

Antonio VITORINO

Commissioner responsible for Justice and Home Affairs

Statement on the European Asylum Policy

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Es gilt das gesprochene Wort

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Mr Antonio Vitorino, Commissioner responsible for Justice and Home Affairs, would like to emphasise the following key points with respect to the general approach of the Council on the Asylum Procedures Directive as agreed upon at the JHA Council meeting of last week.

- In the view of the Commission the Directive provides added value to the legally non-binding standards previously agreed on asylum procedures in the intergovernmental framework at the time of the Maastricht Treaty. Moreover, the Directive establishes a level playing field on processing asylum applications in the 25 Member States.
- The standards are in full accordance with the 'essential guarantees' for procedures for the determination of refugee status as identified by the UNHCR in their 'Handbook on procedures and criteria for determining refugee status' (1979). In certain cases, the standards go beyond these guarantees: for example, the right to be invited to an interview.
- The Directive introduces the obligation for all MS to ensure 'an effective remedy before a court or tribunal' and such judicial scrutiny goes well beyond the above mentioned standards. The importance of the application of this principle of Community law to all negative decisions on asylum applications cannot be underestimated. It will empower national judges in all 25 MS to examine individual decisions in light of the standards in the Directive for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (Qualification Directive).
- The Directive does not lay down rules on the right to remain pending appeal but leaves this to the Member States' individual responsibility. Whilst it is disappointing that the Directive is silent on this issue, it should be underlined that national rules must be in full conformity with the principle of non-refoulement of the 1951 Refugee Convention. Moreover, whether the right to remain has to be considered as an aspect of the notion of an effective remedy under Community law will be determined by the ECJ.
- The provisions on the safe third country concept provide an essential safeguard where they ensure that *as a minimum* in each individual case, a Member State must examine whether the applicant will not run the risk, as stated in article 3 of the European Convention on Human Rights, of being tortured or subject to inhuman treatment or punishment. In this context it is important to underline that the protection ECHR affords to individual applicants against removal in breach of this right is absolute and allows for no exceptions.
- The provisions on the supersafe third country concept provide a series of safeguards: strict criteria for designation (observance in full of ECHR and Geneva Convention), Community method for the list (Commission exclusive right of initiative) and the obligation for Member States to introduce a safety net at national level for exceptional individual cases.