a started criminal case to the requested Contracting Party, the latter must continue the crime investigation using its own legislation. Each document on the case must be authorized and stamped with the official seal of the competent judicial organs of the requesting Contracting Party.
3. The commission and the appended documents must be compiled according to the clauses of Article 18.

4. If the accused is under custody on the territory of the requesting Contracting Party at the moment of sending the commission to carry out the criminal persecution, he/she must be transported to the territory of the requested Contracting Party.

Article 74

Notification in the results of the criminal persecution

Requested Contracting Party must notify the requesting Contracting Party about the final decision. If requested, the copy of the final decision is sent.

Article 75

Consequences of taking the decision

If the requested Contracting Party received, according to Article 72, the commission to carry out the criminal persecution after the verdict came into effect or after a judicial organ of the requested party took some other decision, the criminal case may not be started by the judicial organs of the requesting Contracting Party; if the case was already started, it must be closed.

Article 76

Mitigating and aggravating circumstances

Each Contracting Party, while investigating crimes and considering criminal cases in court, takes account of mitigating and aggravating circumstances, stipulated by laws of the Contracting Parties, regardless of the territory, where the circumstances occurred.

Article 77

Procedure of consideration of the cases within jurisdiction of courts of two or more Contracting Parties

If a person or a group of persons are accused of committing several crimes within jurisdiction of courts of two or more Contracting Parties, a court is competent of that Contracting Party, on whose territory the preliminary investigation has been finished. In such a case the affair is considered according to the juridical procedures of that Contracting Party.

SECTION III

SPECIAL REGULATIONS OF LEGAL AID IN CRIMINAL CASES

Article 78

Passing exhibits

1. By the request the Contracting Parties are obliged to pass to each other the following exhibits:
   (*a*) Objects used in committing the crime, which implied the extradition of the person according to the present Convention, including tools and weapons of the crime; objects that were acquired as a result of the crime or as a remuneration for it, or the objects, which the criminal got in exchange for objects acquired in such a manner;
   (*b*) Objects that may be used as proof of the crime; these objects must be passed also if the criminal cannot be extradited because of his death, escape or other reasons.
2. If the requested Contracting Party needs as proof the objects mentioned in item 1 of the present article, then the passing may be postponed until the proceedings are finished.
3. The rights of third sides for the passed objects remain valid. After finishing the proceedings these objects must be returned gratis.

Article 79

Notification about verdicts and information on criminal records

1. Each Contracting Party must annually inform other Contracting Parties about the verdicts of guilty that came into effect, which were issued by its courts against the citizens of the corresponding Contracting Party, sending also fingerprints of the convicted.
2. Each Contracting Party must inform other Contracting Parties gratis, if requested, about the criminal records of persons, who were tried in its courts and found guilty, if these persons are brought to criminal responsibility on the territory of the requesting Contracting Party.

Article 80

Procedure of communications concerning extradition and criminal persecution

The communications concerning extradition and criminal persecution, as well as concerning the execution of investigation commissions, which infringe citizens' rights and require prosecutor's sanction, are conducted by general prosecutors (prosecutors) of the Contracting Parties.

SECTION IV

CONCLUDING REMARKS

Article 81

Problems arising in implementing the Convention

The problems arising in implementing the Convention are solved by competent organs of the Contracting Parties on their mutual agreement.

Article 82

Compatibility with other international agreements

The present Convention does not collide with clauses of other international agreements, whose participants are the Contracting Parties.

Article 83

Procedure of coming into effect

1. The present Convention must be ratified by the states, which signed it. Instruments of ratification are handed for keeping the Belarus Government that plays the function of the bailee of the Convention.
2. The present Convention comes into effect on the 30th day, counting from the day of handing the bailee the third instrument of ratification. For the state, which hands in its instrument of ratification after the Convention comes into effect, it will come into effect on the 30th day, counting from the day of handing the bailee its instrument of ratification.

Article 84

Term of expiration of the Convention

1. The present Convention is operable during five years since the day of coming into effect. After the expiration of this term the Convention will be automatically prolonged for other five years.
2. Each Contracting Party may leave the present Convention having sent the written notification to the bailee not later than 12 months before the expiration of the consecutive five-year term.

Article 85

Retroactive force

The present Convention is valid also for the legal relations occurred before its coming into effect.

Article 86

Procedure of joining the Convention

Other states may join the present Convention after its coming into effect, if all the Contracting Parties agree, by way of handing the bailee the documents about the wish to join. The joining becomes valid after 30 days after the bailee received the last notification of agreement from the member-countries.

Article 87

Bailee's obligations

The bailee shall inform without delay all the states, which signed the present Convention or joined it later, about the date of handing each instrument of ratification or document about joining, about the date of the Convention coming into effect, as well as about reception of other notifications.

Compiled in the city of Minsk on 22 January 1993 in one original in the Russian language. The original is stored in the Archive of the Government of Belarus, which will direct one authorized copy of the Convention to each member-state.

THE LAW OF UKRAINE

On the ratification of the Convention on legal aid and legal relations in civil, family and criminal cases

The Supreme Rada of Ukraine rules:

To ratify the Convention on legal aid and legal relations in civil, family and criminal cases (Convention, in what follows) signed on behalf of Ukraine in Minsk on 22 January 1993 with the following reservations:

1. Ukraine takes the obligations about rendering legal aid as it is determined by Article 6 of the Convention, except acknowledgement and fulfilment of writs of execution.
2. Ukraine takes the obligations to recognize and execute the decisions taken on the territories of the member-states envisaged by item 'a' of Article 51 of the Convention, except notarial acts on financial obligations.

Head of the Supreme Rada of Ukraine
The City of Kyiv, 10 November 1994 O. MOROZ
No. 240/94-BP

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PROTOCOL TO THE CONVENTION ON LEGAL AID IN CIVIL, FAMILY AND CRIMINAL CASES

Adopted in Moscow on 29 March 1997

Entry into force: 17 September 1999, in accordance with Article 83

The Member States of the Convention on legal aid in civil, family and criminal cases of 22 January 1993 have agreed to introduce the following amendments and additions into the mentioned Convention:

1. In item 2 of Article 1 after the words "prosecutor's office" to add a comma and the words "organs of internal affairs" (the further text must not be changed).

2. To present Articles 5 and 6 in the following form:

"Article 5

Communication procedure

When executing the Convention the competent organs of the Contracting Parties communicate with each other through their central, territorial and other organs, if the Convention does not stipulate another procedure of communication. The Contracting Parties determine the list of their central, territorial and other organs, which are empowered to conduct the direct communication, about which they inform the bailee.

Article 6

Range of legal aid

The Contracting Parties render legal aid to each other by executing procedural and other actions, stipulated by the legislation of the requested Contracting Party, including compiling and mailing documents, carrying our surveillance, searches, withdrawing and transferring exhibits, conducting expertise and search of persons, conducting criminal persecution, extradition of persons to bring them to criminal responsibility of executing verdict, recognition and execution of court decisions in civil cases, verdicts in civil claims, issuing writs of execution and handing documents.'

3. In the sub-item "d" of item 1 of Article 7:

   (*a*) After the word "suspected" to add the words "or accused", the words "their name and location" exchange for the words "their name, juridical address or/and location".

4. To present item 4 of Article 9 in the following form:

   (*a*) "4. Summons of the persons mentioned in item 1 of the present Article, who reside on the territory of one of the Contracting Parties, to the judicial organs of other Contracting Party must not contain any threats of coercion in the case of non-appearance."

5. To present Article 14 of the Convention in the following form:

"Article 14

Mailing documents on civil status and other documents

The Contracting Parties are obliged to mail on request without translation and free of charge certificates on registering acts of civil status – directly through registrar's offices of the Contracting Parties with informing the citizen about mailing the documents.

The Contracting Parties are obliged to mail on request without translation and free of charge documents on education, duration of labour and other documents concerning personal or property rights of citizens of the requested Contracting Party or other persons residing on its territory."

6. To complete Article 17 with the following sentence:

"In case of compiling document in the state languages of the Contracting Parties the document must be appended with the authorized translation into the Russian language."

7. To present Article 19 in the following form:

"Article 19

Refusal in granting legal aid

The request about granting legal aid may be rejected partially or completely, if granting such aid may inflict damage to the sovereignty or security, or contradicts to the legislation of the requested Contracting Party. In case of the refusal in granting legal aid the requesting Contracting Party must be immediately informed on the reasons of the refusal."

8. To introduce into the Convention the following Article 22-1:

"Article 22-1

Request on prosecutor's participation in a civil trial

A prosecutor of a Contracting Party has the right to turn to a prosecutor of another Contracting Party with the request on starting a court affair on the protection of rights and legal interests of citizens of the requesting Contracting Party, on taking part in the consideration of such affairs or on bringing cassation or *votum separatum* into a court of higher instance, as well as on bringing protest in the order of surveillance over court organs in such affairs."

9. To present Article 32 in the following form:

"Article 32

Legal relations between parents and children

1. The rights and obligations of parents and children, including the obligation of parents to support their children, are determined by the legislation of that Contracting Party, on whose territory they have permanent joint residence, and if there is no permanent joint residence of parents and children, their rights and obligations are determined by the legislation of that Contracting Party, whose citizens are the children.

   On the request of the plaintiff the alimony obligations are determined by the legislation of that Contracting Party, on whose territory the children reside permanently.

2. The alimony obligations of adult children to their parents, as well as the alimony obligations of other family members are determined by the legislation of that Contracting Party, on whose territory they have permanent joint residence. If there is no permanent joint residence, such obligations are determined by the legislation of that Contracting Party, whose citizen is the plaintiff.

3. In the affairs concerning the legal relations between parents and children the court is competent of that Contracting Party, whose legislation is applicable according to items 1 and 2 of the present article.

4. Execution of court decisions connected with breeding children is done according to the procedure established by the legislation of the Contracting Party, on whose territory the child resides.

5. The Contracting Parties render each other aid in searching defendants in the alimony affairs, if there are grounds to believe that the defendant stays on the territory of another Contracting Party, and a court approved the search."

10. To present the title of Part IV in the following form:

    "Part IV. Legal aid and legal relations in criminal cases."

11. To present the title of section III of Part IV in the following form:

    "Section III. Special clauses on legal aid and legal relations in criminal cases."

12. To present item 1 of Article 58 in the following form:

    "1. The demand of extradition must contain the following information:

    (*a*) Names of the requesting and requested organs;

(*b*) Description of the actual circumstances of the action and the text of the law of the requesting Contracting Party, after which the action is considered to be a crime with indicating the measure of punishment stipulated by this law;

(*c*) Surname, first name and patronymic of the person to be extradited, his/her year of birth, citizenship, place of permanent or temporary residence, description of the person, photo, fingerprints and other personal data, if possible;

(*d*) Description of the size of damage caused by the action."

13. To present Article 60 in the following form:

"Article 60

Search and detention for extradition

Having received the demand of extradition, the requested Contracting Party must immediately take measures for search and detention of the person to be extradited, except in cases, where the extradition may not be performed."

14. To introduce into the Convention the following Articles 61-1 and 61-2:

"Article 61-1

Search of a person before receiving the demand of extradition

1. The Contracting Parties carry out by the request the search of a person before receiving the demand of his/her extradition, if there are grounds to believe that the person stays on the territory of the requested Contracting Party.
2. The request for the search is compiled according to the clauses of Article 7 and must contain as complete as possible description of the person to be searched along with other information, which enables the searchers to determine his/her location, the request for detainment with the obligation to mail later the demand of extradition of the person.
3. The request for the search must be appended with a copy of the decision of a competent organ about detention or with a copy of the verdict that came into effect, information about the uncompleted part of the punishment, as well as the photo and fingerprints (if available).
4. The requesting Contracting Party must be immediately informed about the detention of the searched person or other results of the search.

Article 61-2

Calculation of the term of detainment

The term of keeping under custody of the person detained according to the clauses of Articles 60, 61 and 61-1 of the present Convention, is included into the total term of detainment stipulated by the legislation of the Contracting Party, to whom the person was extradited."

15. To present Article 62 in the following form:

"Article 62

Releasing the detained person

1. The person detained according to item 1 of Article 61 and to Article 61-1 must be released, if the requesting Contracting Party informs about its intention to release the person, or if the demand of extradition with all appended documents listed in Article 58 is not received within forty days since the detention.
2. The person detained according to item 2 of Article 61 must be released, if the request for his/her detention stipulated by item 1 of Article 61 is not received within the term determined for detention in the legislation."

16. To introduce into the Convention the following Article 67-1:

"Article 67-1

Repeated detention

Releasing a person according to item 2 of Article 59, to items 1 and 2 of Article 62 and to Article 67 does not prevent the repeated detention of the person to be extradited, in case of receiving the repeated demand of extradition."

17. In item 1 of Article 70 after the words "extradited to the latter" to add the words "or delivered temporarily."

18. In Article 71 after the words "expenses of extradition" to add the words "or temporarily delivery."

19. To introduce into the Convention the following Article 76-1:

"Article 76-1

Acknowledgement of verdicts

While solving the questions about the acknowledgement of a person as an especially dangerous recidivist, about recognition of the facts of repeated commitment of the crime and violation of duties connected with conditional prison term, postponed execution of verdict or conditional pre-term release, the judicial organs of the Contracting Parties may acknowledge and count in verdicts issued by courts (tribunals) of the former USSR and union republics, as well as courts of the Contracting Parties."

20. To introduce into the Convention the following Article 78-1:

"Article 78-1

Temporarily delivery of a detained or imprisoned person

1. If it is needed to interrogate as a witness or a victim a person, detained or imprisoned on the territory of a Contracting Party, or to conduct other investigation actions with his/her participation, this person, regardless of citizenship, according to the well-grounded request of the interested Contracting Party and by the decision of General Prosecutor (prosecutor) of the requested Contracting Party, may be temporarily delivered under the condition that the person will be kept under custody and returned at the pre-determined time.
2. The request about the temporarily delivery of the person, mentioned in item 1 of the present article, is compiled according to Article 7 and must also contain the information about the term, during which the presence of the person is needed in the requesting Contracting Party.
3. The temporarily delivery of the person, mentioned in item 1 of the present article, is not done:
   (*a*) If the person did not give consent for this delivery;
   (*b*) If the person must be present at the preliminary investigation or court session on the territory of the requested Contracting Party;
   (*c*) If the delivery may cause the violation of the term of the person's detention or imprisonment.
4. The guarantees envisaged in item 1 of Article 9 are expanded to the person mentioned in item 1 of the present article."

21. To present Article 80 of the Convention in the following form:

"Article 80

Special procedure of communications

The communications concerning extradition and criminal persecution are carried out by General Prosecutors (prosecutors) of the Contracting Parties.

Communications concerning questions of procedural and other actions, which demand a sanction of a prosecutor (a court), are carried out by prosecutor's offices in the order established by General Prosecutors (prosecutors) of the Contracting Parties."

This Protocol shall be ratified and come into effect according to the procedure stipulated by Article 83 of the above-mentioned Convention.

Other countries may join this Protocol after its coming into effect and with the consent of all Contracting Parties by way of handing in the document about joining to the bailee. The joining is considered valid after 30 days since the bailee received the last notification on the consent for this joining.

Compiled in the city of Moscow on 29 March 1997 in one original in the Russian language. The original is stored in the Executive Secretariat of the CIS, which will direct one authorized copy to each state that signed the Protocol.

On behalf of Azerbaijan Republic
On behalf of Moldova Republic
On behalf of Armenian Republic
On behalf of Russian Federation
On behalf of Belarus Republic
On behalf of Tajik Republic
On behalf of Georgia
On behalf of Turkmen Republic
On behalf of Kazakh Republic
On behalf of Uzbek Republic
On behalf of Kyrgyz Republic
On behalf of Ukraine

LAW OF UKRAINE

On the ratification of the Protocol to the Convention on legal aid in civil, family and criminal cases of 22 January 1993

The Supreme Rada of Ukraine rules:

To ratify the Protocol to the Convention on legal aid and legal relations in civil, family and criminal cases (Convention, in what follows) signed in Moscow on 28 March 1997 with the following reservations:

(a) To item 19: "Ukraine does not take the obligation to acknowledge and count in verdicts issued by courts of the Contracting Parties in solving questions about recognizing a person as an especially dangerous recidivist, about establishing the fact of the repeated commitment of the crime and violation of duties connected with conditional prison term, postponed execution of verdict or conditional pre-term release";

(*b*) To item 21: "Ukraine takes the obligation to carry out communications on executing procedural and other actions, envisaged in the second part of Article 80 of the Convention, in the order stipulated by Article 5 of the Convention".

Head of the Supreme Rada of Ukraine O. MOROZ
The City of Kyiv, 3 March 1998
No. 140/98-BP

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CIS AGREEMENT ON AID TO REFUGEES AND FORCED MIGRANTS

Signed on 24 September 1993 by Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, and Uzbekistan

The States – Parties to this Agreement, hereinafter referred to as "the Parties",

Based on universally recognized principles of international law and humanism,

Reaffirming their commitments to the international agreements aimed at protecting human rights,

Taking into account the critical situation which has arisen in connection with the growing number of migrants and refugees on the territory of the former Union of SSR,

Being aware of the responsibility for the destinies of the people who experience hardship and privation,

Recognizing the need to render assistance to refugees and forced migrants,

Have agreed as follows:

Article 1

For the purposes of this Agreement a refugee shall be a person who, not being a citizen of the Party which has granted asylum, has been forced to leave his/her permanent place of residence on the territory of another Party because he/she or members of his/her family have been subjected to violence or persecution in other forms or a real threat of persecution on grounds of race or nationality, religion, language or political convictions as well as belonging to a certain social group in connection with armed or ethnic conflics.

A person who has committed a crime against peace, humanity or other premeditated crime may not be regarded as a refugee.

Article 2

For the purposes of this Agreement a forced migrant shall be a person who, being a citizen of the Party which has granted asylum, has been forced to leave his/her permanent place of residence on the territory of another Party because he/she or the members of his/her family have been victims of violence or persecution in other forms or under real threat of being subjected to persecution on grounds of race or nationality, religion, language, political convictions, as well as belonging to a certain social group in connection with armed and ethnic conflicts.

Article 3

The status of refugee and forced migrant shall be determined in accordance with this Agreement, the universally recognized standards of international law and the legislation of the Party which has granted asylum, and shall be validated by the issuance of a corresponding document.

Article 4

The state which the refugee or forced migrant is leaving shall, with the assistance of interested Parties:

Evacuate the population from areas of armed and inter-ethnic conflicts, providing conditions for unimpeded voluntary exit to the territory of one of the Parties on grounds stipulated in Article 1 and Article 2 of this Agreement;

Ensure the safety of persons and property of the evacuees seeking to bring about a ceasefire and maintain law and order during the evacuation;

Issues of financial, material-technical, food, medical and transport support of evacuees shall be settled between the Parties concerned.

Article 5

The Party which grands asylum shall undertake to:

Provide the necessary social and welfare conditions for the refugees and forced migrants in places of their temporary accommodation;

Assist refugees and forced migrants in getting employment in accordance with the employment legislation of each of the Parties.

Article 6

The Parties shall undertake to:

Assist refugees and forced migrants in filing requests and obtaining the document required to resolve issues of citizenship;

Assist refugees and forced migrants in obtaining, in their former place of residence, certificates of marriage, birth, work records and other documents required to resolve the issues of the provision of pensions, to document seniority, to travel abroad, etc.;

Assist in obtaining information on relatives living on the territory of the state left by the refugee or forced migrant as well as on his/her property left there.

Article 7

The state of exit shall compensate refugees and forced migrants for the cost of the housing and other property left behind or lost on his/her territory and compensate damage to the leath and due to loss of livelihood. The size of material compensation shall be determined at the rates of the state of exit.

The procedure of evaluating the movable and immovable property which was lost by the refugees and forced migrants, the extent of material damage and size of compensation shall be determined jointly by the Parties concerned.

Article 8

The parties shall create an inter-state Fund In Aid of Refugees and Forced Migrants.

The terms, procedure of the formation and use of the Fund's assets shall be determined by a Statute which shall constitue an inseparable part of this Agreement.

Article 9

The consultative council for the employment, migration and social protection of the population of the states – members of the Commonwealth of Independent States shall render practical assistance in the implementation of the accords reached under this Agreement.

Article 10

Each refugee or forced migrant shall have the right to appeal to law courts on the territory of the Parties.

Article 11

The Parties shall take measures to ensure their participation in international treaties on refuges and forced migrants.

The Parties shall bring their national legislation in line with the international legal norms in this domain.

Article 12

This Agreement shall be subject to ratification.

The Agreement shall come into force upon the submission of a third instrument of ratification for custody to the depositary. For the Parties which have ratified it later, it shall come into force on the day they deposit their instruments of ratification.

Article 13

Any of the Parties may abrogate this Agreement through written notification sent to the depositary. The Agreement shall terminate for such Party 6 months after the depositary shall have received such notification.

Article 14

This Agreement, with the consent of all the Parties, shall be open for accession to other states which share its goals and principles through the submission to the depositary of documents on such accession. Accession shall be deemed valid from the day the depositary shall receive the last message of consent to such accession.

DONE in the city of Moscow on September 24, 1993, the authentic copy being in Russian. The authentic copy shall be in custody of the Government of the Republic of Belarus which shall send a certified copy thereof to the states which have signed this Agreement.

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CIS CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Signed in Minsk, Belarus, on 26 May 1995 by all CIS Member States

Text: 3 I.H.R.R. 1, 212 (1996)
Entry into force: 11 August 1998, in accordance with Article 38

The Participant States of the Commonwealth of Independent States, hereinafter referred to as the Contracting Parties,

Having regard to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as to the international obligations concerning human rights entered into within the framework of the OSCE (CSCE);

Considering that the above-mentioned instruments are aimed at securing the universal and effective recognition and observance of the rights enshrined therein;

Having regard to the Declaration of the Heads of Participating States of the Commonwealth of Independent States on international obligations in the field of human rights and fundamental freedoms;

Considering that the observance of international standards in the field of human rights by all Member States of the Commonwealth of Independent States, and the development and fostering of respect for human rights and fundamental freedoms for all, irrespective of race, sex, language, political beliefs, religion and social origin, contribute to the deepening of democratic reforms, economic and social growth and the strengthening of law and order;

Striving for the effective fulfilment of their obligations to protect human rights and fundamental freedoms, in the spirit of the concerting of the efforts of the Contracting Parties for the purpose of asserting the ideals of freedom and the rule of law, preventing violations of human rights and fundamental freedoms, upholding the traditions of tolerance and friendship between peoples, and reinforcing civil peace and accord;

Assuming that such efforts will foster universal respect for and observance of human rights and fundamental freedoms in accordance with the basic instruments of international law in the field of human rights;

Have agreed as follows:

Article 1

The Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms set out in the present Convention.

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally. Until abolished, the death penalty may be applied only in pursuance of a judicial sentence for particularly grave offences.
2. As a rule, women may not be sentenced to the death penalty. The death penalty may not be imposed on women who are pregnant at the time of sentencing, nor may it be executed in the case of women who are pregnant when the sentence is to be carried out.
3. The death penalty may not be imposed on persons for crimes committed by them before they attained the age of eighteen years.
4. Deprivation of life shall not be regarded as inflicted in contravention of the provisions of this Article when it results from the use of force solely in such cases of extreme necessity and necessary defence as are provided for in national legislation.

Article 3

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No one shall be subjected to medical or scientific experiments without his free consent.

Article 4

1. No one shall be held in slavery or servitude.
2. No one shall be constrained to perform forced or compulsory labour.
3. The term 'forced or compulsory labour' as used in the present Article shall not include:
   (*a*) any work required to be done in the ordinary course of detention imposed in accordance with the provisions of Article 5 of this Convention or during conditional release from such detention;
   (*b*) any service of a military character or, in the case of Contracting Parties recognising the right of conscientious objection on political or religious/ethical grounds, service exacted instead of compulsory military service;
   (*c*) any service exacted in the case of an emergency or calamity threatening the life or well-being of the community;
   (*d*) any work or service which forms part of normal civic obligations;
   (*e*) the fulfilment by parents of their duty to create the necessary conditions for their children, and by children who have reached the age of majority of their duty to support parents unable to work and requiring assistance.

Article 5

1. Everyone shall have the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure established by national legislation:
   (*a*) the lawful detention of a person after conviction by a competent court;
   (*b*) the lawful arrest or detention of a person;
   (*c*) the lawful detention of a minor for the purpose of referring his case for investigation, sentencing or trial.
2. Everyone who is arrested shall be informed, at the time of his arrest, in a language which he understands, of the reasons for his arrest.
3. Everyone who is deprived of his liberty by arrest or detention, in accordance with national legislation, shall be entitled to have the lawfulness of his arrest or detention examined by a court.
4. Everyone who is deprived of his liberty shall be entitled to humane treatment and to respect for his dignity as a human being.

   Persons who have been subjected to unlawful arrest or detention shall be entitled, in accordance with national legislation, to compensation for the damage caused.

Article 6

1. All persons shall be equal before the judicial system.

   In the determination of any charge against him, everyone shall be entitled to a fair and public hearing within a reasonable time by an independent and impartial court.

   The decisions of the court or the sentence shall be pronounced publicly, but all or part of the trial may take place *in camera* for reasons of public order or state secrecy or where the interests of juveniles or the protection of the private life of the parties so require.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence shall have the following minimum rights:

   (*a*) to be informed promptly and in detail, in a language which he understands, of the nature and cause of the accusation against him;

   (*b*) to have adequate time and facilities for the preparation of his defence;

   (*c*) to defend himself in person or through legal assistance of his own choosing or to have legal assistance assigned to him whenever the interests of justice so require, as well as to be provided with legal assistance free of charge in cases specified in national legislation;

   (*d*) to make applications to the court concerning the examination of witnesses, the carrying out of investigations, the obtaining of documents, the commissioning of expert appraisals and other procedural acts;

   (*e*) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

   (*f*) not to be forced to testify against himself or plead guilty.

Article 7

1. No one shall be held liable for an act which did not constitute an offence under national legislation or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, after an offence is committed, a law establishes a lesser punishment for it or eliminates liability for it, the new law shall be applicable.

2. No one shall be convicted or punished a second time for an offence for which he has already been convicted or punished in accordance with national legislation.

   Every convicted person shall be entitled, in accordance with the law, to have the judgment of the court reviewed by a higher judicial body as well as apply for a pardon or request a lighter sentence.

Article 8

No one shall be deprived of his liberty merely on the ground of his inability to fulfil a contractual obligation of any kind.

Article 9

1. Everyone shall have the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, public order, public health and morals or for the protection of the rights and freedoms of others.

Article 10

1. Everyone shall have the right to freedom of thought, conscience and faith. This right shall include freedom to choose one's religion or belief and freedom, either alone or in community with others, to engage in religious worship, attend and perform religious and ritual ceremonies and act in accordance with them.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of national security, public safety, public order, public health or morals or for the protection of the rights and freedoms of others.

Article 11

1. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas by any legal means without interference by a public authority and regardless of frontiers.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions and restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, public safety or public order or for the protection of the rights and freedoms of others.

Article 12

1. Everyone shall have the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, public health or morals or for the protection of the rights and freedoms of others. This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law-enforcement or administrative organs of the State.

Article 13

1. Men and women of marriageable age shall have the right to marry and to found a family, according to the national legislation governing the exercise of that right.
2. No marriage shall be entered into without the free and full consent of the intending spouses.
3. For the purpose of creating the necessary conditions for the full development of the family, which is the fundamental unit of society, the Contracting Parties shall contribute to the economic, legal and social protection of family life by such means as social and family allowances, tax relief, the provision of accommodation for families, grants for newly-married couples and other appropriate measures.

Article 14

1. Everyone shall have the right to work and to protection from unemployment, as well as to equal remuneration for equal work, including work-related benefits, to identical conditions in respect of work of equal value and to equal treatment in the assessment of the quality of his work.
2. For the purpose of ensuring that working women may effectively exercise their rights, the Contracting Parties shall:

   (*a*) grant leave with pay, adequate social security benefits, or allowances from public funds for women taking leave before and after childbirth within the period of time prescribed by national legislation;

   (*b*) regard as unlawful any notice of dismissal served by an employer on a woman during her absence on maternity leave or at such time that the period of notice would expire during her absence;

   (*c*) ensure that mothers who nurse their children have sufficient free time for that purpose;

   (*d*) regulate the employment of women for work on night shifts in industry;

   (*e*) regulate the employment of women for underground mining activities as well as for other types of work that are unsuitable for women because of their dangerousness, harmfulness to health or arduousness.

Article 15

For the purpose of ensuring that the right to health protection may be effectively exercised, the Contracting Parties shall, either directly or in conjunction with public or private bodies, take the appropriate measures, aimed *inter alia* at:

(*a*) eliminating the causes of health deterioration as far as possible;

(*b*) providing advisory services and an instructional scheme for the fortification of health and the encouragement of personal responsibility in health matters;

(*c*) creating sanitary and hygienic conditions calculated to prevent, as far as possible, outbreaks of epidemic, endemic and other diseases.

Article 16

1. Everyone shall have the right to social security, including social insurance, according to his age, in cases of illness, invalidity, loss of bread-winner and upbringing of children as well as in other cases provided for in national legislation.
2. For the purpose of ensuring that the right to social and medical assistance may be effectively exercised, the Contracting Parties shall ensure that any person lacking sufficient means and unable to obtain such means through his own efforts or from other sources, particularly in the form of benefits under a social security system, receives the necessary assistance and in the case of illness, such care as is required by his condition.
3. For the purpose of ensuring that the right of mothers and children to social and economic protection may be effectively exercised, the Contracting Parties shall take all appropriate and necessary measures to that end, including the establishment and maintenance of suitable institutions or services.

Article 17

Every minor child shall have the right to such special protective measures as his particular situation requires on the part of the family, society and the State.

Article 18

For the purpose of ensuring that persons who are physically or mentally unfit for work may effectively exercise their right to occupational rehabilitation, vocational training and social reintegration facilities, the Contracting Parties shall:

(*a*) take appropriate measures to provide educational establishments, including, where necessary, public or private specialised institutions;

(*b*) take appropriate measures for the occupational rehabilitation of persons unfit for work, including the setting up of specialised occupational rehabilitation services and establishments with special working conditions, as well as measures to encourage employers to engage disabled persons.

Article 19

Everyone whose rights and freedoms are violated shall be entitled to be effectively restored to his rights and freedoms in accordance with national legislation.

Article 20

1. All shall be equal before the law and shall be entitled, without any discrimination, to equal protection of the law.
2. The enjoyment of the rights and freedoms set forth in this Convention shall be guaranteed without discrimination on any ground such as sex, race, colour, language, religion, political or other

opinion, national or social origin, association with a national minority, property or official capacity, place of birth or other status.

Article 21

Persons belonging to national minorities shall not be denied the right, either individually or collectively, to express, preserve and develop, without hindrance, their ethnic, linguistic, cultural or religious identity.

Article 22

1. Everyone who is lawfully within the territory of any Contracting Party shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of the rights set out in paragraphs 1 and 2 of this Article other than such as are prescribed by the law in the interests of national security or public safety, public order, public health or morals or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 of this Article may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest.

Article 23

Everyone, regardless of where he may be, shall have the right to recognition of his legal capacity.

Article 24

1. Everyone shall have the right to citizenship.
2. No one shall be arbitrarily deprived of his citizenship or of the right to change it.

Article 25

1. No one shall be expelled, under an individual procedure or as a result of a collective measure, from the territory of the State of which he is a citizen.
2. No one shall be deprived of the right to enter the territory of the State of which he is a citizen.
3. Aliens who are lawfully in the territory of any Contracting Party may be expelled only in application of a lawful decision, and they shall have the opportunity of appealing against their expulsion.
4. Collective expulsion of aliens shall be prohibited.

Article 26

1. Every natural and legal person shall have the right to own property. No one shall be deprived of his property except in the public interest, under a judicial procedure and in accordance with the conditions laid down in national legislation and the generally recognised principles of international law.
2. However, the foregoing provisions shall in no way affect the right of the Contracting Parties to adopt such laws as they deem necessary to control the use of items withdrawn from general circulation in the national or public interest.

Article 27

1. No person shall be denied the right to education. In the exercise of any functions which the Contracting Parties assume in relation to education and to teaching, they shall respect the right of parents to ensure for their children such education and teaching as corresponds with their own convictions and national traditions.

2. Elementary and fundamental education of a general kind shall be compulsory and free of charge.

3. Each Contracting Party shall set a minimum age up to which secondary education shall be compulsory and which may not be lower than the minimum age for employment established by law in accordance with internationally recognized standards.

Article 28

For the purpose of ensuring that the right to vocational training may be effectively exercised, the Contracting Parties shall:

1. provide or encourage, as far as necessary, technical or vocational training for all, including disabled persons, in agreement with trade union organisations, as well as offer the opportunity to receive higher education exclusively on the basis of personal abilities;

2. establish or help to establish, as far as necessary:

   (*a*) an appropriate, widely available training system for workers;

   (*b*) special centres for such vocational retraining of workers as is called for by technical progress or by new trends in the occupational field;

3. foster the full exercise of such advantages as are available under the relevant measures, including those aimed at:

   (*a*) reducing or abolishing dues and extra charges;

   (*b*) providing material help where appropriate;

   (*c*) incorporating into the normal working day, at the request of employers, the time spent on the further training of workers during work;

   (d) guaranteeing, with appropriate supervision and in agreement with trade union organisations, the effectiveness of apprenticeships and other training measures for young workers, as well as the proper protection of young workers' interests as a whole.

Article 29

In accordance with national legislation, everyone shall have the right and opportunity and in the State of which he is a citizen:

(a) to take part in the management and conduct of public affairs, either directly or through freely chosen representatives;

(b) to vote and to be elected at elections held on the basis of universal and equal suffrage by secret ballot, that guarantees the free expression of the will of voters;

(c) to have access, on general conditions of equality, to the public service of his country.

Article 30

Nothing in Articles 11, 21 and 20 shall be regarded as preventing the Contracting Parties from imposing restrictions on the political activity of alien citizens and stateless persons.

Article 31

Nothing in this present Convention may be interpreted as implying for any Contracting Party, group or individual any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth in the Convention.

Article 32

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Article 33

Nothing in this Convention may be interpreted as limiting or detracting from any of the human rights and fundamental freedoms recognised and guaranteed under the legislation of the Contracting Party concerned or under a fundamental international instrument in the human rights field to which it has acceded.

Article 34

Monitoring of the execution of this Convention shall be effected by the Human Rights Commission of the Commonwealth of Independent States (HRC CIS), whose Regulations form a separate section of the Convention.

Article 35

1. In time of war or other emergency situation threatening the higher interests of any Contracting Party, that Party may take measures derogating from its obligations under this Convention to the extent strictly required by the gravity of the situation, provided that such measures are not inconsistent with other obligations under international law and do not entail discrimination on the grounds set out in Article 20 of the Convention.
2. No derogation from Article 2 of this Convention, except in respect of deaths resulting from lawful military action, or from Articles 3, 4 (paragraph 1) and 7 shall be made under paragraph 1 of the present Article.
3. Any Contracting Party availing itself of this right of derogation shall keep the depositary of this Convention informed of the measures it has taken and of the reasons therefor. It shall also inform the depositary when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 36

1. Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention concerning the fact that any law then in force in its territory is not in conformity with that provision. Reservations of a general character shall not be permitted under this Article.
2. Any reservation made under this Article shall contain a brief statement of the law concerned.

Article 37

1. Any Contracting Party may denounce this Convention after six months' notice contained in a notification addressed to the depositary, who shall inform the other Contracting Parties.
2. Such denunciation shall not have the effect of releasing the Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date on which the denunciation became effective.

Article 38

1. This Convention, including the Regulations of the Human Rights Commission of the Commonwealth of Independent States, shall enter into force from the date of deposit of the third notification confirming that a Contracting Party has implemented the internal procedures necessary for its entry into force.
2. For the other Contracting Parties, this Convention shall enter into force from the date of receipt by the depositary of a notification confirming that they have implemented the internal procedures referred to in paragraph 1 of the present Article.

Article 39

After this Convention has entered into force, it shall be open to accession by other States sharing its aims and principles, by means of a notification delivered to the depositary confirming that they have implemented the internal procedures referred to in Article 38, paragraph 1, of the Convention. The date of receipt by the depositary of such notification shall be the date of entry into force of the Convention for the State concerned.

DONE in Minsk on 26 May 1995 in Russian in a single authentic copy, to be kept in the Executive Secretariat of the Commonwealth of Independent States, which shall transmit certified copies thereof to each of the States signatories to the Convention.

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- Nationally and Internationally: 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and __, vol. 1, p. 471
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- 2001 Final Text of the Revised AALCO 1966 __ Principles on Status and Treatment of Refugees, vol. 3, p. 1182

Banjul - 1981 African Charter on Human and Peoples' Rights (__ Charter), vol. 3, p. 1029

Beijing - 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The __ Rules), vol. 1, p. 245

Belém do Pará - 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of __), vol. 3, p. 1324

Belief - *See:* ***Religion***

C

Cartagena - 1984 __ Declaration on Refugees, vol. 3, p. 1196

Casablanca - 1965 Protocol on the Treatment of Palestinian Refugees (__ Protocol), vol. 3, p. 1149

Central American Refugees

- 1991 Resolution 46/107 about the International Conference on __, vol. 3, p. 1254
- 1992 Resolution 47/103 about the International Conference on __, vol. 3, p. 1256

Charter

- 1945 __ of the United Nations, vol. 2, p. 928
- 1961 European Social __, vol. 4, p. 1483
- 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the __ of the United Nations, vol. 2, p. 966
- 1981 African __ on Human and Peoples' Rights, vol. 3, p. 1029
- 1995 Additional Protocol to the European Social __ Providing for a System of Collective Complaints, vol. 4, p. 1497
- 1996 European Social __ (Revised), vol. 4, p. 1500
- 1998 Protocol to the African __ on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, vol. 3, p. 1040
- 1999 OSCE Istanbul Summit – __ for European Security (*para. 22*), vol. 4, p. 1853
- 2000 __ of Fundamental Rights of the European Union, vol. 4, p. 1733
- 2001 Inter-American Democratic __ (Declaration of Lima), vol. 3, p. 1291
- 2002 Andean __ for the Promotion and Protection of Human Rights, vol. 3, p. 1297
- 2003 Protocol to the African __ on Human and Peoples' Rights on the Rights of Women in Africa, vol. 3, p. 1047
- 2006 African Youth __, vol. 3, p. 1072

Child(ren)

- 1959 Declaration on the Rights of the __, vol. 1, p. 469
- 1989 Convention on the Rights of the __, vol. 1, p. 405
- 1990 African Charter on the Right and Welfare of the __, vol. 3, p. 1058
- 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labor (No. 182) (ILO), vol. 1, p. 465

- 2000 Optional Protocol to the Convention on the Rights of the __ on the Involvement of Children in Armed Conflict, vol. 1, p. 419
- 2000 Optional Protocol to the Convention on the Rights of the __ on the Sale of Children, __ Prostitution, and __ Pornography, vol. 1, p. 423
- 2005 General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the __, vol. 1, p. 594
- 2005 Addendum to the OSCE Action Plan to combat Trafficking in human beings, Addressing the Special Needs of __ Victims of Trafficking for Protection and Assistance of 7 July 2005 (Decision No. 685), vol. 4, p. 1856
- 2005 UN Security Council Resolution 1612 on __ren and armed conflict, vol. 1, p. 474
- 2005 Covenant on the Rights of the __ in Islam, vol. 3, p. 1171
- *See also:* ***Abduction,***
  Adoption,
  Emergency

Civilian
- 1949 Geneva Convention relative to the Protection of ____ Persons in Time of War, vol. 2, p. 614

Co-operation
- 1968 Final Act of the International Conference on Human Rights (Proclamation of Teheran) – Resolution on __with UNHCR, vol. 2, p. 963
- 1970 Declaration on Principles of International Law concerning Friendly Relations and __ among States in accordance with the Charter of the United Nations, vol. 2, p. 966
- 1975 Final Act of the Conference on Security and __ in Europe (Helsinki Final Act), vol. 4, p. 1797
- 1979 Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, vol. 2, p 649
- Juridical: 1983 The Riyadh Arab Agreement for __, vol. 3, p. 1133
- 1985 Convention concerning International __ regarding Administrative Assistance to Refugees, vol. 1, p. 43
- 1993 Convention on the Protection of Children and __ in Respect of Intercountry Adoption, vol. 1, p. 438
- 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and __ in respect of Parental Responsibility and Measures for the Protection of Children, vol. 1, p. 447
- *See also:* ***Crimes***

Conflict(s)
- 1974 Declaration on the Protection of Women and Children in Emergency and Armed __, vol. 1, p. 396
- 1977 Protocol Additional to the Geneva Convention, and relating to the Protection of Victims of International Armed __ (Protocol I), vol. 2, p. 617
- 1977 Protocol Additional to the Geneva Conventions, and relating to the protection of Victims of Non-International Armed __ (Protocol II), vol. 2, p. 623
- 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed __, vol. 1, p. 419
- 2005 UN Security Council Resolution 1612 on children and armed __, vol. 1, p. 474

Consular Functions

- 1967 European Convention on __, vol. 4, p. 1542
- 1967 Protocol to the European Convention on __ concerning the Protection of Refugees, vol. 4, p. 1555

Copenhagen
- 1990 __ – Document of the Second Conference on the Human Dimension of the CSCE, vol. 4, p. 1837

Copyright
- 1971 Protocol No. 1 annexed to the Universal __ Convention concerning the Application of that Convention to Works of Stateless Persons and Refugees, vol. 1, p. 101

Cotonou
- 2004 __ Declaration and Programme of Action, vol. 3, p. 1021

Crimes
- 1968 Convention on the Non-Applicability of Statutory Limitations to War __ and __ against Humanity, vol. 2, p. 641
- 1979 Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of persons Guilty of War __ and __ against Humanity, vol. 2, p. 649
- 2000 Recommendation of the Inter-American Commission on Human Rights on asylum and international crimes, vol. 3, p. 1253
- *See also:* **Apartheid,**
  Genocide

Criteria
- 1984 Recommendation No. R (84) 1 on the Protection of Persons Satisfying the __ in the Geneva Convention who are not Formally Recognised as Refugees, vol. 4, p. 1400
- 1989 Principles and __ for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America, vol. 3, p. 1231
- 2003 Council Regulation 343/2003/EC establishing the __ and mechanisms for determining the Member State responsible for examining an asylum application (Dublin II Regulation), vol. 4, p. 1644
- 2003 Commission Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation 343/2003/EC establishing the __ 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 (Commission Regulation for Implementing Dublin II Council Regulation), vol. 4, p. 1657

Cruel
- *See:* ***Torture***

D

Death Penalty
- 1983 Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of __, as amended by Protocol No. 11, vol. 4, p. 1468
- 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights (Aiming at the Abolition of the __) of 15 December 1989, vol. 1, p. 199
- 1990 Protocol to the American Convention on Human Rights to Abolish the __, vol. 3, p. 1289

- 2002 Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the __ in all circumstances, vol. 4, p. 1475

D

Degrading - *See:* ***Torture***

Development - 1986 Declaration on the Right to __, vol. 1, p. 550

- 2002 South African __ Community Protocol on Extradition, vol. 3, p. 1094

Diplomatic - 2006 Draft articles on __ Protection, vol. 2, p. 998

Disappearance - 1992 Declaration on the Protection of All Persons from Enforced __, vol. 1, p. 236

- 1994 Inter-American Convention on Forced __ of Persons, vol. 3, p. 1339

- 2006 International Convention for the Protection of All Persons from Enforced __, vol. 1, p. 223

Discrimination - 1958 __ (Employment and Occupation) Convention (No. 111) (ILO), vol. 1, p. 325

- 1960 UNESCO Convention against __ in Education, vol. 1, p. 317

- 1965 International Convention on the Elimination of All Forms of Racial __, vol. 1, p. 308

- 1979 Convention on the Elimination of All Forms of __ against Women, vol. 1, p. 381

- 1981 Declaration on the Elimination of All Forms of Intolerance and of __ Based on Religion or Belief, vol. 1, p. 336

- 1996 General Recommendation No. 22, Refugees and displaced persons, Committee on the Elimination of Racial __, vol. 1, p. 589

- 1999 Optional Protocol to the Convention on the Elimination of All Forms of __ against Women, vol. 1, p. 390

- 2004 General Recommendation No. 30, Discrimination against non-citizens, Committee on the Elimination of Racial __, vol. 1, p. 590

Displaced Persons

- 1989 Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and __ in Latin America, vol. 3, p. 1231

- 1994 San José Declaration on Refugees and __, vol. 3, p. 1214

- 1996 General Recommendation No. 22, Refugees and __, Committee on the Elimination of Racial Discrimination, vol. 1, p. 589

- 2001 Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of __ and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, vol. 4, p. 1620

- *See also:* ***Assistance***

Dublin II Regulation

- 2003 Council Regulation 343/2003/EC establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application (__), vol. 4, p. 1644

- 2003 Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation 343/2003/EC 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 (Commission Regulation for Implementing __), vol. 4, p. 1657

Duties
- 1907 Hague Convention (V) Respecting the Rights and __ of Neutral Powers and Persons in Case of War on Land, vol. 2, p. 631
- 1948 American Declaration of the Rights and __ of Man, vol. 3, p. 1258

E

Education - *See:* ***Discrimination***

Emergency
- 1974 Declaration on the Protection of Women and Children in __ and Armed Conflict, vol. 1, p. 396

Employment - *See:* ***Migration***

Enforced disappearance
- *See:* ***Disappearance***

Equality - *See:* ***Social Security***

Eurodac
- 2000 Council Regulation EC No 2725/2000 concerning the establishment of __ for the comparison of fingerprints for the effective application of the Dublin Convention on the State responsible for examining applications, for asylum lodged in one of the European Union Member States, vol. 4, p. 1603

Exclusion
- 2005 Recommendation Rec(2005)6 on __ from refugee status in the context of Article 1 F of the Convention relating to the Status of Refugees of 28 July 1951, vol. 4, p. 1419

Extradition
- 1933 Montevideo Multilateral Convention on __, vol. 3, p. 1364
- 1957 European Convention on __, vol. 4, p. 1527
- 1975 Additional Protocol to the European Convention on __, vol. 4, p. 1535
- 1978 Second Additional Protocol to the European Convention on __, vol. 4, p. 1538
- 1979 Principles of International Co-operation in the Detection, Arrest, __ and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, vol. 2, p. 649
- 1981 Inter American Convention __, vol. 3, p. 1368
- 1994 Economic Community of West African States Convention on __, vol. 3, p. 1085
- 2002 South African Development Community Protocol on __, vol. 3, p. 1094

F

Family
- 1974 Convention introducing an International __ Record Booklet, vol. 1, p. 531
- 1993 Convention on Legal Aid and Legal Relations in Civil, __ and Criminal Cases, vol. 4, p. 1860

- 1997 Protocol to the Convention on Legal Aid and Legal Relations in Civil, __ and Criminal Cases, vol. 4, p. 1880
- 1999 Recommendation No. R (99) 23 on __ reunion for refugees and other persons in need of international protection, vol. 4, p. 1409
- 2003 Council Directive 2003/86/EC on the right to __ reunification, vol. 4, p. 1682

Final Act
- 1968 __ of the International Conference on Human Rights (Proclamation of Teheran) – Resolution on Co-operation with UNHCR, vol. 2, p. 963
- 1975 __of the Conference on Security and Co-operation in Europe (Helsinki __), vol. 4, p. 1797

Forced Labour
- 1926 Slavery, Servitude, __ and Similar Institutions and Practices Convention (Slavery Convention), vol. 1, p. 339
- 1930 __ Convention (No. 29) (ILO), vol. 1, p. 355
- 1957 Abolition of __ Convention (No. 105) (ILO), vol. 1, p. 362

Freedom(s)
- 1950 Convention for the Protection of Human Rights and Fundamental __, as amended by Protocol 11, vol. 4, p. 1451
- 1952 Protocol to the Convention for the Protection of Human Rights and Fundamental __, as amended by Protocol No. 11, vol. 4, p. 1464
- 1963 Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental __, securing certain rights and __ other than those already included in the Convention and in the first Protocol thereto of, as amended by Protocol No. 11, vol. 4, p. 1466
- 1983 Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental __ concerning the Abolition of Death Penalty, as amended by Protocol No. 11, vol. 4, p. 1468
- 1984 Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental __, as amended by Protocol No. 11, vol. 4, p. 1470
- 1995 CIS Convention on Human Rights and Fundamental __, vol. 4, p. 1888
- 1999 General Comment No. 27, __ of Movement (Article 12), Human Rights Committee, vol. 1, p. 579
- 2000 Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental __, vol. 4, p. 1473
- 2002 Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental __ concerning the abolition of the death penalty in all circumstances, vol. 4, p. 1475
- 2005 Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental __ amending the control system of the convention, vol. 4, p. 1477

G

Geneva
- 1949 __ Convention relative to the Protection of Civilian Persons in Time of War, vol. 2, p. 614

- 1984 Recommendation No. R (84) 1 on the Protection of Persons Satisfying the Criteria in the __ Convention who are not Formally Recognised as Refugees, vol. 4, p. 1400
- *See also:* ***Conflict(s)***

Genocide
- 1948 Convention on the Prevention and Punishment of the Crime of __, vol. 2, p, 638

H

Helskinki
- 1975 Final Act of the Conference on Security and Co-operation in Europe (__ Final Act), vol. 4, p. 1797
- 1992 __ Summit – The Challenges of Change *(Decisions, chapter VI, paras. 39 to 45)*, vol. 4, p. 1850

High Commissioner For Refugees
- 1950 Statute of the Office of the United Nations __, vol. 1, p. 5
- 1995 Office of the United Nations __, UN GA Resolution 50/152, vol. 1, p. 102

HIV/AIDS
- 2001 Declaration of Commitment on __, vol. 1, p. 555

Housing
- 2005 UN Principles on __ and Property Restitution (The Pinheiro Principles), vol. 1, p. 566

Human Rights
- 1968 Final Act of the International Conference on __, Proclamation of Teheran-Resolution on Co-operation with UNHCR, vol. 2, p. 963
- 1969 American Convention on __, "Pact of San Jose", vol. 3, p. 1264
- 1981 Universal Islamic Declaration of __, vol. 3, p. 1155
- 1984 Universal Declaration of __,vol. 1, p. 172
- 1985 Declaration on the __ of the Individuals Who are not Nationals of the Country in which They Live, vol. 1, p. 166
- 1990 Cairo Declaration on __ in Islam, vol. 3, p. 1166
- 1990 Protocol to the American Convention on __ to Abolish the Death Penalty, vol. 3, p. 1289
- 1994 Arab Charter on __, vol. 3, p. 1150
- 2000 Recommendation of the Inter-American Commission on __ on asylum and international crimes, vol. 3, p. 1253
- 2002 Recommended Principles and Guidelines on __ and Human Trafficking, vol. 1, p. 364
- *See also:* ***Islam,***
  Freedom(s),
  Rights

Human Trafficking
- *See:* ***Trafficking***

Humanitarian Assistance
- *See:* ***Assistance,***
  Emergency

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- 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against __, vol. 2, p. 641
- 1979 Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against __, vol. 2, p. 649



ICC
- *See:* ***International Criminal Court***

ILO
- *See:* ***International Labour Organization***
- 1949 Migration for Employment Convention (Revised) (No. 97), vol. 1, p. 149
- 1949 Right to Organise and Collective Bargaining Convention (No. 98), vol. 1, p. 378
- 1951 Equal Remuneration Convention (No. 100), vol. 1, p. 322
- 1957 Abolition of Forced Labour Convention (No. 105), vol. 1, p. 362
- 1958 Discrimination (Employment and Occupation) Convention (No. 111), vol. 1, p. 325
- 1962 Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security (No. 118), vol. 2, p. 958
- 1973 Convention concerning the Minimum Age for Admission to Employment (No. 138), vol. 1, p. 460
- 1975 Migrant Workers (Supplementary Provisions) Convention (No. 143), vol. 1, p. 160
- 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labor (No. 182), vol. 1, p. 465

Immigration
- 2004 Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal __, who cooperate with the competent authorities, vol. 4, p. 1790

Influx
- 2001 Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass __ of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, vol. 4, p. 1620

Inhuman
- *See:* ***Torture***

Intercountry
- *See:* ***Adoption***

Internal Displacement
- 1998 Guiding Principles on Internal Displacement, vol. 1, p. 114

Internally Displaced
- 2006 Recommendation Rec(2006)6 on __ persons, vol. 4, p. 1438
- *See also:* ***Central American Refugees,***
  Displaced Persons,
  Internal Displacement

International Criminal Court

- 1998 Rome Statute of the __, vol. 2, p. 650

International Labour Organization

- 1933 Forced Labour Convention (No. 29), vol. 1, p. 355
- 1948 Freedom of Association and Protection of the Right to Organise Convention (No. 87), vol. 1, p. 374

International Refugee Organization

- 1946 Constitution of the __, vol. 1, p. 53

Islam

- 1981 Universal __ic Declaration of Human Rights, vol. 3, p. 1155
- 1990 Cairo Declaration on Human Rights in __, vol. 3, p. 1166
- 2005 Covenant on the Rights of the Child in __, vol. 3, p. 1171

Istanbul

- 1999 __ Summit – Charter for European Security *(para. 22)*, vol. 4, p. 1853

J

Juvenile(s)

- 1985 United Nations Standard Minimum Rules for the Administration of __ Justice (The Beijing Rules), vol. 1, p. 245
- 1990 United Nations Guidelines for the Prevention of __ Delinquency (The Riyadh Guidelines), vol. 1, p. 278
- 1990 United Nations Rules for the Protection of __ Deprived of their Liberty, vol. 1, p. 284

L

Liberty

- 1990 United Nations Rules for the Protection of Juveniles Deprived of their __, vol. 1, p. 284

Limitation

- *See:* ***Humanity***

Lisbon

- 1996 __ Summit – Summit Declaration *(paras. 9 and 10),* vol. 4, p. 1852

M

Maastricht
- 2003 __ – Eleventh Meeting of the Ministerial Council OSCE Strategy to address Threats to Security and Stability in the 21st century *(para. 38)*, vol. 4, p. 1854
- 2003 __ – OSCE Action Plan to combat Trafficking in human beings *(chapter IV, para. 5.2, and chapter V, paras. 9.1 and 10.3)*; OSCE Action Plan on improving the situation of Roma and Sinti *(chapter VII, preamble, paras. 108, 109, 110, 114)*, vol. 4, p. 1855

Marriage
- 1962 Convention on Consent to __, Minimum Age for __ and Registration of __s, vol. 1, p. 529
- 1965 Recommendation on Consent to __, Minimum Age for __ and Registration of __s, vol. 1, p. 544
- 1980 Convention concerning the Issue of Certificates of Non-Impediment to __, vol. 1, p. 535

Mass Influx
- *See:* ***Influx***

Mercenarism
- 1977 Convention for the Elimination of __ in Africa, vol. 3, p. 1115

Migrants
- 1993 CIS Agreement on Aid to Refugees and Forced __, vol. 4, p. 1885
- 2000 Protocol against the Smuggling of __ by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on Smuggling), vol. 2, p. 734

Migrant Workers
- 1975 __ (Supplementary Provisions) Convention (No. 143) (ILO), vol. 1, p. 160
- 1977 European Convention on the Legal Status of __, vol. 4, p. 1440
- 1990 International Convention on the Protection of the Rights of All __ and Members of their Families, vol. 1, p. 124
- *See also:* ***Social Security***

Migration
- 1949 __ for Employment Convention (Revised) (No. 97) (ILO), vol. 1, p. 149

Millennium
- 2000 United Nations __ Declaration, vol. 2, p. 991

Minors
- 1970 European Convention on the Repatriation of __, vol. 4, p. 1557
- 1984 Inter-American Convention on Conflict of Laws Concerning the Adoption of __, vol. 3, p. 1314
- 1994 Inter-American Convention on International Traffic in __, vol. 3, p. 1329

Minorities - 1995 Framework Convention for the Protection of National __, vol. 4, p. 1521

Montevideo - 1933 __ Multilateral Convention on Extradition, vol. 3, p. 1364

N

Nationality - 1957 Convention on the __ of Married Women, vol. 1, p. 541

- 1997 European Convention on __, vol. 4, p. 1421
- 1999 Draft articles on the __ of Natural Persons in relation to the Succession of States, vol. 1, p. 106
- *See also:* ***Stateless Persons, Statelessness***

Nationals - 1962 Equality of Treatment of __ and Non-Nationals in Social Security Convention (No. 118) (ILO), vol. 2, p. 958
- 1985 Declaration on the Human Rights of Individuals who are not __ of the Country in which They Live, vol. 1, p. 166
- 2001 Council Directive 2001/40/EC on mutual recognition of decisions on the expulsion of third country __, vol. 4, p. 1743
- 2003 Council Directive 2003/109/EC concerning the status of third-country __ who are long-term residents, vol. 4, p. 1776
- 2004 Council Directive 2004/81/EC on the residence permit issued to third-country __ who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, vol. 4, p. 1790
- 2004 Council Directive 2004/83/EC on minimum standards for the qualification and status of third country __ or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, vol. 4, p. 1691
- *See also:* ***Social Security***

O

OAU - *See:* ***Organization of African Unity***

Organization of African Unity

- 1969 __ Convention Governing the Specific Aspects of Refugee Problems in Africa, vol. 3, p. 1004
- 1999 __ Convention on the Prevention and Combating of Terrorism, vol. 3, p. 1119
- *See also:* ***Refugees***

P

Palermo
- 2000 United Nations Convention against Transnational Organized Crime (__ Convention), vol. 2, p. 705
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (__ Protocol on Trafficking), vol. 2, p. 727
- 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on Smuggling), vol. 2, p. 734

Palestine
- 1949 Assistance to __ Refugees, UN GA Resolution 302 (IV), vol. 3, p. 1146
- 1965 Protocol on the Treatment of Palestinian Refugees (Casablanca Protocol), vol. 3, p. 1149

Penal
- 1889 Treaty on International __ Law, vol. 3, p. 1348
- 1940 Treaty on International __ Law (Revised), vol. 3, p. 1355
- 2002 Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence, vol. 4, p. 1772

Peoples' Rights
- African Charter on Human and __, vol. 3, p. 1029

Persecution
- 1967 Resolution 14 on Asylum to Persons in Danger of __, vol. 4, p. 1399

Pinheiro
- 2005 UN Principles on Housing and Property Restitution (The __ Principles), vol. 1, p. 566

Pornography
- *See:* ***Child(ren)***

Prostitution
- 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the __ of Others, vol. 1, p. 350
- *Also see:* ***Child(ren)***

Punishment
- *See:* ***Torture,***
  Crimes,
  Genocide

R

Refuge
- 1939 Treaty on Political Asylum and __, vol. 3, p. 1203

- 2000 Rio de Janeiro Declaration on the Institution of __, vol. 3, p. 1220

Refugees
- 1949 __ and Stateless Persons, UN GA Resolution 319 A (IV), vol. 1, p. 2
- 1951 Convention relating to the Status of __, vol. 1, p. 10
- Definitions of __, according to Agreements, Conventions and Protocols mentioned in Article 1A (1) of the Geneva Convention, vol. 1, p. 36
- 1966 Final Text of the Revised AALCO 1966 Bangkok Principles on Status and Treatment of __, vol. 3, p. 1182
- 1967 Protocol relating to the Status of __, vol. 1, p. 32
- 1969 OAU Convention Governing the Specific Aspects of __ Problems in Africa, vol. 3, p. 1004
- 1985 Convention concerning International Co-operation regarding Administrative Assistance to __, vol. 1, p. 43
- 1993 CIS Agreement on Aid to __ and Forced Migrants, vol. 4, p. 1885
- 1994 Addis Ababa Document on __ and Forced Population Displacements in Africa, vol. 3, p. 1009
- 1996 General Recommendation No. 22, __ and displaced persons, Committee on the Elimination of Racial Discrimination, vol. 1, p. 589
- 2001 Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of __, vol. 1, p. 51
- *See also:* ***Arab Experts,***
  Assistance,
  Cartagena,
  Central American,
  Consular Functions,
  Copyright,
  Displaced persons,
  Emergency,
  High Commissioner for Refugees,
  Nationality,
  Palestine,
  Responsibility,
  Seamen,
  Treatment,
  Visas

Registration
- *See:* ***Marriage***

Religion
- 1982 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on __ or Belief, vol. 1, p. 336

Repatriation
- 1970 European Convention on the __ of Minors, vol. 4, p. 1557

Rescue
- 1979 International Convention on Maritime Search and __, vol. 2, p. 749

Responsibility
- 1980 European Agreement on Transfer of __ for Refugees, vol. 4, p. 1392
- 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental __ and Measures for the Protection of Children, vol. 1, p. 447

Restitution
- *See:* ***Pinheiro***

Return
- 2005 "Twenty Guidelines on Forced __", vol. 4, p. 1596

Returnees - *See:* ***Displaced Persons***

Rio de Janeiro - 2000 __ Declaration on the Institution of Refuge, vol. 3, p. 1220

Rights - 1981 African Charter on Human and Peoples' __, vol. 3, p. 1029

- 1948 American Declaration of the __ and Duties of Man, vol. 3, p. 1258
- Civil and Political: 1966 International Covenant on __, vol. 1, p. 183
- Civil and Political: 1966 Optional Protocol to the International Covenant on Civil and Political __, vol. 1, p. 196
- Civil and Political: 1989 Second Optional Protocol to the International Covenant on Civil and Political __ (Aiming at the Abolition of the Death Penalty), vol. 1, p. 199
- Economic, Social and Cultural: 1966 International Covenant on __, vol. 1, p. 176
- of Women: 1953 Convention on the Political __, vol. 1, p. 394
- of Persons with Disabilities: 1971 Declaration on the __ of Mentally Retarded Persons, vol. 1, p. 500
- of Persons with Disabilities: 1975 Declaration on the __ of Disabled Persons, vol. 1, p. 501
- of Persons with Disabilities: 2006 Convention on the __ of Persons with Disabilities, vol. 1, p. 478
- of Persons with Disabilities: 2006 Optional Protocol to the Convention on the __ of Persons with Disabilities, vol. 1, p. 497
- *See also:* ***Asylum,***
  Charter,
  Child(ren),
  Human Rights,
  Migrant Workers,
  Minorities,
  Nationals

Riyadh - 1983 The ____ Arab Agreement for Judicial Co-operation (Excerpts), vol. 3, p. 1133

- 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency of (The __ Guidelines), vol. 1, p. 278

Rome - 1998 __ Statute of the International Criminal Court, vol. 2, p. 650

S

San Jose - *See:* ***Displaced Persons,***
Human Rights

San Salvador - 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of __), vol. 3, p. 1282

Sanctions - 2001 Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, (Carrier __ Directive), vol. 4, p. 1617

SAR - *See:* ***Rescue***

Sea
- 1974 International Convention for the Safety of Life at __ (SOLAS) (Excerpts), vol. 2, p. 746
- 1982 United Nations Convention on the Law of the __ (UNCLOS), vol. 2, p. 766

Seamen
- 1957 Agreement relating to Refugee ____, vol. 1, p. 37
- 1973 Protocol to the Agreement relating to Refugee __, vol. 1, p. 41

Security
- 1962 Equality of Treatment of Nationals and Non-Nationals in Social __ Convention Convention (No. 118) (ILO), vol. 2, p. 958
- 1972 European Convention on Social __ (Excerpts), vol. 4, p. 1388
- 1975 Final Act of the Conference on __ and Co-operation in Europe (Helsinki Final Act), vol. 4, p. 1797
- 1999 OSCE Istanbul Summit – Charter for European __ (*para. 22*), vol. 4, p. 1853
- 2003 OSCE Maastricht Summit – Eleventh Meeting of the Ministerial Council; OSCE Strategy to address Threats to __ and Stability in the 21st century, *para. 38,* vol. 4, p. 1854

Seizure
- 1970 Convention for the Suppression of Unlawful __ of Aircraft, vol. 2, p. 913

Smuggling
- 2000 Protocol against the __ of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on __), vol. 2, p. 734
- *See also:* ***Trafficking***

Social Security
- 1961 European Social Charter, vol. 4, p. 1483
- 1962 Convention concerning Equality of Treatment of Nationals and Non-Nationals in __ (No. 118), vol. 2, p. 958
- 1972 European Convention on __ (Excerpts), vol. 4, p. 1388
- 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, vol. 4, p. 1497
- 1996 European Social Charter (Revised), vol. 4, p. 1500

Sofia
- 2004 __ – Twelfth Meeting of the Ministerial Council – Decision No.2/04 on the Elaboration of an OSCE Border Security and Management Concept; OSCE Action Plan for the Promotion of Gender Equality *(chapter IV, para. 42)*, vol. 4, p. 1858

SOLAS
- *See:* ***Sea***

Stateless Persons
- 1949 Refugees and __, UN GA Resolution 319 A (IV), vol. 1, p. 2
- 1954 Convention relating to the Status of __, vol. 1, p. 68
- 2004 Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or __ as refugees or as persons who otherwise need international protection and the content of the protection granted, vol. 4, p. 1691
- *See also:* ***Copyright,***
  Nationality,
  Statelessness

Statelessness
- 1930 Special Protocol concerning __, vol. 1, p. 98

- 1961 Convention on the Reduction of __,vol. 1, p. 86
- 1973 Convention to Reduce the Number of Cases of __, vol. 1, p. 95
- 1999 Recommendation No. R (99) 18 on the avoidance and reduction of __, vol. 4, p. 1436
- 2006 AALCO Resolution on "Legal Identity and __", vol. 3, p. 1192
- 2006 Council of Europe Convention on the Avoidance of __ in relation to State Succession, vol. 4, p. 1431

Stockholm - 1992 __ – Third Meeting of the Ministerial Council *(Decisions, "The CSCE as a Community of Values", paras. 5 and 7)*, vol. 4, p. 1851

Stowaways - 1957 International Convention relating to __, vol. 2, p. 904

T

Teheran - 1968 Final Act of the International Conference on Human Rights – Proclamation of __– Resolution on Co-operation with UNHCR, vol. 2, p. 963

Terrorism - 1977 European Convention on the Suppression of __, vol. 4, p. 1563
- 1999 OAU Convention on the Prevention and Combating of __, vol. 3, p. 1119
- 2002 Inter-American Convention Against __, vol. 3, p. 1376
- 2003 Protocol Amending the European Convention on the Suppression of __, vol. 4, p. 1567

Tokyo - 1990 Nations Standard Minimum Rules for Non-custodial Measures (The __ Rules), vol. 1, p. 293

Torture - 1975 Declaration on the Protection of All Persons from Being Subjected to __ and Other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 219
- 1984 Convention against __ and other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 201
- 1985 Inter-American Convention to Prevent and Punish __, vol. 3, p. 1335
- 1987 European Convention for the Prevention of __ and Inhumane or Degrading Treatment or Punishment, vol. 4, p. 1574
- 1992 General Comment No. 20, Article 7 (Replaces general comment 7 concerning prohibition of __ and cruel treatment or punishment), Human Rights Committee, vol. 1, p. 577
- 1997 General Comment No. 1, Implementation of article 3 of the Convention in the context of article 22 (Refoulement and communications), Committee against __, vol. 1, p. 587

- 2000 Principles on the Effective Investigation and Documentation of __ and Other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 221
- 2002 Optional Protocol to the Convention against __ and Other Cruel, Inhuman or Degrading Treatment or Punishment, vol. 1, p. 210

Treatment - *See:* ***Nationals,***
Palestine,
Torture

Trafficking
- 2000 Protocol to Prevent, Suppress and Punish __ in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on __), vol. 2, p. 727
- 2002 Recommended Principles and Guidelines on Human Rights and Human __, vol. 1, p. 364
- 2002 Council Framework Decision on Combating __ in Human Beings, vol. 4, p. 1767
- 2003 Maastricht 2003 – OSCE Action Plan to combat __ in human beings; *chapter IV, para. 5.2, and chapter V, paras. 9.1 and 10.3*, vol. 4, p. 1855
- 2004 Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of __ in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, vol. 4, p. 1790
- 2005 Council of Europe Convention on Action against __ in Human Beings, vol. 4, p. 1580
- 2005 Addendum to the OSCE Action Plan to combat __ in human beings; Addressing the Special Needs of Child Victims of __ for Protection and Assistance of 7 July 2005 (Decision No. 685), vol. 4, p. 1856
- *See also:* ***Prostitution,***
Smuggling

U

UNCLOS - *See:* ***Sea***

UNESCO - *See:* ***Discrimination***

United Nations High Commissioner for Refugees
- See*:* ***High Commissioner for Refugees***

V

Vienna - 1993 __ Declaration and Programme of Action, vol. 2, p. 972

Visas - 1959 European Agreement on the Abolition of __for Refugees, vol. 4, p. 1386

W

War crimes - *See:* **Crimes**

Welfare - *See:* ***Adoption***

Women - *See:* ***Discrimination,***
Rights,
Trafficking

Y

Youth - 2006 African __ Charter, vol. 3, p. 1072

Electronic resources

A few electronic resources in English available on the internet and that may be useful to researchers and practitioners have been provided below:

International Instruments and Legal Texts

Source	Thematic Area	Website
UNHCR RefWorld	International and Regional Instruments, National Legislation	http://www.refworld.org/
United Nations	UN General Assembly Resolutions	http://www.un.org/documents/resga.htm
United Nations	UN Treaty Collection	http://untreaty.un.org/
OCHCR	UN Treaty Bodies	http://www.ohchr.org/english/bodies/treaty/index.htm
OCHCR	UN Human Rights Council	http://www.ohchr.org/english/bodies/hrcouncil/
OHCHR	International Human Rights Law	http://www.ohchr.org/english/law/
United Nations (WomenWatch)	Gender and women's issues	http://www.un.org/womenwatch/asp/user/list.asp?ParentID=1003
ICRC	International Humanitarian Law	http://www.icrc.org/ihl
ILO	International Labour Law	http://www.ilo.org/ilolex/
International Criminal Court	International Criminal Law	http://www.icc-cpi.int/legal_tools.html
IOM	International Instruments in relation to migration	http://www.iom.int/jahia/page855.html
EISIL	International Law	http://eisil.org/

Regional Instruments and Legal Texts

Source	Geographic Area	Website
African Union	Africa	http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm
African Commission on Human and Peoples' Rights	Africa	http://www.achpr.org/english/_info/news_en.html
Economic Community of West African States (ECOWAS)	Africa	http://www.sec.ecowas.int/sitecedeao/english/protocoles.htm
Asian-African Legal Consultative Organization (AALCO)	Asia	http://www.aalco.int/
Association of Southeast Asian Nations (ASEAN)	Asia	http://www.aseansec.org/4966.htm
United Nations Development Programme (UNDP)	Middle East	http://www.arabhumanrights.org/en/
Organization of American States	Americas	http://www.oas.org/DIL/treaties_and_agreements.htm
Inter-American Commission on Human Rights	Americas	http://www.cidh.oas.org/basic.htm
Council of Europe	Europe	http://conventions.coe.int/ http://www.coe.int/t/cm/adoptedTexts_en.asp
European Union	Europe	http://eur-lex.europa.eu/en/index.htm
OSCE	Europe	http://www.osce.org/documents/