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THE EUROPEAN UNION**

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ADDENDUM TO THE NOTE

from : Presidency

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No. Cion prop. : 10279/02 ASILE 33 + REV 1 (de, en, fr) - COM(2002) 326 final/2

Subject : Amended proposal for a Council Directive on minimum standards on procedures
in Member States for granting and withdrawing refugee status

Delegations will find below alternative texts submitted by the German (Article 28A) and United Kingdom (Annex II) delegations. Related changes from the UK are shown in footnotes to Articles 30 and 30B.

Article 28A

Exceptional application of the safe third country concept

1. Member States may provide [...] for procedures to refuse entry or to remove an applicant for asylum, which do not imply an examination of the safety of the applicant in his/her particular circumstances as described in Chapter II, 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 purpose of paragraph 1 where:
 - (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations; and
 - (b) it has in place an asylum procedure **prescribed by law**; and
 - (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and it observes its provisions, including the standards relating to effective remedies; and
 - (d) it has been so designated by the Council under the provisions of Article 28B or by national legislation.

3. Member States may also provide in their national legislation for procedures which do not imply an examination as described in Chapter II in order to refuse entry to an applicant for asylum at the border or to remove him/her from areas behind the border immediately before or after an illegal entry, if it can be established that
 - (a) the applicant poses a threat to the general public, because he/she has non-appealably been punished with imprisonment of at least three years in the Member State on account of a particularly serious criminal offence and where his/her leaving the Member State did not take place more than three years previously;
 - (b) that the conditions for sufficient protection pursuant to Article 26 (b) are **obviously** fulfilled for an applicant.
4. Member State shall respect the principle of non-refoulement in accordance with their international law obligations.
5. Where in cases of paragraph 1 the safe third country and in cases of paragraph 3 (b) the first country of asylum does not readmit or where in cases of paragraph 3 (a) another third country does not permit the applicant for asylum in question 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.

DESIGNATION OF SAFE COUNTRIES OF ORIGIN

[CRITERIA FOR DESIGNATION]

A country may be considered as a safe country of origin where it can be shown that there is generally neither a real risk of persecution as defined in Article 11 Council Directive .../... [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*]; nor a real risk of serious harm (torture or inhuman or degrading treatment or punishment).

[ELEMENTS OF CONSIDERATION]

In order to satisfy themselves that the criteria for designation are met, Member States and the Commission shall have regard to the law and its implementation and the general political circumstances, and may consider, inter alia, the extent to which protection is provided against persecution or mistreatment through :

- (a) the relevant laws and regulations of the country and the manner in which they are applied;
- (b) observance of the rights and freedoms, from which derogation cannot be made under article 15(2), laid down in the European Convention for the Protection of Human Rights;
- (c) provision for a system of effective remedies against violations of these rights and freedoms.
